IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.887,889 & 892 of 2018
and
CMP No's19285 to 19287 of 2018

M/s.Sterling Holiday Financial Services Limited,
Padma Complex, 3rd Floor,
320, Anna Salai,
Nandanam, Chennai - 600 035.
PAN: AAACS 4955K
Now at:
No.28, Muthial Reddy Street,
Alandur, Chennai - 600 016.
PAN: AAACS 4955K ... Appellant/Appellant in three appeals

-vs-

The Assistant Commissioner of Income Tax
Company Circle, VI(4),
Chennai - 600 034. ... Respondent/ Respondent in three appeals

Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 15.03.2018, passed in I.T.A.Nos. 567, 565 & 566/CHNY-2012 for the block assessment periods 1996-97 and 1995-96. Against the order of the Commissioner of Income Tax (Appeals) VI, Chennai-34 made in ITTA No.305,303 and 304 of 2004-05 dated 16.12.2011 against the order of the Assistant Commissioner of Income Tax Company circle VI (4), Chennai-34 made in GIR No/PAN ST-049/AAACS4955K dated 24.03.2003 for the Assessment years 1996-97, 1995-96 and 1995-96 respectively.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel &
Ms.K.G.Usha Rani

COMMON JUDGMENT

(Common Judgment was delivered by T.S.Sivagnanam, J.)

These appeals have been filed by the assesee under Section 260(A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai in TCA.Nos.887, 889 and 892 of 2018, dated 15.03.2018 for the assessment years 1995-96, 1995-96 and 1996-97.

2.These appeals have been filed by raising the following substantial questions of law:

Substantial Question of Law in T.C(A).Nos.887 & 889 of 2018

"Reopening of Assessment:

1)Whether the Assessing Officer had exceeded the jurisdiction by reopening the assessment under Section 147 of the Income Tax Act, 1961?

2)Whether the reopening is merely on challenge of opinion and the Assessing Officer has no jurisdiction under Section147 to reopen the assessment?

Disallowance of Depreciation:

3)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the disallowance of depreciation on Special Grade Cast Iron (SGCI) Rolls?"

Substantial Question of Law in T.C(A).No.892 of 2018

1)Whether on the facts and in the circumstances of the case, Order imposing penalty is liable to be set aside, when the Assessing Officer has not clearly indicated in the notice issued u/s.271(1)(c) about concealment of particulars of income or there furnishing of inaccurate particulars of income?

2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the levy of penalty u/s.271(1)(c)?

3.We take up T.C(A).Nos.887 and 889 of 2019, which are the substantive appeals, wherein the assessee has challenged the validity of the reopening proceedings as well as the order of the Tribunal confirming the disallowance of depreciation on Special Grade Cast Iron (SGCI) Rolls. TC(A).No.892 of 2018 is against the levy of penalty under Section 271(1)(c) of the Act.

4.We have elaborately heard Mr.M.P.Senthilkumar, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the respondent/revenue.

5.Upon going through the facts of the case, we find that the entire transaction said to have been done by the assessee has been held to be bogus. The Assessing Officer completed the assessment vide order dated 24.03.2003 has clearly recorded the following finding:

> "Investigations revealed that the weight of the smallest and lightest SGCI Rolls is 1800 kg and that not more than 5 such Rolls (400 mm * L 760) could be transported in one truck/lorry of 9-tonne capacity. The weight of the Rolls allegedly sent by Lorry No.MCU 3005 is an under:
>
> 400 MM x L 1020 .. 1800 kg x 12 = 21,600 kgs
>
> 485 MM x L 760 .. 1850 kg x 14 = 25,900 kgs
>
> -------------
>
> Total .. 47,500 kgs
>
> -------------
>
> Similarly, the weight of the Rolls allegedly sent by Lorry No.MH 04/5194 is as under:
>
> 485 MM x L 1300 .. 2500 kg x 13 = 32,500 kgs
>
> 485 MM x L 1200 .. 2400 kg x 13 = 31,200 kgs
>
> -------------
>
> Total 67,700 kgs
>
> -------------
>
> This itself would go to show that the consignments were never undertaken. Suffice it to say that during enquiry by the Department, the said Transporter (Noble Roadlines) denied having transported any Rolls and stated that he has transported only Scraps to Bellary & Steel & Alloys Ltd. (BSAL), Bellary. Also M/s B.H.Enterprise have stated that they have never supplied any Rolls to BSAL, Bellary, and that it is a "common practice to obtain industrial finance by floating such transactions of lease" by involving finance companies."

