IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM :

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

Tax Case Appeal No.743 of 2018

M/s.Tecno Doors Private Limited,
Plot No.L-1, SIPCOT Industrial Parks,
Mambkkam, Pondur 'A' Village,
Sriperumpudur Taluk,
Kancheepuram-602
106 .... Appellant

-vs-

Assessing Officer,
Assistant Commissioner of Income Tax,
Corporate Circle-3(1),
New Block,
4th Floor, 121, MG Road,
Nungambakkam,
Chennai-34, Tamil Nadu ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 22.06.2018 in ITA No.16/Chny/2018, for the Assessment year 2014-15. against the Order of the Commissioner of Income Tax Appeals II, Chennai dated 25/09/2017 in ITA.No. 311/CIT(A)11/2016-17 in the assessment Year 2014-15.

Against the Order of the Assistant Commissioner of Income Tax Corporate Circle 3 (1) Chennai 34 in GIR.No. PAN AACCT4786F dated 20.12.2016 in the assessment Year 2014-15.

For Appellant : Mr.K.Senguttuvan
For Respondent : Ms.V.Pushpa for
Mr.M.Swaminathan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal, filed by the appellant/assessee, under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), is directed against the order passed by the Income

Tax Appellate Tribunal, Madras 'D' Bench, in ITA No.16/Chny/2018, for the Assessment year 2014-15.

2.The Appeal has been filed raising the following Substantial Questions of Law:

> "1.Whether in law, the Hon'ble ITAT is correct in modifying the AO's order which is non-speaking order?
>
> 2.Whether in law, the Hon'ble ITAT is correct in holding the dis-allowance of the expenses at a percentage arbitrarily without substantiating?
>
> 3.Whether in law, the Hon'ble ITAT is correct in rejecting and dishonouring the settled judicial principle that assessment cannot be made on a pure guess and without reference to any evidence or any material at all?
>
> 4.Whether on the facts and in the circumstances of the case and in law, the Appellate tribunal was right in disallowing expenses of the appellant purely on the basis of assumptions and presumptions?”

3.Heard Mr.K.Senguttuvan, the learned counsel for the appellant and M/s.V.Pushpa and M.Swaminathan, the learned Counsels for the respondent.

4.The short issue which falls for consideration is as to whether the Tribunal was justified in reversing the order passed by the Commissioner of Income Tax (Appeals) ('CITA' for brevity), who had deleted the addition made by the Assessing Officer being 5% of the turnover, as being without any basis.

5.The Assessing Officer, while completing the assessment under Section 143(3) of the Act, vide order dated 20.12.2016, made an observation that it is seen from the financials submitted by the assessee that the profit declared for the assessment year 2013-14 was 26.80% of the total turnover; whereas, the same was declared at 19.82% for the assessment year 2014-15, which according to the Assessing Officer, was by inflating the expenses. The Assessing Officer would state that an illustration was made by him and the same was put to the assessee and the assese was not able to give a convincing reply. Therefore, the Assessing Officer decided to add 5% of the turnover over and above the income already declared. It is the assessee's contention that when the assessee was confronted by the Assessing Officer, by way of an illustration, alleging that they had inflated the expenses, the assessee had submitted a letter dated 29.09.2016 along with the following documents:

> "1.Bills supporting expense claim of Business Expense;
>
> 2.Bills supporting the expenses towards Clearing and Forwarding expenses made to MML Logistics;
>
> 3.The document putting for the closure of Vendor M/s.Ambica Projects - liability towards fixed asset vendor;
>
> 4.Bills for purchases in Repairs & Maintenance expense for expenses above Rs.1 lac."

The assessee requested the Assessing Officer to take the above mentioned records and proceed with the matter. However, on a perusal of the assessment order, we find that there is no reference to the records submitted by the assessee.

6.From the list of records produced, we find that the Bills supporting Business Expenses, Bills Supporting Expenses towards Clearing and Forwarding and the Bills pertaining to Repairs and Maintenance to the tune of Rs.One lakh were produced. Thus, the Assessing Officer appears to have not taken into consideration these records, which has been acknowledged by him, as could be seen from the date seal dated 29.09.2016.

7.When the assessee took the matter on appeal to the Commissioner of Income Tax (Appeals-11), Chennai, they contended that the arbitrary enhancement of turnover of 5% was without any basis and not sustainable and the Assessing Officer acted on a pure guess work and suspicion, which is not legally tenable. The assessee relied upon the decision of the Hon'ble Supreme Court in Dhakeswari Cotton Mills Limited vs. the Commissioner of Income Tax, West Bengal [1954 (10) TMI 12]; the decision of the High Court of Gujarat in the case of Commissioner of Income Tax-IV vs. Symphony Comfort System Ltd., [(2013) 35 Taxman.com 533 (Gujarat)] and the decision of the Allahabad High Court in the case of Commissioner of Income Tax-I vs. U.P.State Food & Essential Commodities [(2013) 39 taxmann.com 106 (Allahabad)] and the decision of the Income Tax Appellate Tribunal Delhi Bench in Prem Chand vs. Income Tax Officer in I.T.A.No.4126/Del/10-ITAT Delhi.

8.All the decisions were in support of the assessee's contention that there cannot be any arbitrary addition based on pure guess work and suspicion. The CITA took note of the decisions and the submissions made by the assessee and deleted the addition stating that there was no sufficient ground to make such a huge addition, especially when no investigation was conducted. On appeal by the Revenue before the Tribunal, the Tribunal came to a conclusion that it cannot be ruled out that the assessee has not inflated the expenses, however, found fault with the Assessing Officer in adopting 5%, pointing out that it is on higher side and directed the Assessing Officer to adopt 2.5%. In our considered view, the order passed by the Assessing Officer as well as the Tribunal are wholly erroneous. A low gross profit rate can at best be a reason for making an enquiry, but it cannot be a sole basis for making an addition. In Symphony Comfort System Ltd., the High Court of Gujarat held that the Assessing Officer cannot make addition merely by comparing the expenditure with preceding year's expenditure, which precisely was done by the Assessing Officer in the instant case, while he passed the assessment order dated 20.12.2016.

9.Thus, we are fully convinced that the addition made by the Assessing Officer was rightly deleted by the Commissioner of Income Tax (Appeals) and the Tribunal fell in error in interfering with the said order and by way of a guess work reducing to 2.5% without any material before it. Thus, for the above reasons, the order passed by the Tribunal calls for interference.

10.In the result, the appeal filed by the assessee is allowed. The Order passed by the Tribunal in ITA No.16/Chny/2018 is set aside and the order passed by the Commissioner of Income Tax (Appeals) dated 25.09.2007 is restored and the Substantial Questions of Law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Income Tax Appellate Tribunal Madras 'D' Bench.
Rajaji Bhavan, Besant Nagar, Chennai 90.

2. The Income Tax Appeals II,
   Chennai.

3. The Assistant Commissioner of Income Tax,
   Corporate Circle 3 (1),
   Chennai 34.

+1cc to Mr.Swaminathan, Advocate, S.R.No. 77838
+1cc to Mr.K.Senguttuvan, Advocate, S.R.No. 78081

T.C.A.No.743 of 2018

MG(CO)
GN(06/12/2018)