IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.06.2019

CORAM

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

Tax Case Appeal No.441 of 2018

The Commissioner of Income tax,
Chennai. .. Appellant

-vs-

M/s.Celebrity Fashions Ltd.,
SDG, IV and C2, 3rd Main Road,
MEPZ/SEZ, Tambaram,
Chennai-600 045.
PAN: AAACC3696DD .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order 06.12.2017 on the file of the Income-tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.38/Mds/2017 for the assessment year 2012-13 against the O/o. Commissioner of Income Tax (Appeals)-1, Chennai-34, made in ITA.283/CIT(A)-1/2015-16 dt.3.10.2016 for the assessment year 2012-2013 and against the O/O Deputy Commissioner of Income Tax Corporate Circle-1(2), Nungambakkam, Chennai - 34, made in PAN AAACC3696D/2012-2013 dt.21/09/2015

For Appellant : Mrs.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman

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

This appeal filed by the appellant/Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 06.12.2017, passed by the Income-tax Appellate Tribunal 'B' Bench Chennai (for brevity, "the Tribunal"), in I.T.A.No.38/Mds/2017 for the assessment year 2012-13.

2.The Revenue has raised the following substantial questions of law for consideration:-

> "(i) Whether the Tribunal was correct in holding that penalty levied u/s.271(1)(c) is not attracted even if the Assessee had claimed the unpaid interest to the schedule bank in its profit and loss account and failed to disallow the same under Sec.43B(e) of the Income-tax Act?
>
> (ii) Whether the Tribunal was correct in holding that the Assessee has proved that the furnishing of inaccurate particulars leading to incorrect claim of expenditure was inadvertent even when no steps were taken by the Assessee to file a Revised Return despite being aware of the fact that it had made a wrong claim of expenditure in its profit and loss account?"

3.We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

4.With the consent on either side, the appeal itself is taken up for disposal.

5.The first substantial question of law raised by the Revenue is whether the Tribunal is correct in holding that penalty levied under Section 271(1)(c) of the Act is not attracted even if the assessee had claimed unpaid interest to the schedule bank in its profit and loss account and failed to disallow the same under Section 43B(e) of the Act.

6.The second question which has been raised by the Revenue is whether the Tribunal was correct in holding that the assessee is not guilty of furnishing inaccurate particulars.

7.The assessee filed return of income for the assessment year under consideration, 2012-13 on 27.09.2012 admitting an income of Rs.14,95,34,377/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was served on the assessee. Thereafter, notice under Section 142(1) questionnaire was issued to the assessee. In response to such notice, the assessee appeared through its authorised representative and furnished the details called for, and additions were made by the Assessing Officer, vide order dated 30.03.2015 under Section 143 (3) of the Act. Subsequently, penalty proceedings were initiated under Section 271(1)(c) read with Section 274 of the Act by issuing notice dated 30.03.2015. The assessee submitted their reply along with a petition under Section 154 of the Act for rectification of the mistake and placed reliance on the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Private Limited vs. CIT reported in (2012)

348 ITR 306 (Kalcutta). The Assessing Officer by order dated 21.09.2015, held that the assessee is guilty of furnishing inaccurate particulars and the provision of Section 271(1)(c) would stand attracted. Further, it was observed that furnishing of inaccurate particulars by the assessee has resulted in lesser income to the tune of Rs.1,55,00,000/- being returned for the relevant assessment year 2012-13. Accordingly, the Assessing Officer imposed minimum penalty of Rs.50,28,975/-.

8.The assessee carried the matter by way of appeal to the Commissioner of Income-tax (Appeals)-1, Chennai ("the CIT(A)", for brevity). Before the CIT(A), the assessee contended that this amount was clearly disclosed by the assessee in the audit report, that is, in point no.11 of the statutory audit report, dated 15.05.2012, and in page no.14 of the annual report for the financial year 2011-12, which was filed along with the return. The said record was also placed before the CIT(A). The assessee further stated that it is a bona fide error, inasmuch as this amount and details were disclosed by the assessee in the documents along with the return of income. It was further submitted that the returned loss of the assessee is Rs.14.95 crores and the assessee has substantial carry forward losses also and consequently, the assessee had no benefit, interest or intention in making an unsupportable claim to enhance the loss.

