IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.467 of 2010

Mr.Sujith Cherian
Prop. Kerala Fashion Jewellery
Chennai 4. ...Appellant/Respondent

Vs.

The Asst. Commissioner of Income Tax,
Business Circle II,
3rd Floor, New Block, Aayakar Bhavan
121, M.G. Road, Chennai 34 ...Respondent/Appellant

Tax Case Appeal filed 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.2201/MDS/2008 dated 16.10.2009 against the order passed by the Commissioner of Income Tax (Appeals)VI, Chennai PAN No. AADPC7155R in I.T.A.No.32/2006-2007 dated 22.07.2008 against the order passed by the Assistant Commissioner of Income Tax Circle II, Chennai GDR No. AADPC7155R, Assessment year 2003-2004, dated of order 17.03.2006.

For Appellant : Mr.Ashok Pathi
For Respondent : Mr.S.Rajesh,
Junior Standing Counsel

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J.)

The Assessee has preferred this appeal under Section 260A of the Income Tax Act aggrieved by the order dated 16 October 2009 passed by the learned Income Tax Appellate Tribunal Branch “D”, Chennai, whereby the learned Tribunal partly allowed the appeal filed by the Revenue and set aside the order passed by the learned Commissioner of Income Tax Appeals on 22 July 2008 for the Assessment year 2003-04, and restored the Additions made by the Assessing Authority with the following observations :

9. A significant fact, which in our view, has not been appreciated by the learned Commissioner of Income Tax (Appeals) while deciding the issue is the admission by the Assessee after the survey vide its letter dated 7.3.2005 as well as letter dated 17.2.2006, as duly recorded by the learned Commissioner of Income Tax (appeals) in the impugned order at P.No.3.Thus, when the Assessee has admitted an additional income of Rs.42 lakhs subsequent to survey and even during the assessment, then the said admission in the absence of anything contrary on record cannot be overlooked. We do not agree and accept the contention of the learned A.R. Of the Assessee that if the offer of the Assessee is considered to be true then the same has to be telescoped against the excess book stock. It was the onus and duty of the Assessee to prove that there was no discrepancy in the books of accounts as well as in the stock. When the fact of discrepancy of recorded excess purchases has not been disputed then the Assessee cannot take advantage by pleading that the same will reduce the discrepancy in the stock. We find that when the Assessee has admitted an additional income of Rs.42 lakhs, then, irrespective of the rival contentions of the parties, the same is liable to be added to the income of the Assessee. It is a case of unambiguous admission on the part of the Assessee. Accordingly, we are of the view that an addition of Rs.42 lakhs as admitted by the Assessee on account of unproved purchases is justified. The order of the learned Commissioner of Income Tax (Appeals) is set aside and the order of the Assessing Officer is modified to that extent.

10. In the result, this appeal filed by the Revenue is partly allowed.

2. During the time of admission of this appeal, the following substantial questions of law were framed for consideration of the court:-

1. Whether on the facts and in the circumstances of the case, the Appellate

> Tribunal is right in law in holding that the addition of Rs.42 lakhs is warranted as undisclosed purchases in the hands of the Appellant as per the real income theory under Section 28 of the Income Ta Act, 1961?
>
> 2. Whether the Tribunal's finding in para 9 is perverse especially when in paras 5 to 8, the Tribunal itself observes the "contrary facts on record" to prove that the purchases were not properly entered and only there was "Excess Book Stock" as compared to "Physical Stock" recorded in the books?"

3. Having heard the learned counsel for the parties and upon perusal of the record, we find that the additions in question to the extent of Rs.42 lakhs are mainly based on the admission made by the Assessee himself who is a dealer of jewellery, based upon the statements recorded during the course of survey, which was conducted in the business place of the Assessee on 16 December 2002 and thereafter, during the course of the assessment proceedings also for the aforesaid Assessment Year 2003-04 by two letters dated 7 March 2005 and 17 February 2006, the Assessee himself agreed to additions of Rs.42 lakhs on account of unproved purchases of gold from various dealers, during the assessment period in question.

4. The learned counsel for the Assessee sought to urge before us that the said admission of the Assessee was not corroborated by any other material on record by the Assessing Authority and therefore, such an admission could not have resulted in the addition in the declared income.

5. Per contra, the learned counsel for the Revenue supported the impugned order passed by the learned Income Tax Appellate Tribunal.

6. Having heard the learned counsel, we are of the opinion that in fact, no question of law arises in the present case, much less substantial question of law, giving rise to the maintainability of the appeal under Section 260A, by the Assessee. The admission on the part of the Assessee was the best evidence to be used by the Assessing Authority in the present case. Admittedly, during the course of survey, the discrepancies in the stocks of gold were found at the business place of the Assessee for which initially though he admitted a difference of Rs.50 lakhs in value, but later on during the course of assessment proceedings, he seems to have reduced that valuation by the admission letters dated 7 March 2005 and 17 February 2006, to the extent of Rs.42 lakhs. The Tribunal has upheld the admissions only to the extent of Rs.42 lakhs in the present

case. We do not find any perversity in the said findings of the learned Tribunal based on the admission of the Assessee himself and therefore, we do not find any merit in the appeal filed by the Assessee and the same deserves to be dismissed.

7. In view of the aforesaid, we answer the questions of law as admitted by the Coordinate Bench against the Assessee and in favour of the respondent. The appeal is dismissed. There is no order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Asst. Commissioner of Income Tax,
Business Circle II,
3rd Floor, New Block
121, M.G. Road, Chennai 34

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

3.The Commissioner of Income Tax(Appellate)VI
Chennai

+1 CC to M/s. Pass Associates sr 649
+1 CC to Mr.S.Rajesh, Advocate sr 507.

T.C.(A).No.467 of 2010

PP(CO)
SP(29/05/2020)