IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.06.2019

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

Tax Case (Appeal) No.756 of 2008

The Commissioner of Income-tax,
Central-III, Madras. .. Appellant

-vs-

Shri S.V.Sreenivasan,
No.10, Sreenivasaragavan Street,
R.S.Puram, Coimbatore. .. Respondent

Tax Case Appeal filed under Section 260A of the Income-tax Act, 1961 against the order 06.12.2006 passed by the Income Tax Appellate Tribunal Chennai Bench 'D', in I.T.A.No.2686/Mds/2005, for the assessment year 2002-03. Appeal against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 06/12/2006 passed in I.T.A.No.2686(mds)/2005 in Assessment year 2002-2003 against the order of the Commissioner of Income Tax (Appeals)-II, Coimbatore in I.T.A. No.78-C/05-06 for the assessment year 2002-2003 PAN/GIR No.AIQPS8095P.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: and Mrs.K.G.Usharani,
Standing Counsel

For Respondent : Mr.A.S.Sriraman,
for Mr.S.Sridhar

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JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 06.12.2006, passed by the Income Tax Appellate Tribunal Chennai Bench 'D' (for brevity, "the Tribunal"), in I.T.A.No.2686/Mds/2005 for the assessment year 2002-03.

2.The above appeal has been admitted, on 08.07.2008, on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in deleting the addition of Rs.2,65,16,037/- on account of value of gold and diamond in Peak in WPS account, even though the additions made by the assessing officer and confirmed by the Commissioner of Income Tax (Appeals) and the Tribunal not considering the materials available on record including the seized material is valid?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue; and Mr.A.S.Sriraman, learned counsel for Mr.S.Sridhar, learned counsel for the respondent/assessee.

4.The short issue which falls for consideration is whether the Tribunal was justified in law in deleting the addition on account of value of gold and diamond in peak in WPS account, that is, work in progress account, even though the additions made by the Assessing Officer and Confirmed by the Commissioner of Income-tax (Appeals)-II, Coimbatore (for brevity "the CIT (A)") and not considering the materials available on record.

5.The learned Senior Standing Counsel placed reliance on the decision of the High Court of Allahabad in the case of R.C.Jewellers v. Commissioner of Income-tax-I, Lucknow reported in [2014] 44 taxmann.com 487 (Allahabad).

6.We have carefully gone through the order passed by the Tribunal and we find that the Tribunal had called for remand reports from the Assessing Officer. Two such reports have been given by the Assessing Officer as well as one report by the Additional Commissioner of Income-tax, Central Range, Coimbatore, which have been referred to. The purpose for which the remand reports were called for from the Assessing Officer was in the light of the stand taken by the assessee before the Tribunal that it has got all the details of the customers, who had entrusted gold to the assessee for the purpose of making ornaments. Further, it has been contended that the gold so given by the customers were handed over to job worker, who will manufacture the jewellery and hand it over to the assessee after receiving charges for the same.

7.To be noted that all the details of the names of the persons, quantity of gold etc., were culled out from the computer statement maintained by the assessee under the head 'work in progress'. We have perused the remand report given by the Assessing Officer dated 23.08.2006. From the remand report, it is seen that the assessee filed a letter dated 07.08.2006 and furnished the names and addresses of 22 customers and 56 workers who were working with the assessee. The Assessing Officer examined the customers of the assessee on oath under Section 131 of the Act on 17.08.2016 and 18.08.2006 and their sworn statements were recorded. The Assessing Officer would state that all that they have stated were recorded. Apart from that the job workers were also examined who have stated on oath that the assessee takes 2% of the gold as his commission for the job work done, but they were unable to identify the parties from whom they were getting the gold for conversion into new jewellery. The workers also stated that they are getting gold from the assessee and making new jewellery for the assessee and they are receiving cooly of 2%. The remand report specifically states that all the customers and workers who were examined on oath have filed copies of their Ration Card, Driving Licence, Voter's Identity card for establishing their identity.

8.On a perusal of the copies of the sworn statements and other connected records, the Tribunal granted relief to the assessee.

9.It is the endeavour of Mr.T.R.Senthil Kumar, learned Senior Standing Counsel to convince us that the Tribunal granted the relief without taking note of the fact that no such record was produced by the assessee before the Assessing Officer.

10.In our opinion, it would be too late for the Revenue to raise such a contention before this Court especially when, the Revenue had complied with the orders passed by the Tribunal giving interim direction to the assessee to submit remand reports.

11.Additions have been made under Section 69 of the Act. The provision states that where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

12.In the instant case, the details were culled out from the books maintained by the assessee. The assessee, no doubt, did not offer convincing explanation before the Assessing Officer, but raised a plea before the Tribunal that they are willing to produce all the names of their customers as well as their workers who can be examined. The Tribunal was convinced with the stand taken by the assessee and therefore, granted an opportunity to the assessee to do so and called for a remand report. Statements were recorded from the customers and the job workers and the identity of the customers and job workers was not disputed by the Revenue, as they had produced proper proof of identity. The explanation offered by the assessee read with the statements given by the customers and job workers was found to satisfactory to the Tribunal. This satisfaction being recorded by the Tribunal is a satisfaction on the facts placed before it.

13.We are afraid that exercising power under Section 260A of the Act, we cannot venture into the factual thicket to state that the satisfaction recorded by the Tribunal was unfounded. Therefore, in our considered view, the Tribunal was right in granting relief to the assessee.

14.The decision of the High Court of Allahabad in R.C.Jewellers (supra) is clearly distinguishable on facts. In the said case, the creditworthiness of the parties was in doubt. The Court took into consideration all the private parties who were stated to have given gold and found each one of them were incapable of delivering the gold to the assessee therein. No entry was found in the books of accounts of the said assessee. Nothing was reflected in the books of account of the six creditors and the Tribunal in the said case was not convinced that jewellery was given on credit basis. Further, the Tribunal held that the credit of the gold ornaments by six parties was not established and the explanation furnished by the assessee was found to be not acceptable. The decision in the case of R.C.Jewellers (supra) can render no assistance to the case of the Revenue.

15.For the above reasons, this tax case appeal is dismissed and the substantial question of law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Income-tax,
Central Circle-III, Coimbatore.

2.The Commissioner of Income-tax (Appeals)-II,
Coimbatore.

3.The Income Tax Appellate Tribunal
Chennai Bench 'D'.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.49903

T.C. (A) No.756 of 2008

VSN II(CO)

RRS(01/08/2019)