6.The assessee has not been able to dislodge the above factual findings either before the Commissioner of Income Tax (Appeals) (CIT(A)) or before the Tribunal. Further the Tribunal considered the decision of the High Court of Karnataka in the same matter relating to M/s Bellary Steel & Alloys Ltd., and held that the entire transaction was sham. Paragraph 10 of the decision of the High Court of Karnataka in the case of CIT Vs.Bellary Steel and Alloys Ltd, 370 ITR 226 would be relevant and is quoted herein below:

> "10. From the aforesaid material on record, it is clear that the lessor has not purchased any machinery. When no machineries were purchased, the question of leasing non-existence machinery would not arise. Therefore, the payment of rent for a property, which is not leased would not arise. That is why the assessing authority and the lower appellate authority rightly and concurrently held that the lease in question is a sham and it is not real. The Tribunal has not disturbed this finding that there was no purchase of machinery, there was no lease of machinery and there was no payment of lease rentals. But strangely, it recorded a finding that unless the Revenue has disputed the assessee's claim with documentary evidence, it cannot be termed as a sham or a device. When once the managing director admits in his affidavit that there was no purchase of materials/machinery, there was no lease of machinery and, therefore, the amounts paid is not lease of machinery and, therefore, the amounts paid is not lease rentals, we fail to understand what more evidence was required to establish that the case of lease rentals pleaded by the assessee is a sham transaction or unreal transaction. Therefore, the Tribunal without any justification erred in setting aside the concurrent findings recorded by the two courts below, which is based on legal evidence. However, after holding that the assessee is not entitled to a claim of depreciation on the lease rentals it holds that the said amount is to be treated as financial transactions and treated as interest paid for the financial loans availed of by the assessee, a finding, which si without any basis, without any legal evidence on record. When once the case pleaded by the assessee was found to be without basis and the transaction, on which reliance is placed was found to be bogus, sham and unreal, the assessee's claim is to be negatived. In the absence of legal evidence to substantiate the claim under different heads, the Tribunal without properly appreciating the material on record to find out whether such a claim has any

legal basis could bot have granted the relief, which it has granted. The said finding is not only contrary to law but is contrary to the material on record. In that view of the matter, the said substantial question of law is answered in favour of the Revenue and against the assessee.”

7.The Tribunal in the instant case after taking note of all the factual details, in our view, rightly held that the entire transaction was bogus and the assessee claimed depreciation on a lease to M/s Bellary Steels & Alloys Ltd, which were also bogus. Further, the Tribunal rightly held that the intention of the assessee was clearly malafide from the beginning. It manufactured evidence which fell flat in the face of deposition of related parties and other evidence brought in by the Assessing Officer. With these findings, the Tribunal rightly confirmed the order passed by the CIT(A).

8.Mr.M.P.Senthilkumar, learned counsel appearing for the appellant submitted that atleast the peak of the financial transaction should be taken into consideration and the assessee should be entitled to whatever relief under the Act in respect of such transaction.

9.We outrightly reject the said submission since the assessee has engaged in fraudulent activity by making a bogus claim of depreciation. The assessee's intention is tainted with malafide and it attempted to create evidence which was self serving as related parties had uttered the truth. It defies logic as to how the cargo of 67,700 kgs could have been transported in two lorries. The transporter who is said to have been transported only SGCI rolls has stated that he never transported any rolls but transported only scrap. Therefore, the assessee is not entitled for any relief.

10.Mr.M.P.Senthil Kumar, learned counsel submitted that atleast with regard to levy of penalty, this Court may consider the same. As we have already held that the assessee is guilty of fraud and has perpetuated fraud to defraud the revenue. The assessee having resorted to unscruplous and illegal activity is not entitled to any indulgence. Further, the Tribunal has noted that identical transaction was done even in the year 2008 where penalty was levied respect of similar transaction making a bogus claim for depreciation on SCGI rolls from the very same M/s Bellary Steels & Alloys Ltd., and this order of penalty was confirmed by the High Court in the case of CRN Investments (P) Ltd vs. CIT, (2008) 300 ITR 342.

11.Thus, for the above reasons, the tax case (appeals) filed by the assessee is dismissed and consequently, the substantial questions of law are answered against the assessee. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

cse

To

1.The Assistant Commissioner of Income Tax
Company Circle, VI(4), Chennai - 600 034.

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

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

+1cc to Mr.T.R.Senthilkumar,Senior Standing Counsel, for Income Tax SR.No.4758

+3ccs to Mr.G.Baskar, Advocate SR.No.4377

Tax Case (Appeal) No.887,889 & 892 of 2018

NMI(CO)
GMY(27/02/2019)