IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.4.2019

CORAM

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

Tax Case Appeal No.249 & 250 of 2019

Commissioner of Income Tax
Madurai ... Appellant in both the cases

Vs.

Smt.T.Ani Chandra Kala
PAN: AULPA8681N ... Respondent in TCA 249/2019

Shri Pauldhas Regin
PAN: AFTPR9440R ... Respondent in TCA 250/2019

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 21.8.2018 made in ITA Nos.1937/Chny/2017 and 1938/Chny/2017 appeals against the order passed by the Commissioner of Income Tax (appeals)3(i/c) Madurai dated 08.05.2017 in P.A. No. AULPA8681N and ARTPR9440R for the assessment year 2014-2015 against the order passed by the Assistant Commissioner of Income Tax Circle i, Nagercoil dated 20.12.2016 for the assessment year 2014-2015 respectively.

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

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed these Tax Case (Appeals) 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 on 21.8.2018 whereby the learned Tribunal dismissed the Revenue's Appeals and upheld the order passed by the learned Commissioner of Income Tax (Appeals) dated 8.5.2017 for the Assessment Year 2014-2015.

2.The suggested substantial questions of law are quoted below for ready reference:-

"i) Whether the ITAT is right in deleting the addition made under Section 68 of the Income tax Act when the assessee could not explain the advance received from M/s.Kannan Enterprises, Kollam?

ii) Whether the ITAT is right in law in upholding the order of the CIT (A) who admitted return of income of the creditor M/s.Kannan Enterprises, Kollam, which was not produced before the Assessing Officer, as additional evidence without giving an opportunity to the Assessing Officer as per rule 46A of the IT Rules?

iii) Whether the ITAT is right in law in holding that violation of Rule 46A would be relevant, only where the document produced by the assessee before the CIT(A) as additional evidence is a critical piece of evidence for reaching the conclusion when Rule 46A does not speak of 'critical' piece of evidence or 'Non-critical' piece of evidence?

iv) Whether the ITAT is right in holding that the alleged creditor M/s.Kannan Enterprises, obtained loan from bank based on return of income of the creditor, without obtaining details of loan like bank statement, etc., especially when the creditor in its confirmation letter dated 8.12.2016 had not mentioned that it had availed bank loan and such loan was advanced to the assessee?"

3. The learned Senior Standing Counsel Mr.M.Swaminathan has urged before us that the alleged credit entries of Rs.3,63,00,000/- and Rs.5,45,40,000/- from one M/s.Kannan Enterprises, Kollam were not properly explained by the Assessees, who were carrying on business in Cashewnuts.

4. The explanation given by the Assessees for the credit entries, as narrated in Para 3.2 of the Order passed by the Commissioner of Income Tax (Appeals) dated 8.5.2017 is quoted below for ready reference:-

"3.2. At the time of hearing the representative submitted that the appellant received advance for purchase of cashew, raw nuts and kernels from M/s.Kannan Enterprises, Kollam and this fact was brought to the notice of the Assessing Officer by letter dated 19.12.2016. It was claimed in the above letter that for the purpose of availing loans from financial institutions, the appellant required more capital and, therefore, in order to enhance

> the credit limit, the appellant accounted the purchase advance received from M/s.Kannan Enterprises, kollam in the capital account. It was also submitted that whenever raw nuts are supplied to M/s.Kannan Enterprises, Kollam, the same would be adjusted and it would be debited to capital account. He further submitted that the Assessing Officer had issued letter under Section 133(6) dated 2.12.2016 to M/s.Kannan Enterprises, Kollam in response to the same M/s.Kannan Enterprises, Kollam filed a letter dated 8.12.2016 in which it was confirmed by them that they had given money to the appellant and quoted the permanent account number along with dates of payments. It was also claimed that the amount was towards advance for purchase of raw nuts for the new business unit alongwith the above letter he also attached ledger account copy of the appellant and permanent account number card of Kannan Thangappa Nadar, Proprietor of M/s.Kannan Enterprises, Kollam. He submitted that as the creditor had confirmed the payment to the appellant, there was no case for addition. He also submitted that M/s.Kannan Enterprises, Kollam had availed bank loan which was given to the appellant for purchase of cashew, raw nut and kernels."

