IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

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

Tax Case (Appeal) No.75 of 2011

The Commissioner of Incometax,
Tiruchirapalli. ... Appellant

-vs-

M/s.MGM Transports (Madras) Pvt. Limited,
No.189, Wall Tax Road, Chennai. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal Chennai Bench 'D', dated 18.06.2010, in I.T.A.No.2094/Mds/2008 for the assessment year 2004-05 against the order of the commisioner of Income Tax (Appeals) V,dated 21.04.2008 and made in ITA.NO.626/2006-07 and against the order of the Income Tax officer Company Ward iv(1), dated 29.12.2006 and made in PAN/GIR AACCM5485M/500M of the Assessment Year 2004-2005.

For Appellant : Mr.Karthik Ranganathan,
Standing Counsel

For Respondent : Mr.T.Vasudevan,
For Mr.R.Janakiraman

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JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order of the Income-tax Appellate Tribunal Chennai Bench 'D', (for brevity “the Tribunal”) dated 18.06.2010, in I.T.A.No.2094/Mds/2008 for the assessment year 2004-05.

2. The appeal has been admitted, on 28.02.2011, on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the additions of 1.59 crores under the head Sundry creditors without affording fair and proper opportunity to department for verifications of the documents filed?
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> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in upholding the orders of CIT(A) without even extending time for verification of the documents filed at the appellate stage or remanding back the said issue to the lower authority for verification by protecting the interest of the department?"

3. Heard Mr.Karthik Ranganathan, learned Standing Counsel for the appellant/Revenue and Mr.T.Vasudevan, learned counsel, for Mr.R.Janakiraman, learned counsel for the respondent/assessee.

4. The short question, which falls for consideration in this appeal, which has been framed as substantial questions of law, is whether the Commissioner of Income Tax (Appeals)-V, Chennai (for brevity "the CIT(A)"), was justified in deleting the addition made by the Assessing Officer to the tune of Rs.74,72,798/- claimed by the assessee as amount paid to Sundry creditors.

5. The Assessing Officer while completing the assessment under Section 143(3) read with Section 144 of the Act, vide order dated 29.12.2006, has specifically recorded that the assessee did not furnish requisite details in spite of request made by the Assessing Officer. The details sought for were addresses and confirmations in respect of Sundry creditors and the assessee furnished the addresses only in a few cases, no confirmations or any kind of proof for the transactions were furnished, despite opportunities and reminders. Books of accounts, which were called for, were also not produced and the assessee failed to prove their case and therefore, the Assessing Officer concluded that these credits are assessee's own investments from and out of its undisclosed income. Accordingly, a sum of Rs.1,59,44,769/- was added to the total income of the assessee.

6. On appeal before the CIT(A), the assessee stated that his failure to produce the required details was on account of "long illness suffered by him" while the assessment proceedings were in progress and medical certificate from a qualified doctor was also filed in support of his plea. Though the CIT(A) does not state as to who was the person, who had taken ill, it is submitted that it is the Managing Director of the assessee, who had fallen ill. The CIT(A) allowed the assessee to file some documents and details and called for a remand report from the Assessing Officer, who has submitted the same on 27.02.2008. Insofar as Sundry creditors are concerned, this is what the Assessing Officer states in his remand report.

> "4.Sundry Creditors:-
>
> Confirmations in respect of sundry creditors have been filed by the assessee company, and the same have been verified. Sundry creditors includes a sum of Rs.74,72,798/- (hire charges) from M/s.Namakkal south India Transports which is a sister-concern of the assessee company. It is also seen from the income tax return and books of accounts that hire charges also paid to M/s.Namakkal South India Transports amounting to Rs.74,72,798/- which has been shown as sundry creditors. Enquiries were not caused to verify the genuiness of sundry creditors due to shortage of time. (emphasis supplied)"

7. The CIT(A) on receiving the report, noted that enquiries were not carried out by the Assessing Officer due to shortage of time but, however, concluded that the transactions having been explained and confirmations from the concerned party having been filed, no addition on account of Sundry creditors can be sustained at this stage of the proceedings for lack of time for further verification.

