IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM :

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

TCA.No.263 of 2009

M/s.Padmaja Financial Services P. Ltd.,
No.187 (Old No.107) Peters Road,
Chennai - 600 086. .. Appellant/Appellant

Vs.

The Asst. Commissioner of Income Tax,
Company Circle-IV(3),
Chennai - 600 034.
.. Respondent/Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, Chennai dated 31.05.2007 in I.T.A.No.1534/Mds/1995 for the assessment year 1990-91, and against the order of the Commissioner of Income Tax(Appelas)-IV, Chennai-600 034 made in ITA.NO.181/93-94 order dated 28/02/1995 and against the order of the Assistant Commissioner of Income Tax, Company circle-IV(3), Chennai, made in PAN/GIR.NO.139P/47-081-CN-6149, order dated 22.03.1993 in the Assessment year of 1990-1991.

For Appellant : Mr. Venkat Narayanan
for M/s.Subbaraya Aiyar Padmanabhan & Ramamani

For Respondent : Mr.S.Rajesh, for Mr.Karthik Ranganathan
Standing Counsel

J U D G M E N T

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

This appeal by the Revenue under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated 31.05.2007 in ITA.No.1534/Mds/1995 passed by the Income Tax Appellate Tribunal Madras, 'B' Bench in the assessment year 1990-91.

2.The appeal has been admitted on the following substantial question of law :

> "Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that the expenditure was incurred wholly and exclusively for the purpose of business and hence allowable u/s. 37 of the Act?"

3.We have heard Mr.Venkat Narayanan, learned counsel for the appellant/assessee and Mr.S.Rajesh, learned Standing Counsel for the respondent/revenue.

4.The assessee filed its return of income for the assessment year 1990-91 declaring total income of Rs.82,390/- on 11.01.1991. The case was selected for scrutiny, in response to which the assessee's authorized representative and the Director appeared before the Assessing Officer and answered the queries raised by the Assessing Officer. The Assessing Officer noted that the main source of income of the assessee Company is by way of service charges received from its clients mainly from Corporate Sector for providing financial services like arranging credits investment advise, etc. For the previous year relating to the assessment year 1990-91, the assessee had admitted a gross receipt of service charges amounting to Rs.17,69,638.65. It also claimed payment of service charges amounting to Rs.5,02,077.70 and the net amount of Rs.12,67,560.95 was shown in the Profit and Loss Account. The assessee claimed payment of service charges to ten persons/firms. The Assessing Officer disbelieved the payment of such service charges and for which purpose, the assessee was called upon to furnish the names of those ten persons. Upon the names being furnished, the said persons were summoned and statement under Section 131 was recorded. After going through the statements given by those ten persons, the Assessing Officer found that none of the parties have rendered any worthwhile service to the assessee Company and most of them did not have any knowledge about their own business and did not know for what purpose they received money from the assessee. Accordingly the stand taken by the assessee was rejected and the assessment was completed by order dated 22.03.1993. The assessee carried the matter by way of an appeal to the Commissioner of Appeals-IV (CITA), Madras, who by order dated 28.02.1995 confirmed the factual finding recorded by the Assessing Officer and on further appeal before the Tribunal, the order passed by the Assessing Officer and the CIT(A) was confirmed by the impugned order.

5.Mr.Venkat Narayanan, learned counsel for the assessee submitted that the names of the persons who have rendered services were provided to the Assessing Officer and they were summoned and statement was recorded and all of them have received service charges and shown them in their books of accounts and also disclosed it in the Income Tax Returns filed and therefore, the Assessing Officer committed an error in disbelieving the stand taken by the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Sassoon J.David & Co. P. Ltd vs. Commissioner of Income Tax [(1979) 118 ITR 0261(SC)]. In the said decision, it was pointed out that an attempt was made in the IT Bill of 1961 to lay down the "necessity" of the expenditure as a condition for claiming deduction under Section 37. Section 37(1) in the Bill read "any expenditure ..... laid out of expended wholly, necessarily and exclusively for the purposes of the business for profession shall be allowed...." It was further pointed out that the introduction of the word "necessarily" in the section resulted in public protest. Consequently, when Section 37 was finally enacted into law, the word "necessarily" came to be dropped. Further, it was pointed out that the fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under Section 10(2)(xv) of the Act if it satisfies the tests laid down by law. It needs to be pointed out that the above decision can render no assistance to the case of the assessee. The said decision points out the effect of Section 37 of the Act. Nevertheless, unless and until the other test laid down by law are satisfied, the question of claiming the same as a deduction does not arise. In the instant case two authorities and the Tribunal concurrently disbelieved the case of the assessee and to say the least, the stand of the assessee was utterly false. Therefore, the question of claiming deduction does not arise.

