IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.411 of 2011

M/s.Rathna Stores P. Ltd.,
79, Usman Road,
Chennai - 17. ... Appellant/Respondent

-vs-

The Deputy Commissioner of Income Tax,
Company Circle V(3),
Chennai. ... Respondent/Appellant

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "C" Bench, Chennai, dated 12.04.2011, passed in I.T.A.No.1901/Mds/2010 for the assessment year 2006-07. against the order of Commissioner of Income Tax, Appeals V at Chennai dated 18.08.2010 in ITA.No.160/08-09 against the order dated 15.12.2008/2006-2007/AACCR7287E by the Assistant Commissioner of Income Tax, Chennai.

For Appellant : Mr.R.Kumar

For Respondent : M/s.R.Hemalatha
Senior Standing Counsel

JUDGMENT
(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant is directed against the order of the Income-tax Appellate Tribunal, "C" Bench, Chennai, dated 12.04.2011, passed in I.T.A.No.1901/Mds/2010 for the assessment year 2006-07.

2.Heard Mr.R.Kumar, learned counsel for the appellant/ assessee and M/s.R.Hemalatha, learned Senior Standing Counsel for the respondent/revenue.

3.This Appeal was admitted on 24.02.2011, on the following substantial questions of law:-

i.Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in reversing the order of the Commissioner of Income Tax (Appeals) and restoring the addition made in the assessment of loans as 'cash credit' under Section 86 and consequent disallowance of interest paid?

ii.Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in holding that the appellant Company had not discharged its burden of proof in regard to the genuineness of the loans disagreeing with the findings of the Commissioner of Income Tax (Appeals)?

iii.Whether on the facts and circumstances of the case the Appellate Tribunal is justified in sustaining the addition under Section 68 and the consequential disallowance of interest on the ground that the genuineness of the credits is not proved when the appellant Company had produced confirmation letters from the creditors containing their names, addresses along with their PAN numbers before the assessing officer? and

iv.Whether on the facts and in the circumstances of the case the views expressed by the Appellate Tribunal (in para 10 at page 9 of its order) regarding the assessing officer's legal duty to issue summons under Section 131 for verification of the loans by enforcing the attendance of the loan creditors and production of their records represents the correct law?

4.The assessee for the assessment year under consideration (2006-07) admitted a total income of Rs.25,83,790/- in its return of income. During the previous year relevant to the assessment year under consideration, the assessee had taken unsecured loan totalling Rs.96,50,000/- from 87 parties. The Assessing Officer issued notice under Section 142(1) of the Act calling for details and in particular, details of unsecured loans taken. The assessee filed confirmation letters in support of the loans giving the particulars of the loan creditors, namely, the addresses and their Income Tax Permanent Account Number, etc. The assessee would state that the creditors also confirmed the balance as on 31.03.2006. The Assessing Officer appears to have directed the assessee to produce all the loan creditors in person along with their bank statement, PAN card and details of returns filed by them, etc. However, the assessee would contend that for want of time and for impending limitation for completion of assessment on 31.12.2008 the assessee filed a letter dated 12.12.2008 expressing his inability to produce the names of the loan creditors (numbering 87). The Assessing Officer passed an order on 15.12.2008 within three days thereafter, adding the entire loan of Rs.96.50 lakhs as unexplained cash credit under Section 68 of the Act. Further, the Assessing Officer added back the interest of Rs.11,58,000/- paid under such loan as ingenuine expenses.

5.On appeal before the Commissioner of Income Tax (Appeals) (CITA), the addition and the adding back of interest were deleted holding that the assessee had filed confirmation letters and given identity particulars and PAN of the creditors and had discharged the initial onus in its part and if the Assessing Officer is not satisfied about the genuineness of the transaction which according to the assessee were cheque payments, he is bound to call the parties and prove the credits to be not genuine. The Department filed an appeal before the Tribunal and in the grounds of appeal, one of the ground is that the CITA atleast should have remanded the matter to the Assessing Officer for verification of the credits instead of deleting the loan credit addition and interest disallowance. The Tribunal by the impugned order allowed the appeal filed by the revenue and set aside the order passed by the CITA. Admittedly, the assessee in response to the notice under Section 142(1) of the Act had produced the details pertaining to the loan credits by furnishing their names, addresses and the PAN details. The assessee's specific case is that for want of time they were unable to produce all the 87 creditors in person before the Assessing Officer as the assessment was getting time barred by 31.12.2008 and the time permitted by the Assessing Officer was thoroughly inadequate. The Assessing Officer could not have extended time beyond 31.12.2008 and consequently, the assessment was completed. When the matter was taken on appeal by the assessee before the CITA, the CITA allowed the appeal in entirety and deleted the addition and the disallowance of the interest.

