IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.1327 of 2009

The Commissioner of Income Tax
Tamil Nadu VII,
Chennai ... Appellant

Vs.

M/s.Textile Dye-Chem Corporation,
150, Montieth Road, Chennai 600 008.
(PAN: AAAFTO387R) ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 22.5.2009 made in ITA No.1728/Mds/2008,

against the order dated 13/05/2018 made in ITA No.234/07-08 on the file of the Commissioner of Income Tax (Appeals)-IX for the Assessment Year 2004-05,

against the order dated 28/12/2007 made in PAN/GIR No.AAAFT0387R on the file of the Income Tax Officer, Business Wars-VII(1), Chennai, for the Assessment Year 2004-05.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.S.Premalatha

For Respondent : Mr.M.P.Senthilkumar assisted by
Ms.Sree Lakshmi Valli

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case (Appeal) under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal dated 22.5.2009, by which the learned Tribunal partly allowed the Appeal of the Revenue and upheld the order passed by the learned Commissioner of Income Tax (Appeals), wherein the learned Commissioner of Income Tax (Appeals) has directed for adopting the Gross Profit Rate of 7.37% for Assessment Year 2003-04 for best judgment assessment:-

> "i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding, for estimating the profits on the basis of GP Rates for past years is valid, even though the Commissioner of Income Tax (Appeals) having agreed that the inflated purchases are shown in the accounts only to reduce the actual profits?
>
> ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law without considering the grounds raised before the Income Tax Appellate Tribunal by way of specific grounds, which was supported by Jurisdictional High Court Decision reported in 263 ITR 5 is valid?"

2. The relevant portion of the order passed by the Commissioner of Income Tax (Appeals) is quoted below for ready reference:-

> "7. I have considered the assessment order, statement of facts and written submissions filed by the learned AR of the appellant. I find that the appellant is not able to produce M/s.Parol Chemicals and M/s.Jupiter Chemicals. The appellant had not given full postal addresses of these parties to the AO on the ground that these parties has approached with the help of third party to the appellant. However, the appellant has claimed that they have evidence to show that those goods have been sold. The learned AR of the appellant have also argued that the learned AO has not investigated the correctness of the sales. The contention of the learned AR of the appellant is that if the AO is accepting the sales, she should also accept the purchase. Without purchases, the sales cannot be accepted. I find that the appellant has not paid purchase amount to M/s.Parol Chemicals and M/s.Jupiter Chemicals on the ground that they have not received the full payment from the parties to whom goods were sold. In the circumstances, I find that sales are accepted but the genuineness of the purchases is not verifiable because the appellant is not able to furnish the postal address of the parties. The AO's observation is that the appellant has inflated the purchases. If we consider this, I find

that whole purchases cannot be denied, because there is a corresponding sale. In this case, if purchases are not verifiable we can presume that books of account cannot be relied upon. In this situation, it is presumed that inflated purchases are shown in the account to reduce the actual profit earned. Therefore, we have to see the rate of GP shown by the appellant as compared to earlier years. I find that the appellant has shown reduced GP rates compared to earlier years. Vide letter dated 27th December 2007, the appellant has given a GP chart and shown GP for assessment year 2003-04 @ 19.06 and vide letter dated 8.4.08 at the time of appellate proceedings, the appellant has filed GP rate of three years as under:

Asst.Year	Purchases	Sales	G.P.	G.P.
2002-03	2290.86	2696.74	211.15	7.83%
2003-04	2713.58	3269.60	240.83	7.37%
2004-05	2854.38	3422.18	223.57	6.53%

In view of this, the AO is directed to adopt the GP of 7.37% shown in assessment year 2003-04 for the year under appeal and accordingly calculate the GP."

3. The observation made by the learned Tribunal is also quoted below for ready reference:-

"6. We have considered the rival submissions carefully in the light of the material on record. No doubt the burden is always on the Assessee to prove the expenditure which has been claimed by such Assessee, but at the same time if the sales had been accounted for in the books then corresponding expenditure on purchase cannot be ignored merely because bills could not be produced for which the Assessee seems to have given justifiable explanation."

4. Having heard the learned counsel appearing for the parties, we are of the clear opinion that no substantial question of law arises in this Appeal as the estimation of income of the Assessee at the GP rates is the best judgment method usually adopted by the Authorities below when the books of accounts are rejected which cannot be said to be perverse in any manner in the present case.

5. Therefore, in our opinion, the Appeal filed by the Revenue is devoid of merit and it deserves to be dismissed.

Accordingly, it is dismissed and the substantial questions of law, as framed earlier, are answered in favour of the Assessee and against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Commissioner of Income Tax
   Tamil Nadu VII,
   Chennai

2. Income Tax Appellate Tribunal,
   Madras 'C' Bench, Chennai

3. The Asst. Commissioner of
   Income Tax,
   Business Range - VII, Chennai.

+1cc to Mr.M.Swaminathan, Advocate Sr.38523
+1cc to Mr.Philip George, Advocate Sr.38577

TCA No.1327 of 2009

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srg 20/06/2019