IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Tax Case (Appeal) Nos. 529 and 530 of 2008

M/s.Gem Granites
#76, Cathedral Road,
Chennai-600 086. .. Appellant in both TCAs

Vs

The Assistant Commissioner of Income Tax,
Circle-XV, Chennai-600 034. .. Respondent in both TCAs

Common Prayer:- Tax Case Appeals filed under section 260A of the Income Tax Act, 1961, against ITA Nos.531/Mds/2005 and 532/Mds/2005 for the assessment years 2000-01 and 2001-02, respectively, in the common order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 28.02.2007, in ITA Nos.531 & 532/Mds/2005.

For Appellant in both TCAs : Mr. M.P.Senthil Kumar
For Respondent in both TCAs : M/s.V.Pushpa

COMMON JUDGEMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J.]

Heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and the learned Standing Counsel appearing for the respondent.

2. These appeals have been filed by the appellant/assessee challenging the common orders passed by the Income Tax Appellate Tribunal, 'A' Bench Chennai in I.T.A.Nos.531 and 532/Mds/2005 dated 28.02.2007.

3.These appeals have been admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that crane hire charges cannot be treated as turnover of the appellant?

4. The learned counsel appearing for the appellant/assessee, in both the appeals, contended that the Income Tax Appellate Tribunal ought to have appreciated the crane hire charges received by the appellant was nothing, but a part of its regular operation of its business and therefore, the same ought to have held to be "turnover". Further it is submitted that the Income Tax Appellate Tribunal erred in observing that the learned counsel for the assessee had stated that the issue is against the assessee.

5. We have heard the learned Standing Counsel appearing for the respondent / Department on the above submission.

6. On a perusal of the impugned order passed by the Tribunal, we find that the assessee before the Tribunal accepted that the legal issue regarding the crane hire charges was decided against the assessee. Having accepted the legal position, the only plea raised before the Tribunal was to permit them to set off the crane hire charges paid against the crane hire charges received.

7. The Tribunal considered the said alternate submission and took note of the fact that this being a business income, the set off of the crane hire charges paid against the crane hire charges received should be allowed. Accordingly, the Tribunal, while accepting the alternate plea, as put forth by the assessee, directed the Assessing Officer to recalculate the income. In the light of the stand taken before the Tribunal, we find that this particular crane higher charges received by the assessee was a part of the regular operation of the business and it was never the case of the assessee that it forms part of the total turnover.

8. In this regard, it is beneficial to place reliance on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs.K.Ravindranathan Nair**, reported in **(2007) 295 ITR 0228**.

9. The factual difference between the assessee's case and that of the case involved **K.Ravindranathan Nair, cited supra,** was that the said case pertains to processing charges, and the instant case pertains to crane higher charges.

10. The Hon'ble Supreme Court, after considering the factual issues has held as follows:-

> "19. In our, view, for the above reasons, the said processing charges, which was part of gross total income, was an independent income like rent, commission, brokerage etc., and, therefore, 90 per cent of the said sum had to be reduced from the gross total income to arrive at the business profits and since the said processing charge was an important component of business profits, it also had to be included in the total turnover in the said formula to arrive at business profits in terms of cl.(baa) to the said Explanation."

11. Thus, by applying the above referred to decision, we find that the Tribunal was fully justified in permitting the alternate plea of set off to be raised and there is no error in the order passed by the Tribunal.

12. Accordingly these Tax Case Appeals are dismissed and thus, the question of law is answered against the assessee and in favour of the Revenue. No costs.

[T.S.S., J.,] [N.S.S., J]

03.04.2018

Index : No

Internet : Yes

kv/srk

To

The Assistant Commissioner of Income Tax,
Circle-XV, Chennai-600 034.

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

kv/srk

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