In the High Court of Judicature at Madras

Dated : 16.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.895 of 2017

Sri.I.M.Farvis Ahmed ...Appellant

Vs

The Income Tax Officer, Business
Ward – XIII(4), Chennai ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 24.7.2017 made in ITA.No.1995/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai C/'SMC' Bench for the assessment year 2009-10, against the Order dated 28/04/2016 and made in ITA No.28/CIT(A)-7/2011-12, on the file of the Commissioner of Income Tax (Appeals)-7, Chennai - 34, and against the Order dated 27/12/2011 and made in PAN No.AAFPF1394M, on the file of the Income Tax Officer, Business Ward XIII(4), Chennai - 34.

For Appellant : Mr.S.Rajasekar

For Respondent : Mr.S.Rajesh, JSC for
Mr.Karthik Renganathan, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.S.Rajasekar, learned counsel for the appellant – assessee and Mr.S.Rajesh, learned Junior Standing Counsel appearing for the respondent – Revenue.

2. This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 24.7.2017 made in ITA.No.1995/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai C/'SMC' Bench (hereinafter called the Tribunal) for the assessment year 2009-10.

3. The assessee has filed this appeal by raising the following substantial questions of law :

"i. Whether, on the facts and the circumstances of the case, the Tribunal was right in holding that the entire cash deposit is to be assessed as income of the appellant under Section 69 of the Income Tax Act disregarding the fact that the same is income from business and hence, only profit margin is assessable to income ? And

ii. Is the finding of the Tribunal that the purchases and expenses were already recorded in the books and therefore, there is no need to consider the net profit ratio in making the addition, not perverse?"

4. The assessee is an individual stated to be running a snack bar and trading in edible essences. For the assessment year under consideration namely 2009-10, the assessee filed return of income on 20.10.2009. The return was processed under Section 143 (1) of the Act on 27.9.2010. The case was selected for scrutiny and a notice under Section 143(2) of the Act was issued on 26.8.2010. A questionnaire was issued to the assessee calling for details. The representative of the assessee appeared and the matter was heard on different dates and on 23.12.2011, the assessee filed the profit and loss account and the balance sheet. As per the AIR information, the assessee made cash deposits of Rs.41,80,050/- during the year 2008-09 in a savings bank account with M/s.Axis Bank and in his current account with M/s.ICICI Bank and paid an amount of Rs.2,38,373/- towards credit card expenses.

5. The Assessing Officer found that there were no cash withdrawals, that the entire credits were from the collection in the business run by the assessee, that the total turnover was shown as Rs.36,95,266/- alone and that the difference in the amount credited into the bank and the amount shown as turnover was added to the total income. The Assessing Officer further found that the assessee deposited cash totaling to Rs.9,40,000/- in the ICICI Bank current account. Since the assessee did not disclose the details, the Assessing Officer addressed a letter to the ICICI Bank and called for details. However, the bank did not furnish the copy of the accounts, but stated that the account was closed on 09.10.2009. During the course of assessment proceedings, the assessee accepted that the books were prepared only on the basis of the Axis Bank account and that the deposits in the other account were not considered while preparing the books. Hence, the deposits in the ICICI Bank amounting to Rs.9,40,000/- were added to the total income. Apart from that, the credit card expenses were taken into consideration and ultimately, the assessment was completed by order dated 27.12.2011.

6. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-7, Chennai [for brevity, the CIT(A)]. The First Appellate Authority, after considering the facts of the case, found that the explanation offered by the assessee was not satisfactory and dismissed the appeal. On further appeal by the assessee, the Tribunal concurred with the view taken by the CIT(A) and dismissed the appeal. This is how the assessee is before us by way of this appeal.

7. From the facts, it is evidently clear that the explanation offered by the assessee was found to be not satisfactory by the Assessing Officer. The CIT(A) re-examined the factual matrix, considered the sufficiency of the explanation and held that in the absence of verifiable evidence, the bank deposits could not be presumed to be a part of sales turnover. The Tribunal also took into consideration the facts and held that the entire unaccounted deposits were to be considered as unexplained income of the assessee under Section 69 of the Act.

8. A thorough fact finding exercise has been done by both the CIT(A) as well as the Tribunal. While exercising power under Section 260A of the Act, we cannot consider ourselves as the Third Appellate Authority and re-examine the facts. We find that no substantial question of law arises for consideration in this appeal.

9. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

RS — Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai C/SMC Bench.

2.The Income Tax Officer, Business Ward – XIII(4), Chennai.

3.The Commissioner of Income Tax (Appeals)-7, Chennai -34.

+1 cc to M/s.R.Hemalatha, Advocate, S.R.No.60424
+1 cc to M/s.Karthik Ranganathan, Advocate, S.R.No.60089

TCA.No.895 of 2017

VD(CO)
SSM(14/08/2019)