IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

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THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

and

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

T.C.(Appeal) No.397 of 2010

The Commissioner of Income-tax,
Circle X, Chennai. ... Appellant

-vs-

M/s. Abdul Wahid & Company,
26, Vepery High Road,
Periamet, Chennai-3. ... Respondent

Tax Case (Appeal) filed under Section 260-A of Income Tax Act, 1961, against the order of the Income-tax Appellate Tribunal "B" Bench, Chennai, dated 21.08.2009 passed in I.T.A.No.542/Mds/09.

For Appellant : Mr.T.Ravikumar
Standing Counsel (Taxes)

For Respondent : Mr.N.Quadir Hoseyn

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J U D G M E N T

(Judgment of the Court was delivered by M.M.SUNDRESH,J.)

This Tax Case (Appeal) has been filed by the Revenue challenging the order passed by the Commissioner of Income Tax (Appeals) viz., the Appellate Authority as confirmed by the Income-tax Appellate Tribunal "B" Bench, Chennai, dated 21.08.2009 in I.T.A.No.542/Mds/09 for the assessment year 1999-2000.

2. This tax case (appeal) has been admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case the Tribunal is right in holding that the discount given to the assessee on purchase of the material which means the cost of the material purchased was reduced by the discount given?

3. The assessee originally took a stand by treating the 'discount and Kasur' as other income in the original return and thereafter, changed it to be adjusted against the purchase of skins and chemicals account at cost and therefore, not to be treated as income

separately.

4. The Tribunal, while confirming the order of the Appellate Authority, CIT Appeals, took into consideration that purchase invoice of the assessee clearly shows the total cost and discount given. Therefore, only the net amount was payable on the purchase made. The assessee did not receive any part of the discount amount in cash. In any case, it makes no difference either discount amount is reduced from the purchase cost or not or shown separately by taking note of the increase in the business profit. Thus, merely because the assessee has taken a different stand from the one took earlier, his entitlement cannot be rejected. Challenging the same, the present appeal has been filed.

5. Mr.T.Ravikumar, learned Standing Counsel appearing for the Revenue, submitted that the assessee has taken a contrary stand. It is for seeking better benefit, such a stand was taken. Having taken the earlier stand that the discount would come under the caption "other income", it is not open to the assessee to change it thereafter only for the purpose of getting benefit under the Act.

6. We do not find any substantial question of law involved in this appeal. After all, the Tribunal as well as the Commissioner of Income Tax Appeal rendered their finding on facts. After due adjudication, it was accordingly held in favour of the assesee. There is no dispute on facts. The earlier stand taken by the assessee was at best a mistake of fact. Thus, that alone would not disentitle the assessee from getting the benefit which otherwise it is entitled in law. In any case, the consequence will be the same. Therefore, we do not find any substantial question of law involved and the tax case appeal stands dismissed. No costs.

(M.M.S., J.) **(N.A.V., J.)**

22.06.2018

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To

1.The Commissioner of Income-tax,
Circle X, Chennai.

2.The Income-tax Appellate Tribunal "B" Bench,
Chennai.

3.The Commissioner of Income-tax (Appeals) V,
Officer of the Commissioner of
Income-tax (Appeals) V,
121, Mahatma Gandhi Road, Chennai-600 034.

M.M.SUNDRESH, J.

and

N.ANAND VENKATESH, J.

raa

T.C.(Appeal) No.397 of 2010

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