6.Reliance was also placed on the decision in the case of Commissioner of Income Tax vs. Sapthagiri Traders Ltd. and others [(2008) 305 ITR 0438 (Madras)]. In the said case, the Tribunal found that the transaction of purchase of packing material was not proved to be sham nor the price paid was proved to be different than that shown in the books and the payments were made through Cheques, there was no reason to deny deduction under Section 37(1) of the Act. In the preceding paragraphs of this judgment, we have pointed out about the various persons who were summoned by the Assessing Officer and statement was recorded. Those persons though admitted that they have received money from the petitioner were not aware for what purpose the same was paid and most surprisingly many of them did not know what is their line of business. Therefore, the assessee had set up a false case with a view to avoid the tax liability.

7.Reliance was also placed on the decision in the case of Commissioner of Income Tax vs. Devayhi Beverages Ltd. [(2008) 2896 ITR 0041 (Del)]. We find that the decision can hardly help the assessee on account of the factual position therein where the Court found that the assessee therein engaged in manufacture and sale of soft drinks is entitled to full deduction allowed by it to dealers for breakage and leakage of bottles irrespective of percentage of similar discount allowed by it in the earlier year. On facts, the Tribunal held in favour of the assessee which was confirmed by the High Court of Delhi. This decision cannot be applied to the facts of the present case.

8.Mr.S.Rajesh, learned Standing Counsel for the respondent rightly placed reliance on the decision of the High Court of Kerala in the case of Ram Bahadur Thakur Ltd. vs. Commissioner of Income Tax [(2003) 130 Taxman 275 (KER.)] which refused to interfere with the concurrent finding of the fact arrived at by the Appellate Authority and the Tribunal. He has also relied on the decision of the High Court of Punjab and Haryana in the case of Liberty Footwear Co. vs. Commissioner of Income Tax [(2014) 51 taxmann.com 87 (P&H)].

9.Reliance was also placed on the decision of the Hon'ble Apex Court in the case of Commissioner of Income Tax vs. P.Mohanakala [(2007) 161 Taxman 169(SC)], wherein the Apex Court pointed out that when the finding of fact arrived by the authorities below were based on proper appreciation of facts, material available on record and surrounding circumstances, it would not call for any interference. In the said case, the Apex Court pointed out that the doubtful nature of transaction and the manner in which the sums were found credited in the books of accounts maintained by the assessee had been duly taken into consideration by the authorities below and the transaction though apparent were held to be not real one. It was further pointed out that it may be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence. This decision applies on all fours to the assessee's case where also the assessee pleaded that the amounts paid as service charges to those third parties should disclose the same in their income tax return. This can hardly validate such invalid and doubtful transactions.

10.In the light of the above discussion and noting that the two authorities and the Tribunal concurrently on facts held that the assessee had miserably failed to establish his case. Thus, the Court finds that there is no substantial question of law arising for consideration in this appeal.

11.In the result, the tax case appeal fails and is dismissed and the Substantial Question of law is answered in favour of the respondent/revenue. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax Appeals-IV,
Chennai-600 034.

2.The Asst. Commissioner of Income Tax,
Company Circle-IV(3),
Chennai - 600 034.

3.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

4. The Section Officer,
V.R Section,
High Court, Madras

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate sr.59036
+2cc to to Mr.Karthik Ranganathan, Advocate sr.59169

TCA.No.263 of 2009

nrjk(co)
nr 28/08/2019