5. The learned Assessing Authority, however, did not believe the said explanation of the Assessees and added the same under Section 68 of the Act as unexplained credit in the hands of the Assessee. However, the learned Commissioner of Income Tax (Appeals) allowed the Appeals of the Assessees and deleted the said addition and as far as the receipt of those amounts on various dates were concerned, the learned Commissioner of Income Tax (Appeals) observed that the Joint Commissioner of Income tax may examine the case as to whether there was any violation of Section 269SS/269T of the Act as those credits were said to have been received in cash from time to time.

6. The learned Commissioner of Income Tax (Appeals) also observed that advances given by the said M/s.Kannan Enterprises were made from time to time as advances against purchase of Cashewnuts from the Assessees and such amounts tallied with the credit entires made by the Assessee. The relevant observation of the Commissioner of Income Tax (Appeals) in Para 3.3.1 of the order is also quoted below for ready reference:-

> "3.3.1. From the above, it is seen that the Assessing Officer has conducted due verification with creditor, who had confirmed the same alongwith his permanent account number and the fact that he was assessed to tax. It is further seen that the

dates of credit of various amounts in the capital account of the appellant tally exactly with dates of payments as per the ledger account of the appellant given by M/s.Kannan Enterprises in his books of accounts as per letter dated 8.12.2016. However, the Assessing Officer made addition on the ground that the creditor was not having adequate source. But, I find that the Assessing Officer has not brought anything on record to show that the creditor was not having adequate source, especially when he was assessed to tax. The Assessing Officer has relied on the decision of the Hon'ble High Court of Jharkhand in the case of Pradeep Kumar Agarwal (244 ITR 116) but in that case the Assessing Officer doubted the credit worthiness of the creditor because he was not assessed to tax. However, in the case of the appellant the creditor was assessed to tax and he had given the permanent account number to the Assessing Officer and also confirmed the credit and, therefore, the above decision is not applicable to the facts of this case. Once the creditor had given his permanent account number and confirmed the credit, the Assessing Officer could not have made this addition without conducting further enquiries to disprove the claim of the creditor but the Assessing Officer has not conducted such enquiry. As contended by the representative, the creditor could have taken bank loan during the year, and such loan might have been utilised for the purpose of giving purchase advance to the appellant. In the circumstances, the Assessing Officer without conducting further enquiries with the Assessing Officer of the creditor could not have come to the conclusion that the creditor was not having source. In the circumstances, I find that the addition is not justified and the same is deleted. The representative submitted a copy of income tax return of M/s.Kannan Enterprises, Kollam as per which the amount of advance given to the appellant is getting duly reflected. This return of income is taken as supporting evidence and on the basis of the same it is found that the creditor had availed bank loan which was utilised for the purpose of giving advance to the appellant. Even without the above supporting evidence, I find that there was no justification for adding credit as the creditor had confirmed the same and also furnished his permanent account number on which the Assessing Officer did not conduct further enquiry and prove that the amount advanced to the appellant did not appear in his return of income. Since I have held that the advance received by the appellant as genuine and deleted the addition, the JCIT may examine the case as to whether there was any violation mentioned in section 269SS/269T and any penalty proceedings can be initiated under Section 271D/271E of the Act. In view of the above, I find that there is no case for making addition towards unexplained cash credit under Section 68 and the same is deleted."

