

In the High Court of Judicature at Madras

Dated : 03.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SESHASAYEE

Tax Case (Appeal) No.476 of 2008

M/s.Five Star Marine Exports
P.Ltd., Chennai-2.

...Appellant

Vs

The Deputy Commissioner of
Income Tax, Company Circle-II,
Chennai-34.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.3.2007 made in ITA.No.74/Mds/2006 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 1999-2000.

For Appellant :

Mr.M.P.Senthilkumar

For Respondent :

Mr.Karthik Ranganathan

Mr.Vijay Kumar Punna &

Mr.Prabhu Mukunth Arunkumar

JUDGMENT WAS DELIVERED BY T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant and the learned counsel for

the respondent.

2. This appeal by the assessee is directed against the order passed by the Income Tax Appellate Tribunal in ITA.No.74/Mds/2006 dated 16.3.2007 pertaining to the assessment year 1999-2000. The above tax case appeal has been admitted on the following substantial questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the penalty under Section 271D of the Income Tax Act, 1961 ? and

2. Whether, on the facts and in the circumstances of the case, the decision of the Income Tax Appellate Tribunal upholding the penalty under Section 271D of the Income Tax Act, 1961 is perverse, since it was without any material and without any finding, rebutting the factual findings of the Commissioner of Income Tax (Appeals) that the transactions relating to purchase of raw materials and none of the transactions related to advancing or advance being made of a loan or a deposit ?"

3. The assessment for the relevant year i.e. 1999-2000 was completed and an order of assessment was passed on 27.8.2003 under Section 143(3) read with Section 147 of the Income Tax Act, 1961. While completing the

assessment, the Assessing Officer, on perusal of the books of accounts produced by the assessee, found that the assessee accepted loans by way of cash from seven persons totally amounting to Rs.41,95,000/-. When this was pointed out to the assessee, they sent a reply dated 17.3.2003 stating that the transactions with six persons are genuine business transactions and that to consider them as loan, the provisions of Section 269SS of the said Act, if so needed, would apply.

4. Since the assessee took such a stand accepting the same as loan in contravention of the provisions of Section 269SS of the said Act, the Assessing Officer intimated the assessee that penal action under Section 271D of the said Act would be initiated separately. Accordingly, the Additional Commissioner of Income Tax, Company Range-II, Chennai initiated action and by order dated 25.2.2004, imposed penalty under Section 271D(1) of the said Act to the tune of Rs.41,95,000/-.

5. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 30.9.2005, allowed the appeal on the ground that the transactions done by the assessee with seven persons were in the nature of trade transactions relating to the purchases made on raw materials and did not relate to advancing or advance being made of a loan or a deposit and that the provisions of Section 269SS of

the said Act were not attracted.

6. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Department preferred an appeal before the Income Tax Appellate Tribunal, which was taken on file as I.T.A.No.74/Mds/2006. The Tribunal issued several notices to the assessee and the case was adjourned for nearly a year. Further, the assessee did not appear before the Tribunal, but remained absent and therefore, the assessee was set ex parte and the Tribunal decided the matter on merits. By the impugned order, the Tribunal allowed the appeal filed by the Department and set aside the order passed by the Commissioner of Income Tax (Appeals). Aggrieved by that, the assessee preferred this appeal, which was admitted on the above substantial questions of law.

7. Before we examine as to whether the substantial questions of law arise for consideration in this appeal, we are required to look into the factual position. Before the Commissioner of Income Tax (Appeals), the assessee contended that all the six parties are suppliers of raw materials and that on the date, when the loans were said to have been taken, there was sufficient cash balance and not considering this, the Assessing Officer held that they were in the nature of loans. The Commissioner of Income Tax (Appeals), though took note of the said submission made by the assessee, found that

the prawn seeds, which were supplied to the assessee, were treated at par with cash and that this was necessitated by the fact that the trade is highly volatile and accounting to that extent became difficult.

