NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 29 of 2019

- Deputy Commissioner of Income Tax 1(1), 32/32 Bungalows, Bhilai, District Durg (C.G.)

---- Appellant

Versus

- M/s Ganpati Motors, G.E. Road Supela, Bhilai, District Durg (C.G.)

---- Respondent

For Appellant : Shri Amit Chaudhari, Senior Standing Counsel.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

25.07.2019

1. The challenge involved in this appeal preferred by the Deputy Commissioner of Income Tax is with regard to the correctness and sustainability of the verdict passed by the Income Tax Appellate Tribunal, whereby the deletion of a sum of Rs. 8,71,72,350/- as ordered by the Commissioner of Income Tax (Appeal), interdicting the verdict passed by the Assessing officer, has been upheld. The following questions of law are suggested as involving substantial question of law:

> "1. Whether on the point of law and on the facts and circumstances of the case, the ITAT was justified in confirming the order of the ld. CIT(A) who has deleted the addition of Rs. 8,71,72, 350/- made by the AO by applying the provisions of Section 43B of I.T. Act, 1961 on account of unpaid VAT when particularly, the Hon'ble Supreme Court in the case of Chowringhee Sales Bureau (P) Ltd., vs. CIT (1973) 87 ITR 542 has held that unpaid sales tax liability has to be included as part of receipts of the assessee and

> thereby in the present case, the provisions of Section 43B are attracted?
>
> (2) Whether in law and on facts & circumstances of the case, the ITAT was justified in allowing the assessee to route his Value Added Tax (VAT) amount out of his regular profit and loss account in contravention of Section 145A of the Income Tax Act, 1961?
>
> (3) Whether in law and on facts & circumstances of the case, the ITAT was justified in considering unpaid VAT as allowable in contravention of Section 43B of the Income Tax Act, 1961?"

2. Heard the learned standing counsel for the Appellant.

3. The point of dispute is with reference to the applicability of Section 43B of the Income Tax Act, 1961 and whether the amount of Sales Tax / VST, not satisfied by the Assessee and retained at Assessee's hands could be treated as part of the turnover, to be reckoned for taxation.

4. As a matter of fact, the Assessee had filed a return on 27.03.2012 declaring the total turnover of Rs. 1,47,07,196/-. The matter was subject to scrutiny and assessment and later, it is stated that the proceedings were subjected to reassessment proceedings invoking the power and procedure under Section 147, read with Section 148 of the Income Tax Act, 1961. Ultimately the Assessing Officer disallowed the deletion amounting to Rs. 8,71,72,350/- and the total income was worked out, also reckoning the said amount, fixing the total turnover as Rs. 10,21,65,290/-, in turn, fixing the tax liability accordingly. This was sought to be challenged by filling an appeal before the Commissioner of Income Tax, where the contention of the Assessee was accepted and the amount covered towards the 'unsatisfied tax' was deleted. The said order was upheld by the Tribunal, correctness of which is under challenge this present appeal.

5. The reliance sought to be placed by the Department is on the verdict passed by the Apex Court in **Chowringhee Sales Bureau (P) Ltd. vs. Commissioner of Income Tax, West Bengal** reported in **AIR 1973 SC 376**. The Tribunal referred

to the said decision as well, besides the decision rendered by the Gauhati High Court reported in **India Carbon Limited v. Inspecting Assistant Commissioner and Another (1993) 200 ITR 0759**, and that of the High Court of Delhi in **Commissioner of Income Tax vs. Noble & Hewitt (India) (P) Ltd. r**eported in **2008 305 ITR 0324**, considering the applicability of the above provision. In fact, the circumstances under which the law declared by the Court in ***Chowringhee's*** case would be attracted was discussed in detail by a co-ordinate Bench of this Court and as per the verdict passed on 25.04.2017 in **Tax Case No. 30 of 2016**, interference was declined in the said appeal preferred by the Department. It was referring to the said verdict of the jurisdictional High Court, that the matter was finalized by the Income Tax Appellate Tribunal.

6. The learned counsel for the Appellant clearly concedes that the issue has been considered and decided by this Court and a copy of said verdict is also placed for perusal of this Court. After going through the pleadings and proceedings, the relevant provisions of law and also the verdict passed by a co-ordinate Bench of this Court as mentioned above, this Court is of the firm view that no question of law has been raised, much less any substantial question of law, so as to call for interference in terms of Section 260(A) of Income Tax Act, 1961 and the issue stands already decided by the Court. There is no reason to disagree.

7. The appeal stands dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan