

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.3.2019

CORAM

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

Tax Case Appeal No.765 of 2018

M/s.SVS Oils Mills,
8/12, T.H.Road,
Thiruvottiyur,
Chennai 600 019.

...Appellant

-Vs-

The Assistant Commissioner of
Income Tax
Non Corporate Circle - 6(1)
Chennai

...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 20.3.2018 made in ITA No.474/Chny/2018, against the Order of the Commissioner of Income Tax, (Appeals) - 5, 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 34, order dated 06.02.18 in ITA No.229/CIT(A)-5/16-17, for the Assessment Year 2014-15 against the order of the Assistant Commissioner of Income Tax, Non Corporate Circle - 6, Chennai order, dated 26.12.16 in PAN/GIR No.AAKFS37512 D for the Assessment Year 2014 -15.

For Appellant : Mr.P.H.Arvind Pandian,
Senior Counsel assisted by
Mr.S.Sridhar XA.S.Sriraman

For Respondent : Mr.T.R.Senthilkumar,
Senior Standing Counsel

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Assessee has filed this Tax Case (Appeal) 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 20.3.2018, by which the learned Tribunal dismissed the Assessee's Appeal for the

Assessment Year 2014-2015 and upheld the Additions of alleged excess Stock to the extent of Rs.2,50,31,815/- found during the course of Survey effected at the business place of the Assessee on 21.11.2013:-

- "i) Whether the provisions of section 69B/69C of the Act would justify the separate addition for the value of the excess stock despite inclusion of such excess stock by posting necessary entries in the stock register and further despite the undisputed reporting of the sales effected in relation thereto in its entirety by the Appellant?
- ii) Whether the Appellate Tribunal is correct in ignoring the principles governing avoidance of double taxation on the issue of correctness of making separate addition for the value of the excess stock despite the appropriate book entries made by way of entry in stock register along with corresponding income offered in the form of sales made to give effect to the admission made during the course of survey by the Appellant?
- iii) Whether the Appellate Tribunal was justified in law in sustaining the addition of stock and its purported findings were arrived at by ignoring the relevant materials placed on record and were arbitrary, unreasonable and perverse?"

2. All the three Authorities below have given the finding of facts against the Assessee and on the admission of the Assessee during the statements recorded under Section 131 of the Act during the course of Survey under Section 133A of the Act, the Authorities below have found that the said excess stock was liable to be added as undisclosed income of the Assessee under Section 69C of the Act. The relevant findings of the Tribunal are quoted below for ready reference:-

"There is a clear admission by the assessee that the difference in stock as on date of survey was added in its stock register but no corresponding entry was passed in the books of accounts. Stock cannot come in from vacuum. When stock is introduced in the stock register, there has to be a corresponding entry in the financial books of accounts. Either it has to be a purchase or shown as paid out of explained or unexplained source. Once stock to the extent of the surplus found at the date of survey, is included in the stock register, assessee has to give an explanation for the source from which it acquired such stock. Assessee having not passed any entry in

financial books, addition of stock made by it, in its stock register, can only be considered as made out of undisclosed source. The addition in our opinion was rightly done by the lower authorities. Coming to the decision of Ahmedabad Bench of the Tribunal in the case of Chokshi Hiralal Maganlal (supra), there is a clear finding that excess stock found during the survey was not separated or clearly indentified, but, was part of mixed stock which was included in the declared stock, as per books of accounts. Facts here are entirely different. There is no case for the assessee that surplus stock was clearly indentified at the time of surveyor entries passed in its cash book, journal or ledger for the value of such stock. In the circumstances, we do not find any reason to interfere with the order of the learned Commissioner of Income Tax (Appeals). Appeal of the assessee stands dismissed.

7. Since the appeal of the assessee is dismissed its stay petition has become infructuous.

8. To summarize the result, appeal and stay petition of the assessee are dismissed."

3. The findings of the Assessing Authority in the Assessment Order dated 26.12.2016 are also quoted below for ready reference:-

"3. In this case, a survey under section 133A of the Income Tax Act, 1961 was conducted on 21/11/2013. During the course of survey statement of Shri.S.V.Chandrapandian, Partner of the assessee firm was recorded under Section 131 of the Income Tax Act, 1961. In the said statement he has made a disclosure of Rs.2,50,31,815/- on account of excess stock. The value of the stock as per books of accounts was Rs.24,79,65,928/- whereas the value of stock as per physical verification was Rs.27,29,97,742/-. Thus, there was a difference of Rs.2,50,31,815/-. In this regard, he stated in answer No.12 of the statement that he was unable to give the details for the above mentioned excess stock of Rs.2,50,31,815/- and requested that the above mentioned amount may be treated as the unaccounted income of the M/s.S.V.S.Mills for the F.Y.2013-14. In addition to the above, he also declared an amount of Rs.20,95,821/- on account of excess cash. Thus there was a total disclosure of Rs.2,71,27,635/-.

4. However, on examination of the ITR and

final accounts submitted by the AR of the assessee during the course of scrutiny assessment proceedings, it was noticed that there is no reference to this amount. Hence, the AR of the assessee was requested vide order sheet entry dated 12/08/2016, inter alia, to furnish the clarification as to how the amount declared as income during the course of survey under Section 133A of the Income Tax Act, 1961 conducted on 21/11/2013 is reflected in the computation of income and the case was adjourned to 18/8/2016. However, there was no reply from the assessee on the said date. Subsequently, the AR of the assessee vide his letter dated 07/11/2016 stated that "In this regard we would like to state that in the Schedule No.14 Other Income there is a head viz., Sundry Income of Rs.20,00,000/- which is amount decided during the survey." However, there was no reference to the income declared under Section 133A of the Income Tax Act, 1961 in respect of unaccounted stock amounting to Rs.2,50,31,814/- in the said letter."

4. The learned Senior counsel for the Assessee, Mr.Arvind Pandian, submitted before us that since the undisclosed income was added back to the closing stock of the Assessee in the Books of Accounts, it was brought to tax at that point of time and therefore, separate Addition under Section 69C of the Act has resulted in double taxation of the same amount and therefore, the learned Tribunal has fallen into an error in upholding the same Addition and therefore, it gives rise to substantial question of law. He relied upon the order passed by the Ahmedabad Bench of Income Tax Appellate Tribunal in Ambuja Ginning Pressing & Oil Co. P. Ltd. vs. IT, Ward-1(2) Bhavnagar in I.T.A.No.3618/Ahd/2015 for the Assessment Year 2012-2013 dated 4.10.2018. The relevant portion of the order is quoted below for ready reference:-

"7. A perusal of the above reply would indicate that the assessee has included value of above stock in the closing stock. At this stage, it is pertinent to observe that as far as first fold of contention is concerned, the learned counsel for the assessee did not make any arguments. It is an admitted fact that during the course of survey excess stock was found. It was admitted by the director. Now this discovery of discrepancy cannot be brushed aside by merely submitting that on account of water contents in the cotton bales, their weight has been increased resulting into excess stock. This

aspect ought to have contested at the time of survey by the directors. He should have not admitted working of the excess stock and objected the calculations made by the department. Subsequently, it cannot be stated that cotton was having water contents on account of rain etc. There should be a specific circumstances or specific reply. This is missing. Therefore, we do not find any merit in the first fold of contention. The assessee is having excess stock of Rs.58,02,095/-. This value of excess stock should suffer tax. Second question is, whether by inclusion of this stock in the value of the closing stock, the assessee has recognized income offered by it or not. The AO without looking into the reply of the assessee extracted (supra) separately made addition. Therefore, in the given facts and circumstances, we deem it appropriate to remit this issue to the file of the AO to consider the above reply of the assessee. It is to be ascertained that excess stock found at the time of survey valued at Rs.58,02,095/- should suffer tax. If the assessee has already included this amount in the value of closing stock, then separate addition would result double addition. We further make it clear that the AO would verify the fact about the enhancement of closing stock by a sum of Rs.58,02,095/- There should not be any corresponding expenditure debited by the assessee. In other words, the assessee will not be entitled for corresponding expenses because this must have already been debited in the regular course of business. If it found that the assessee included a sum of Rs.58,02,095/- in the value of the closing stock and not debited any corresponding expenditure, then there should not be further addition, because this stock will ultimately suffer tax on account of sale without allowing corresponding expenditure. With the above directions, the appeal of the assessee is partly allowed."

