

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.06.2019
CORAM
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.99 of 2017

M/s.Empee Holdings Limited
"Empee Towers", No.59, Harris Road
Pudupet, Chennai - 600 002
PAN : AABCE 5490N

... Appellant

- Vs -

The Deputy Commissioner of Income Tax
Company Circle - II(1), Chennai

Respondent

Prayer : Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai in I.T.A.No.1502/Mds/2014 dated 19.07.2016 against the order of the office of the Commissioner of Income Tax (Appeals)-II, Nungambakkam, Chennai-34 in ITA.No.417/13-14 dated 07/03/2014 against the order of the Deputy Commissioner of Income Tax, Uthamar Gandhi Salai, Chennai 600 034 vide PAN.NO.AABCE5490N for the assessment year 2003-2004.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.Karthik Renganathan,
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This appeal by the assessee is directed against the order dated 19.07.2016 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench in I.T.A.No.1502/Mds/2014 for the assessment year 2003-04, raising the following substantial questions of law for consideration.

"1. Whether the Appellate Tribunal is correct in law in confirming the validity of the re-assessment despite the fact of disclosure of the complete facts relating to the borrowal of funds as well as deployment of such funds within the ambit and scope of its business activities duly authorized in the Memorandum of Association

proving the lack of reasons to believe the escapement of income for assessment?

2. Whether on the facts and circumstances of the case, the tribunal was right in holding that unabsorbed depreciation pertaining to assessment year 1999-2000 to 2001-02, could be set off beyond eight assessment years and allow set off against the income of the present assessment year 2010-11?"

2. We have heard Mr.A.S.Sriraman, learned counsel for the appellant assessee and Mr.Karthik Renganathan, learned Senior Standing Counsel for the respondent Revenue.

3. Before we proceed to decide the matter, the first and foremost issue to be decided is whether any substantial question of law arises for consideration. We say so because, the order of reassessment dated 20.12.2010 was affirmed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as CIT(A) for brevity) vide order dated 07.03.2014, which was affirmed by the Tribunal by the impugned order dated 19.07.2016.

4. It is the preliminary objection of Mr.Karthik Renganathan, learned Senior Standing Counsel that three authorities have concurrently held against the assessee on facts and this Court will not upset such factual finding in an appeal, which has been filed by the assessee under Section 260A of the IT Act, inasmuch as no questions of law arises for consideration.

5. The assessee has filed the return of income for the assessment year 2003-04 on 01.12.2003, admitting an income of Rs.4,33,900. Subsequently, the assessee filed a revised balance sheet on 22.12.2003 and the return was processed under Section 143(1) on 23.06.2004. Subsequently, assessment proceedings under Section 147 of the Act was initiated and the notice under Section 148 was issued on 16.03.2010. The assessee submitted their response on 12.04.2010, requesting to treat the original return of income filed on 01.12.2003 as one in response to the notice under Section 148. The assessee was represented by their Chartered Accountant, who had made detailed submissions.

6. The assessing officer, after considering the factual position, found the stand taken by the assessee is devoid of merits. It was also pointed that the assessee omitted to state that during the year, there is a substantial increase in

investments to the tune of Rs.4,93,03,229 for which there was no other source. Further, as on 31.03.2002, the share application money pending allotment was shown at Rs.4,60,75,680/- which is exactly shown as investment in the assets side. During the relevant period for assessment year 2003-04., viz, 31.03.2003, the share application money has increased to Rs.7,60,75,680 and the investment has also increased from Rs.4,60,75,680 to Rs.9,53,78,909. Thus, the assessing officer held that the fresh share application money received is not sufficient to cover the entire investments and part of the investments are funded out of unsecured loans. The balance unsecured loans are fully diverted to group companies as interest free loans. The assessee had placed reliance on the decision of the Honourable Supreme Court in S.A.Builders Vs.Commissioner of Income Tax reported in 288 ITR 1. The assessing officer pointed out that the assessee has not given any such convincing reasons for granting interest free loans to its group companies, apart from a generalised statement that the loan was given in the context of common management, unity and control. The assessing officer, in paragraph 6.5, discusses about the loans given to the group companies, the financial position of the group company M/s.Empee Distilleries Limited etc., Thus, the assessing officer concluded that the interest income of Rs.62,89,206 funded to the Empee Sugars & Chemicals Limited is not allowable under Section 36(1)(iii) of the Act, since the loan was diverted as interest free advance for non business purposes. The assessee preferred an appeal before the CIT(A)-II, Chennai.

7. The stand taken before the assessing officer was reiterated before the CIT(A). The assessee also challenged the validity of reopening proceedings under Section 147 of the Act. With regard to the allegation that there was change of opinion, the CIT(A) rightly held that there is no original assessment under Section 143(3) of the Act and therefore, the restriction imposed by the proviso to Section 147 will not come to the rescue of the assessee. Further more, in paragraph 4.1.2 of the order dated 07.03.2014, the CIT(A) has discussed about how the assessing officer had reason to believe that there was escapement of income from the assessment. Next the CIT(A) proceeded to consider the correctness of disallowance of the interest. We find from the order passed by the CIT(A), more particularly in Paragraphs 4.2.2 and 4.2.3 that, a thorough factual appraisal has been done by the CIT(A). The CIT(A), on going through the nature of transaction and after giving full details, held that the intention of the assessee, while entering into the transactions, was to book the expenditure only. The assessee filed the appeal before the Tribunal, challenging the order passed by the CIT(A).

8. The factual findings recorded by the assessing officer and the CIT(A) could not be dislodged by the assessee before the Tribunal, which is the last forum, which can re-appreciate the factual matrix. The Tribunal, after considering the assessee's case and the materials placed before it, took out the apparent facts, the financial statements, the concept of same management and chain holding of shares and tax adjustments, agreed with the CIT(A)'s findings and held that there was no reason to interfere with the order of the CIT(A). Further more, the pattern of management of the three companies was also examined by the Tribunal as well as the contention advanced by the assessee that the assessment proceedings under Section 147 was a change of opinion. This point was also rejected by the Tribunal on a perusal of the facts. Further, the Tribunal held that the increase in unsecured loans and assessee's company income was not from business activity but only out of redemption of mutual funds.

9. Thus, in our considered opinion, no question of law, much less substantial question of law arises for our consideration in this appeal. For the above reasons, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Income Tax, Company Circle - II(1), Chennai

2. The Income Tax Appellate Tribunal, Chennai "D" Bench.

3. The O/o Commissioner of Income Tax Appeals-II,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1cc to Mr.S.Sridhar, Advocate sr.45520

+1cc to Mr.Karthik Renganathan, Advocate sr.45713

T.C. (A) No.99 of 2017

spd(co)

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