6.In our considered view, the order passed by the CITA is without adequate reasons and the CITA having not examined the genuinity of the loan transactions could not have allowed the appeal in its entirety. Therefore, the revenue was well justified in approaching the Tribunal. In the Memorandum of Grounds of Appeal before the Tribunal, the revenue contended that the CITA atleast ought to have remanded the issue to the Assessing Officer for verification of the creditors. However, the Tribunal while considering the appeal thought fit to restore the order passed by the Assessing Officer and set aside the order passed by the CITA. The facts clearly show that the details furnished by the assessee, namely, the names of the creditors, their PAN details, payments effected through Cheque and confirmation letters were never verified at any stage of the proceedings. The Assessing Officer did not do so, probably for want of time and neither the Tribunal undertook such an exercise. Under normal circumstances, the Tribunal atleast would have called for a remand report. Even such procedure was not resorted to.

7.The Hon'ble Supreme Court while considering the aspect as on whom the burden of proof lies in the case of Sumati Dayal vs. Commissioner of Income Tax reported in (1995) 214 ITR 801 (SC) held that the burden of proof is on the assessee and he has to prove that amounts credits in his accounts did not represent income. The said decision was followed by the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. P.Mohanakala reported in (2007) 291 ITR 278 (SC). In the said decision, the Hon'ble Supreme Court while considering Section 68 of the Act held that the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attendent circumstances available on record. It further held that the opinion of the Assessing Officer is required to be formed objectively with reference to the material on record and the application of mind is the sine qua non for forming the opinion Further, it was pointed out that in cases where the explanation offered by the assessee about the nature and source of the sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee, viz., the receipt of money. Then the burden is on the assessee to rebut the same and if he fails to rebut it, it can be held against the assessee that it was a receipt of an income nature.

8.It is no doubt true that the burden is on the assessee to prove that the credits availed by him from 87 persons are genuine. It may be true that mere production of the PAN details, confirmation letters from some of those creditors by itself will not tantamount to discharging the burden of proof. But nevertheless, when these details are furnished, that too, after the Assessing Officer issued notice under Section 142(1) of the Act verification is required to be done. It is a common knowledge that those persons who had given confirmation letters would not readily volunteer and appear before the Assessing Officer to depose. Therefore, a departmental verification or atleast a sample verification should have been done to examine the genuinity of the stand taken by the assessee. In fact the Department themselves understood the matter in such a way that is why they had raised the ground before the Tribunal stating that the CITA atleast ought to have remanded the matter. Thus, for the above reasons, we are of the view that a verification can be done by the Assessing Officer on the materials placed before him. The learned counsel for the assessee submits that tax has also been deducted at source and documents are available which will prove the genuinity of the transaction. It is well open to the assessee to place all material before the Assessing Officer .

9.In the result, the appeal filed by the assessee is allowed, the impugned order is set aside and the matter is remanded to the Assessing Officer for fresh consideration. The Assessing Officer shall verify all the documents produced and the assessee shall also endeavour to produce atleast a few of the creditors before the Assessing Officer to show his bonafide and make out a case before the Assessing Officer. Accordingly, the Substantial Questions of Law are left open and the appeal stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Income-tax Appellate Tribunal, "C" Bench, Chennai.

2.The Commissioner of Income Tax,(Appeals)V,
Chennai-34

3.The Deputy Commissioner of Income Tax,
Company Circle V(3)Chennai.

4.The Assistant Commissioner of Income Tax,
Company Circle V(3), Chennai.

+1cc to Mr.T.N.Seetharaman, Advocate, S.R.No.89742
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.88625

Tax Case (Appeal) No.411 of 2011

SJ(Co)
CS/04/02/2019