8. In fact, the said contention of the assessee was considered by the Additional Commissioner of Income Tax, who had afforded an opportunity to the assessee to substantiate the genuineness of the parties and the claim made by them that the transactions related to trade alone, which were peculiar to the business carried on by the assessee. Though such an opportunity was granted to the assessee, they were unable to substantiate the genuineness of the parties. In fact, to that effect, a report has been submitted by the Additional Commissioner of Income Tax dated 31.8.2005. This report has been taken note of by the Commissioner of Income Tax (Appeals) while passing the order dated 30.9.2005. But unfortunately, we find that there is no discussion as to why such a report should be ignored.

9. Furthermore, the transactions with six parties have been considered by the Commissioner of Income Tax (Appeals). But, nowhere in the order, there is any finding to the effect that raw materials supplied by those six parties were shown as cash in the books of accounts of the assessee. Therefore, we find that the Tribunal was fully justified in holding that the Commissioner of Income Tax (Appeals) erroneously held that the

transactions were trade transactions. The Tribunal was also fully justified in observing as to how the purchases made by the assessee resulted in acceptance of cash from suppliers. Apart from that, the Tribunal was right in reversing the finding of the Commissioner of Income Tax (Appeals) on the ground that there was no distress situation for the assessee so as to take loan, since it is their own case that they had sufficient cash during the relevant time.

10. Thus, we find that the above referred to questions of law do not arise for consideration in this appeal and that the Tribunal rightly decided on the factual issue. For the above reasons, we find that there is nothing wrong in the order passed by the Tribunal.

11. Accordingly, the above tax case (appeal) is dismissed. No costs.

03.4.2018

Internet : Yes

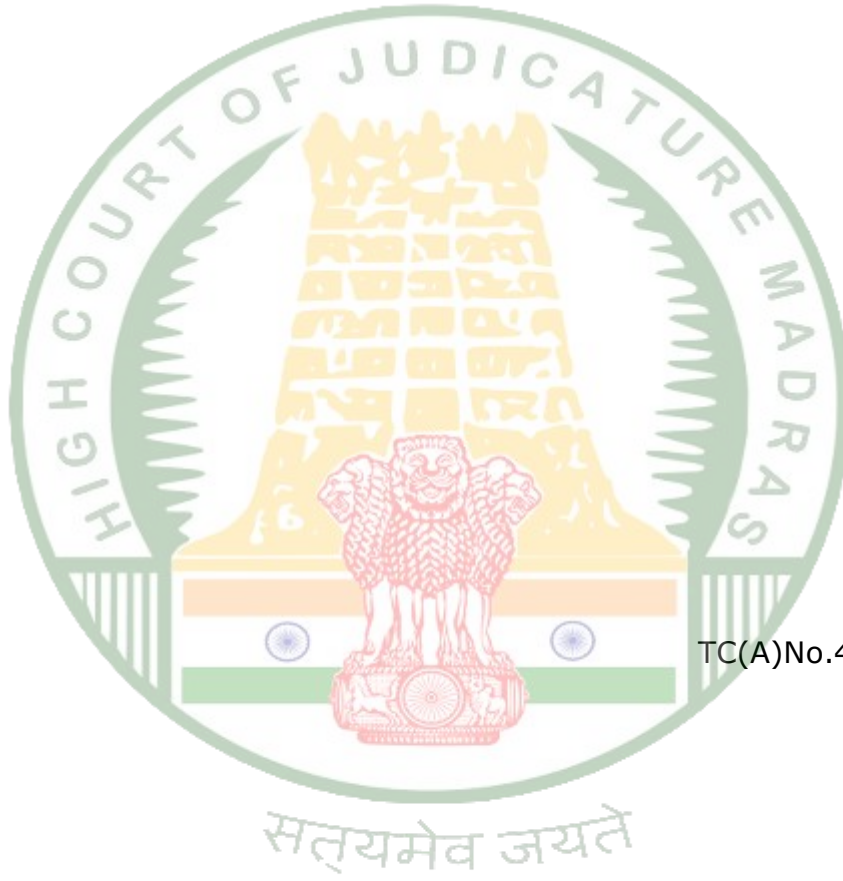
To

- 1.The Deputy Commissioner of Income Tax, Company Circle-II, Chennai-34.
- 2.The Income Tax Appellate Tribunal, Chennai 'A' Bench.

RS

T.S.SIVAGNANAM,J
AND
N.SESHASAYEE,J

RS



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