8. To put it succinctly, the finding rendered by the CIT(A) is perverse. The CIT(A) has ignored the basic tenets of law. If the Assessing Officer says that he did not have sufficient time to enquire, the CIT(A) could have adopted one of the two options, that is, to extend time to the Assessing Officer to submit a comprehensive report or to conduct the verification exercise by himself, since he has got powers to re-appreciate the factual matrix. In fact, these records were not placed before the Assessing

Officer at the first instance. Therefore, the CIT(A) could have undertaken the exercise as first appellate authority, and examined the genuinity and admissibility of the documents/confirmation of vouchers, etc., and on being satisfied, should have recorded as to what extent the Assessing Officer had explained the transaction and confirmed the same. Without embarking upon such exercise, the CIT(A) erroneously deleted the entire addition. Added to this, the Tribunal also confirmed the order, by dismissing the appeal filed by the Revenue. In paragraph 2 of the order, though the Tribunal states that it is not a fit case to restore the issue to the file of the Assessing Officer, however, no reasons have been assigned by the Tribunal to come to such a conclusion. The Tribunal further states that it is a futile exercise in the given facts and circumstances of the case. This also we find to be an utterly perverse finding. The Tribunal lost sight of the fact that the CIT(A) did not correlate the transactions and therefore, en bloc the addition could not have been deleted.

9. The learned counsel for the assessee referred to the decision of the Hon'ble Division Bench of this Court in the case of S.Hastimal vs. Commissioner of Income-Tax, [1963] 49 ITR 273 (Mad). The substantial question of law, which fell for consideration in the said case was whether the Tribunal was right in law and had material to hold that the sum of Rs.25,000/- was income from undisclosed sources in the year of assessment 1948-49 and assessable under the Act. The Tribunal noted the peculiar facts and circumstances of the case and pointed out that the proceedings under Section 34 of the Act started in the year 1957 and calling upon the assessee to explain a capital credit in his favour in the books of account for Hastimal Jayantilal and Co. made in the year 1947 would be difficult. However, the Hon'ble Division Bench went ahead to examine the correctness of the assessee's version stating that he had borrowed a sum of Rs.25,000/-and the monies were transferred through proper banking channel, etc., and ultimately, granted relief.

10. We find that the said decision is of no assistance to the case of the assessee and clearly distinguishable on facts. It is not clear as to why the documents, which were produced before the CIT(A), were not produced before the Assessing Officer, though the assessee was represented by a Chartered Accountant as its Authorised Representative. Furthermore, the CIT(A) does not state as to on account of whose illness, the documents could not be

produced. In any event, as pointed out by us earlier, no exercise has been done for correlating the document, its validity and genuineness and to consider to what extent the assessee has explained the case. Thus, a half-baked enquiry has resulted in an erroneous order passed by the CIT(A). Thus, we are of the clear view that the order passed by the Tribunal, confirming the order passed by the CIT(A), calls for interference.

11. For the above reasons, the appeal filed by the Revenue is allowed. Consequently, the order passed by the Tribunal as well as the Commissioner of Income-tax (Appeals)-V, Chennai are set aside and the matter is remanded to the Assessing Officer for fresh consideration, who shall consider the confirmation vouchers placed before him by the assessee and make a thorough verification and redo the assessment under the said head in accordance with law. In the light of the above, the substantial questions of law are answered in favour of the Revenue. No costs. The CIT(A) is directed to consign the records to the Assessing Officer for compliance of the above direction.

abr

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Deputy Assistant Registrar,
Income-tax Appellate Tribunal Chennai Bench 'D'.

2.The Commisioner of Income Tax(Appeals)V,
Chennai. 600034.

3.The Income Tax Officer,
company Ward iv(1),
121,Mahathma Gandhi salai,
Chennai. 600 034.

+1cc to Mr..Karthik Ranganathan, , Advocate SR.No. 80820

+1cc to Mr. .R.Janakiraman, Advocate SR.No. 81252

T.C.(A) No.75 of 2011

A.SK(11/01/2019)