7. The learned Tribunal dismissed the Appeals filed by the Revenue with the following observation:-

"8. Assessees had clearly explained that the purpose of entering the credits in their respective capital accounts, was to enable them to obtain credit facility from M/s.Tamil Nadu Mercantile Bank Ltd. In our opinion, assessees were not breaking any law nor doing anything unlawful in this. Assessees could clearly substantiate the source from which they had received the money, dehors the Income Tax Return of M/s.Kannan Enterprises, Kollam. Violation of Rule 46A would be relevant only where the document produced by the assessee before the learned CIT(A) is a critical piece of evidence for reaching the conclusion. Just because, money was received in cash, in our opinion, AO ought not have disbelieved a claim, for which assessee produced all materials in support. Learned CIT (A), in our opinion, was therefore justified in deleting the addition made by the AO under Section 68 of the Act. We do not find any merit in these appeals filed by the Revenue."

8. The learned counsel for the Revenue/appellant submitted that the Ledger Accounts of the Assessees concerned were not produced before the Assessing Authority nor the said creditor viz., Proprietor of M/s.Kannan Enterprises, Kollam was produced before the Assessing Authority and only a letter dated 8.12.2016, in pursuance of the notice issued to the Assessees, was produced before the Assessing Authority. He submitted that if any additional evidence was produced before the learned Appellate Authority, Rule 46A of the Income Tax Rules 1962 requires the matter to be remanded back to the Assessing Authority to appreciate that evidence.

9. Having heard the learned counsel for the Revenue, we are satisfied that the two Appellate Authorities viz., Commissioner of Income Tax (Appeals) and the Tribunal have examined the matter on the basis of the evidence available on record and

arrived at the finding of facts that those credits were advances made by Kannan Enterprises, Kollam against purchase of materials from the Assessees, who were engaged in the business of Cashewnuts.

10. We find from the records that the Assessment Orders were passed by the Assessing Authority on 20.12.2016 after holding 3 hearings on 28.9.2016, 1.12.,2016 and 19.12.2016. The only evidence produced by the Assessees and having been examined by the Assessing Authority was a letter dated 8.12.2016 which has been quoted by the learned Commissioner of Income Tax (Appeals) in its order. Another letter filed by the Assessees dated 19.12.2016 is also quoted by the learned Commissioner of Income Tax (Appeals) as the last submission made by the Assessees, wherein it is contended that those advances were made to the Assessees against the purchase of goods.

11. Therefore, in our opinion, nothing prevented the Assessing Authority to examine the matter further even summoning the said creditor viz., Proprietor of M/s.Kannan Enterprises, Kollam. Unless the such credit entries were shown to be explained, merely based on assumptions that there were certain increase in the capital of the Assessees which was also explained to the Assessees, the Assessing Authority could not have made such an addition merely on assumptions. The Assessing Authority and the Appellate Authority have the power of Civil Court under Section 131 of the Act including the power to enforce attendance of the witnesses and the parties. If a half-hearted enquiry was made by the Assessing Authority and additions were made as unexplained cash credits under Section 68 of the Act and such finding of facts were reversed by the Appellate Authority, it would not give rise to any substantial question of law for our consideration under Section 260A of the Act. The two Appellate Authorities have concurrently held that those credit entires represented Trade Advances for purchase of goods and section 46A of the Rules does not apply in the present case. Therefore, we are of the considered opinion that these findings of facts cannot be held to be perverse and do not give rise to any substantial question of law requiring our consideration.

12.The Appeals filed by the Revenue are devoid of merit and the same are liable to be dismissed. Accordingly, they are dismissed. Copy of this Judgment may be sent to the Assessees forthwith. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ssk.

To

1. The Commissioner of Income Tax
   Madurai

2. The Income Tax Appellate Tribunal,
   Madras 'B' Bench, Chennai

3. The Assistant Commissioner of
   Income Tax,
   Circle 1, Nagercoil

4.The Commissioner of Income Tax(Appeals)3
  (i/c)Madurai.

+2 Ccs to Mr.M.Swaminathan, Advocate sr 31232.

TCA Nos.249 & 250 of 2019

SSI(CO)
SP(12/06/2019)