5. He, therefore, submitted that a corresponding purchase of such closing stocks should be allowed to be reflected in the Books of Accounts of the Assessee and a deduction to that extent should be given to the Assessee or in the alternative the matter may be remanded to the learned Assessing Authority as done by the Ahmedabad Bench of Income Tax Appellate Tribunal.

6. Having heard the learned counsel appearing for the Assessee, we are satisfied that no substantial question of law arises in the present case and the finding of facts of all the three Authorities concurrently rendered against the Assessee in the present case cannot be held to be perverse or wrong in any manner. These orders, therefore, deserve to be upheld and we do not find any merit in the Appeal of the Assessee.

7. However, before parting with, we may observe that there is a series of five provisions viz., Section 69-Unexplained investments, Section 69A-Unexplained money, etc., Section 69B-Amount of investments, etc., not fully disclosed in books of account 69C-Unexplained expenditure, etc. and 69D-Amount borrowed or repaid on hundi which have been enacted in the Income Tax Act, 1961 from time to time to bring to tax the undisclosed income either as undisclosed income or the same found during the course of investigation either during the Survey under section 133A or the search operation under Section 132 of the Act or otherwise, investigation or scrutiny during the Assessment proceedings and thus, the unexplained investment or expenses are brought to tax in the form of undisclosed income by making the additions to the extent of such undisclosed income or expenditure straightaway. There is no justification or question of giving the corresponding deduction to the extent of any purchase or source of incurring such expenditure or unexplained investments.

8. In our opinion, Section 69B providing for amounts of investments in Bullion, Jewellery or other valuable articles (including excess Stocks as well) would have been more appropriate Section to be indicated in the orders passed by the Authorities below rather than Section 69C-Unexplained Expenditure. Nonetheless, we are of the clear opinion that mentioning of wrong section would not upset the Additions made by the Assessing Authorities below in the present case. All these 5 provisions enumerated above have been enacted with a view to bring to tax the unexplained debit balances in the Balance Sheet of the Assessee either in the form of Unexplained Investments, Expenses or Stocks, etc., or unexplained Assets, Money, Bullion, Jewellery, etc., and therefore, such unexplained investments and expenses intended to be brought to tax as Undisclosed Income, these provisions are not only clearly worded but also indicated to plug the loopholes and check the menace of black money. Likewise, unexplained credits in the Balance Sheet are also brought to tax under Section 68 of the Act.

9. In the light of the above, the contention raised by the learned counsel for the Assessee has essentially emanated from a misconception that the Additions made under Section 69B/69C

have to be reduced to some extent by giving leverage to the Assessee to claim some deductions from these Additions as well. If the contention of the learned counsel for the Assessee was to be accepted viz., by allowing the purchases corresponding to the alleged excess stock, the Assessee will have to now record verifiable purchases in his Books of Accounts and for that he will have valid purchase Invoices from genuine and existing Sellers which is not possible. When the excess stocks were found during the Survey, there is no question of allowing the Assessee to record any additional purchases because such purchases had already been recorded in the books of accounts of the Assessee. Therefore, the excess stock, per se, has to be naturally brought to tax as 'undisclosed income' by itself and there is no question of any corresponding deduction from that in such cases.

10. In our opinion, the learned Tribunal as well as the Authorities below were justified in bringing to tax the Undisclosed Income under Section 69B/69C of the Act and such findings of fact do not give rise to any substantial question of law. The order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench does not enure to the benefit of the arguments advanced by the learned Senior Counsel as there also the learned Tribunal has rightly held that the value of excess stock of Rs.58,02,095/- should suffer tax and by inclusion of those Stocks in the value of Closing Stock the Assessee has recognised income over and above recorded in its Books of Accounts. Such Additions of the excess Stocks declared by the Assessee during the course of search in the closing stock does not amount to double taxation as contended. Mere remand of the case by the Ahmedabad Bench of Income Tax Appellate Tribunal to the Assessing Authority for verifying the figures, does not lay down any principle as contended by the learned Senior Counsel for the Assessee.

11. We do not find any merit in the present Appeal of the Assessee and the same is liable to be dismissed. Accordingly, it is dismissed. No order as to costs.
ssk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of
Income Tax Non Corporate Circle - 6
Chennai.

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

3. The Commissioner of Income Tax (Appeals)-5,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai -34.

+1cc to Mr.S.Sridhar, Advocate, SR.No.28809

TCA No.765 of 2018

Kak (01/07/2019)



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