

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.10 of 2009

M/s. Oren Hydrocrbons Pvt. Ltd.
28/28 Saravana Street,
T.Nagar,
Chennai - 600 017. ... Appellant

Vs.

The Deputy Commissioner of Income-tax,
Company Circle -V (1),
Aayakar Bhavan, M.R.Road,
Chennai - 600 034. ... Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, Chennai, dated 26.09.2008 in I.T.A.No.2058/Mds/2006 for the assessment year 2001-02, against the Order of the Commissioner of Income Tax (Appeals)-IV, Chennai, No.121, Mahatma Gandhi Salai, Nungambakkam, Chennai - 34, dated 18/07/2006 made in Appeal No.CIT(A)-IV/CHE/459/05-06 as against the Order of the Assistant Commissioner of Income Tax, Company Circle V(1), Chennai - 34, dated 26/03/2004 in PAN/GIR/No.AAACO3649L/51085-0 for the Assessment year 2001-02.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Ms.R.Hemalatha
Senior Standing Counsel

* * *

J U D G M E N T

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

This appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 26.09.2008 passed by the Income Tax Appellate Tribunal Chennai 'B' Bench in I.T.A.No.2058/Mds/2006 for the Assessment Year 2001-02.

2. The appeal has been admitted on the following substantial questions of law vide order dated 25.02.2009:

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the appellant is not entitled to the deduction of the freight amounting to Rs.19,83,445/- and

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the appellant is not entitled to the deduction of the sum of Rs.11,37,018/- in respect of purchase made from Neelam Minerals?"

3. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Ms.R.Hemalatha, learned Senior Standing Counsel for the respondent/revenue.

4. The first aspect which to be considered is as to whether any substantial question of law arises for consideration in this appeal. On a careful reading of the order of the Tribunal, we find that the entire matter revolves around the factual aspect as to whether the assessee was able to substantiate his plea that they have incurred expenses towards freight and transportation paid to Venkata Subbareddy Transport Contractors and Subbareddy contractors. We note that the Assessing Officer while completing the assessment vide order dated 26.03.2004 prima facie did not agree with the assessee's stand, nevertheless to establish the same in a proper manner, issued notice under Section 133(6) of the Act to the said transporters, which was returned unserved/undelivered. Subsequently, Commission was issued under Section 131(1)(d) of the Act on 18.02.2004 to the Income Tax Officer, ward -I, Cuddappah. The said officer, in response to the commission issued, submitted as follows:

"a) Venkata Subbareddy Transport Contractors and Subbareddy Transporters were not found to be doing business at the address mentioned.

b) Door No.3/198, Sattar Compound, Cuddapah is not in existence.

c) Local enquiries revealed that no such persons were doing transport business from the above address and

d) Shri. Ramamuni Reddy furnished a letter dated 27.02.2004 to ITO, Cuddappah stating that he was not a partner with the above mentioned

firms or persons and had no business transaction. He further confirmed that he had no business transaction with the assessee M/s. Oren Hydro Carbons Pvt.Ltd."

5. The above finding will clearly show that the assessee failed to establish that they had incurred expenses towards freight and transportation. The Commissioner of Income- Tax (Appeals) -IV, Chennai, (hereinafter referred to as 'CIT(A)') reversed the finding of the Assessing Officer based upon the copies of crossed demand drafts issued in favour of V.Venkata Subba Reddy @ V.Subba Reddy. In our considered opinion, mere production of crossed demand drafts was not sufficient to establish the stand taken by the assessee. When the Assessing Officer was able to establish that there was no such person or transport company, the assessee set up another case by stating that there is another partner by name Rama Muni Reddy, who is also in Cuddappah. The said person has given a statement stating that they had nothing to do with the said business. The Revenue preferred an appeal before the Tribunal. The Tribunal in our considered view, rightly reversed the finding of the CIT(A) and noted the fact that the transporters are not in existence has not been repelled by the assessee in the appeal proceedings and the CIT(A) merely accepted the plea of the assessee without any material or evidence on record.

6. Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee filed a paper book containing the copies of the demand drafts, consignments note, delivery challans and the written statement made before the CIT(A).

7. We find all these records are self-serving and these records do not dislodge the specific finding of the Assessing Officer based on Commission issued to the Income Tax Officer, Cuddappah referred above. Therefore, the assessee having not been able to establish by documents that the finding of the Assessing Officer was incorrect, we have no hesitation to hold that the order passed by the CIT(A) is utterly perverse.

8. According to the learned counsel for the appellant/assessee, the finding of the Tribunal is perverse. We do not agree with said submission as we have already held that the order of the CIT(A) is utterly perverse.

9. Ms.R.Hemalatha, learned Senior Standing Counsel for the respondent/revenue placed reliance on the decision of the Hon'ble Supreme Court of India in the case of Mangalore Ganesh Beedi Works Vs. Commissioner of Income Tax reported in (2015) 378 ITR 0640, wherein the Supreme Court held that there was no reason to reverse the finding of the fact particularly since nothing has been shown to conclude that the finding of fact was perverse in any manner whatsoever. It was further held that if the finding of the fact arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court and in the said case, it was noted that the Revenue did not seek for framing of any such question. In this regard, the Supreme Court referred to the decision in the case of K.Ravindranathan Nair Vs. Commissioner of Income Tax reported in [2001] 247 ITR 178 (SC).

10. In the light of the above reasons, we hold that there is no substantial question of law arising for consideration in this appeal. Accordingly, the appeal filed by assessee fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

mp/ska

Sub Assistant Registrar

To

- 1) The Deputy Commissioner of Income-tax,
Company Circle -V (1),
Aayakar Bhavan, M.R.Road,
Chennai - 600 034.
- 2) The Commissioner of Income Tax (Appeals)-IV, Chennai,
No.121, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 34.
- 3) The Assistant Commissioner of Income Tax,
Company Circle V(1),
Chennai - 34.

+1 cc to M/s.R.Hemalatha, Advocate, S.R.No.55146

+1 cc to Mr.N.Muthukumar, Advocate, S.R.No.55261

TCA.No.10 of 2009

SPD(CO)

SSM(24/07/2019).