9.Further, the assessee submitted that the said amount of Rs.1,55,00,000/- being interest on loan to bank, was offered to tax by the assessee in the assessment year 2012-13 based on remission by bank under settlement scheme which will prove the bona fide of the assessee. In this regard, notes on accounts and annual accounts were referred to and the copies were placed before the CIT(A). The CIT(A) after considering the entire factual matrix, held that the assessee could not be held to have furnished inaccurate particulars of income, or concealed its particulars of income, or offered an explanation which it could not substantiate on the basis of material which it was relying upon. Further, the CIT(A) applied the decision in the case of Price Waterhouse Coopers Private Limited (supra) and allowed the appeal filed by the assessee.

10.The Revenue carried the matter by way of appeal to the Tribunal. The Tribunal once again went through the factual details and took note of the reply given by the assessee to the query raised by the Assessing Officer that the assessee company has been declared as a sick industrial company under Section 3 (1)(o) of the Sick Industrial Companies Act, vide order dated 19.04.2011 and Board for Industrial and Financial Reconstruction issued directions to the lenders and to the assessee to submit a Rehabilitation Scheme as per Section 18 of the Sick Industrial Companies Act. Further, the Tribunal noted the reply given by the assessee stating that the term loan obligations and interest commitments have been met in full with respect to the State Bank of India in accordance with the terms and conditions of the sanction letter. However, the assessee has defaulted in repayments of term loans amounting to Rs.0.22 crores and interest commitments amounting to Rs.1.55 crores with respect to HDFC Bank's borrowings and that the term loan repayment is pending since February, 2012 while the interest commitment remains unpaid since January, 2011. The other relevant details with regard to the loan transaction with the HDFC Bank was also mentioned in the reply. After considering these factual issues, the Tribunal accepted the finding recorded by the CIT(A) and held that the omission to make suo motu disallowance under Section 43B(e) of the Act was an inadvertent error and not with an intention to understate the income.

11.Mrs.R.Hemalatha, learned Senior Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Mak Data P. Ltd. vs. CIT reported in (2013) 358 ITR 0593 (SC) and submitted that the assessee did not file any revised return and consequently, the Assessing Officer was well justified in levying penalty, that too, by exercising discretion, he has levied only minimum penalty.

12.Further, it is submitted that the decision in Price Waterhouse Coopers Private Limited (supra), will not apply to the facts of the case, as in the said case, the assessee had filed a revised return.

13.In our considered view, the decision in Mak Data P. Ltd. (supra) would not be of any assistance to the case of the Revenue. The said case arose out of a survey proceedings under Section 133A of the Act and in the background of those facts, the Court examined the conduct of the assessee vis-a-vis the need to impose penalty under Section 271(1)(c) of the Act. Admittedly, the case on hand is not a case of survey, but it is a case where the assessee having come to know about the same, after the Assessing Officer pointed it out, immediately filed petition for rectification under Section 154 along with explanation stating that it is an inadvertent error. The decision in the case of Price Waterhouse Coopers Private Limited (supra) is also identical where in the tax audit report filed by the assessee, it was indicated that provision towards payment of gratuity was not allowable, but the assessee therein failed to add the said provision to total income. Considering the said fact, the Hon'ble Supreme Court held that no penalty could be imposed for such mistake. The operative portion of the judgment reads as follows:-

> "18.The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for

payment was not allowable under Section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

19.The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income."

14.As noted by the CIT(A) as well as the Tribunal, the conduct of the assessee clearly establishes that it is an inadvertent error and cannot be stated to be a contumacious conduct on the part of the assessee and cannot be stated to be with an intention to understate his income by furnishing inaccurate particulars.

15.In the light of the said factual finding recorded by the two authorities, we find that there is no substantial question of law arising for consideration in this appeal. Accordingly, the same stands dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//
Sub Assistant Registrar

abr

To

1.The Income-tax Appellate Tribunal 'B' Bench,
  Chennai.

2.The Deputy Commissioner of Income-tax,
  Corporate Circle 1(2), Chennai.

3.The Commissioner of Income-tax (Appeals)-1,
  121, Mahatma Gandhi Road,
  Chennai-600 034.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.52260
+1cc to Mr.S.Sridhar, Advocate, S.R.No.52454

T.C.A.No.441 of 2018

RR(CO)

RRS(13/08/2019)