IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.9.2019

CORAM

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

Tax Case (Appeal) No.840 of 2010

The Commissioner of Income Tax II,
Madurai. Appellant/Appellant

Vs.

M/s.Kajah Enterprises Pvt. Ltd.
64, Upstairs, South Car Street,
Tirunelveli Town (PAN No.AACCK3663J) Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 26.2.2010 made in ITA No.937/Mds/2009.

Prayer: Against the order of the Commissioner of Income Tax (Appeals)-II i/c Madurai-625 002, made in ITA No.363/2008-2009 dated 30/3/2009 and against the order of the Joint Commissioner of Income Tax Tirunelveli Range, Tirunelveli made in PAN/GIR No.AACCK3663J dt.30.12.08 Assessment Year 2006-2007.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.V.Pushpa, Jr. Standing Counsel

For Respondent : Mr.M.P.Senthilkumar for
Mr.G.Baskar

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, 1961 aggrieved by the order dated 26.2.2010 passed by the learned Income Tax Appellate Tribunal, rejecting the Revenue's Appeal, with the following observation:-

> "9. After hearing the rival submissions and after cogitating the entire conspectus of this case in the light of the provisions and the precedents, we are of the considered opinion that the submission

of the ld. AR that the Assessing Officer has simply estimated the income of the assessee without rejecting the books of account is a misconceived fact. The Assessing Officer has not at all estimated the income of the assessee. He has found the expenses claimed to earn income, which he has compared, with other years and other comparable cases. So, it is not, in fact, a case of rejection of books of account and making estimation of income u/s 145 of the Act. The Assessing Officer has found for a fact that the assessee-company has managed to sell its product through its sister concern, in which mostly Directors are partners. This is a very important aspect and has not at all been dealt by the ld. CIT(A). Another important aspect is regarding the huge expenditure incurred in the Rajah Island Project. Again, the ld. CIT(A) noticed from the assessment order that the Assessing Officer has nowhere mentioned that these expenses were not incurred by the assessee. He has not even mentioned about even a single item of unvouched expenditure. Without finding any defect in the voucher albeit mentioning that most of the expenses were paid in cash, he has not identified them. So to that extent, the ld. CIT(A) is correct that there is no evidence to deny any position of such expenses. Expenses can be separately disallowed if they are found to be inflated or false but with proof. In that view of the matter, when we mull over the entire records, primarily we find that simplicitor on the basis of comparison of expenses with assessee's earlier years or with other cases and without finding fault or material defect in the maintenance of bills and vouchers, which is the case, the Assessing Officer can not make lump sum addition. Hence, we are in agreement with the result arrived at by the ld. CIT(A) and uphold the impugned deletion.

10. In the result, the appeal of the Revenue stands dismissed."

2. The Appeal was admitted on 7.9.2010 by a co-ordinate Bench of this court on the following substantial questions of law:-

"(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the additions made by the assessing officer to the tune of Rs.3 crores, on the basis that the assessee had inflated the

expenses with the idea of reducing its net profits and thereby its taxable income?
(2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the additions made by the assessing officer without considering the issue regarding excessive expenditure claimed and abnormal increase in the Director's salary under Section 40A(2)(a) and 40A(2)(b) of the Income Tax Act, 1961 is valid?"

3. Learned Senior Standing Counsel Mr.M.Swaminathan appearing for the Revenue submitted that the Assessing Authority, in the Assessment Order dated 30.12.2008, has clearly found that that the expenditure on account of Director's Salary had been disproportionately increased from 4.92 Crores in the last Assessment Year 2005-2006 to 7.39 Crores in the present Assessment Year 2006-2007 as on comparison of other Assessment Years, there is a remarkable increase and it is disproportionately high and therefore, invoking Section 40A(2)(b) of the Act, the learned Assessing Authority was justified in making the addition of Rs.3 crores in question, which have been set aside by the two higher Appellate Authorities allowing the Appeal of the Assessee. He therefore, submitted that the questions of law framed above deserve to be answered in favour of the Revenue.

4. The learned counsel Mr.M.P.Senthilkumar appearing for the Assessee supported the impugned order and submitted that these are findings of facts and without rejecting the Books of Accounts, the Assessing Authority could not have disallowed, in arbitrary manner, a lumpsum of Rs.3 crores.

5. Having heard the learned counsel for the parties, we are satisfied that no substantial question of law arises in this Appeal. The findings given by the Assessing Authority did not reveal any evidence being taken by him while rejecting the expenses on account of Director's Salary being excessive. The reasons of higher payment, number of Directors, their relationship and the turnover or anything like that which can set up as a reasonable basis for disallowing such expenditure within the meaning of Section 40A2(b) have not been discussed by the learned Assessing Authority.

6. The two higher Appellate Authorities are also being fact finding Authorities, are binding on us unless such findings can be held to be perverse and requiring our consideration under Section 260A of the Act. The learned Tribunal, in our opinion, has rightly held that unless the Books of Accounts are rejected, the expenses on account of Director's Salary for the Assessment Year 2006-2007 to the tune of Rs.7.39 Crores cannot be held to

be excessive. We do not find any reasonable basis in the Assessment Order and therefore, it has been rightly set aside by the higher Appellate Authorities. Therefore, the questions of law as framed deserve to be answered against the Revenue and in favour of the Assessee and the Appeal filed by the Revenue is liable to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1.The Commissioner of Income Tax II,
Madurai.

2.The Income tax Appellate Tribunal
A Bench, Chennai.

3.The Joint Commissioner of Income Tax,
Tirunelveli Range, Tirunelveli.

+1cc to Mr.M.Swaminathan, Advocate SR.76333
+1cc to Mr.G.Baskar, Advocate SR.76305

TC(A) No.840 of 2010

PVS(CO)
CB(01/11/2019)