IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2020

CORAM

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

Tax Case (Appeal) Nos.670 & 671 of 2010

M/s.Atofina Peroxides India Ltd.,
now known as
M/s.Arkema Peroxides India Private Ltd.,
1st Floor, Balmer Lawrie House,
628, Anna Salai, Teynampet,
Chennai 600 018. ..Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Special Range-IX,
121, Nungambakkam High Road,
Chennai 600 034. ..Respondent/Respondent
(Cause title accepted vide order
dated 28/04/2010 made in MP.No.1 of 2010
in TC(A)SR.Nos.79606 & 79608 of 2006)

Prayer : Tax Case (Appeals) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 2.4.2006 made in ITA Nos.1851 & 1852/Mds/2002 and against the order of the Commissioner of Income Tax(Appeals) III, Chennai -34, dated 17.09.2002, made in ITA.No.Tr.208/1998-99/A-III & ITR.No.Tr.258/98-99/A-III, dated 17.09.2002 for the assessment year 1993-1994 and 1994-1995 respectively and against the order of the Deputy Commissioner of Income Tax, Special Range -IX, Chennai -34, dated 08.03.1996 and 25.02.1997 made in PAN/GIR.No.47/095-CZ-0592 for the assessment year 1993-94 & 1994-1995.

For Appellant : Mr.Venkatnarayanan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Assessee has filed the Appeals agreed by the common order passed by the learned Tribunal for the Assessment Years 1993-94 and 1994-95 whereby the Tribunal upheld the disallowances of foreign travel expenses, addition made on estimated variation in consumption of raw material and contribution of Rs.3,00,000/- made to one Lady Ampthill Hospital.

2. The relevant finding of the order passed by the Tribunal is quoted below for ready reference:-

> "3. We have heard both the counsels. We find that orders of the lower authorities are reasonable on this issue. The assessee cannot the expected to claim allowance of foreign travel expenses by merely claiming to be the same for business purposes without substantiating the same with necessary bills and vouchers. As such, the orders of a lower authorities on this issue are affirmed and the assessee's appeal is dismissed.
>
> ....
>
> 5. The next common issue raised pertains to the excess consumption of raw materials. The assessee is a manufacturer polymerization initiators and cross linking agent formulations. The assessee was requested by the assessing officer to furnish details regarding the manufacturing processes of these products. The assessing officer wanted to find out the quantity of finished products, quantum of wastage and shortage occurred during the manufacturing process as well as the quantum of any other kind of losses such as evaporation loss and handling loss. The assessee filed a very brief note which did not satisfy the assessing officer. In order to verify the percentage of yield of finished products from the major raw materials, the assessing officer referred to the quantitative information in respect of each class of raw materials consumed and goods manufactured. The assessing officer compared the ratio of total production of raw materials consumed in the previous year with the current assessment year and held that consumption was more to the extent of

Rs.13,02,479/- as excess consumption of raw materials. Upon assessee's appeal, the learned CIT(A) did not find the assessee's explanation sufficient and upheld the order of the Assessing Officer.

6. We have heard both the counsels and perused the records. The learned D.R. averred that the assessee has neither maintained nor provided the necessary details as required in this case. He particularly adverted the A.O.'s observation that the explanation given by the assessee was silent about the shortages/wastages/losses. He also averred that there is a specific column in the audit report under Section 44AB where the assessee is required to give several information on the quantity and percentage of production, wastage, yield and shortage, etc. This information was not given by the assessee in the said report. The information, as required by the lower authorities from the assessee did not elicit appropriate information to arrive at the comparative variation in the consumption of the raw materials with reference to the production.

....

8. Upon considering the entire spectrum of the case, we find that expenses have to be justified not only with regard to the substantive/documentary evidence but also by the verificatory evidence that the amount spent was actually for the purpose of the business. To put it in other words, it needs to be established in this case that raw material said to have been consumed for production was actually so consumed. This can be established only by reference to this necessary data of consumption, production, wastage & losses and the correlation between the same. The assessee for obvious reasons has not furnished the necessary details in this regard in report under Section 44AB and not fully complied with information required by the A.O. Hence, the assessee has not established that the increase in consumption which in other words means abnormal shortage/wastage/loss is actually justified. As such the uphold the order of the lower authorities and decide the issue against the assessee.

....

14. One issue raised in ITA 1852 is regarding disallowance of contributions made to the Lady Amphthill Hospital. On this issue, it is to be noted that the assessee has made contribution of Rs.3,00,000/- towards the hospital and claimed the sum as the admissible expenses on account of staff welfare. The assessee has claimed that the contribution would enable the employees to have medical facilities at a confessional rate. However, it has been noted by the A.O. and the learned CIT (A) that the assessee has not given any proof for his assertion that the employees actually got any benefit out of the contribution. Since the assessee has not brought anything to support the assertion that his contribution to the hospital actually provided any benefit/succour to the employees of the assessee and office. Thereafter he made comparison with production figures and estimated excess consumption. In our opinion, this basis of segregation of electricity expenses is not cogent enough to warrant an addition on comparative analysis. As such, we reverse the orders of the learned CIT(A) in this case and decide the issue in favour of the assessee."

3. These two Appeals were admitted by a co-ordinate Bench of this Court on 10.8.2010 by separate orders and the questions of law framed are quoted below for ready reference:-

"T.C.A.No.670 of 2010

i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the addition of the estimated variation in consumption of raw materials? and

ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the appellant had not established the increase in consumption of raw materials in spite of the break-up of raw materials and production details furnished by the appellant?

T.C.A.No.671 of 2010

i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the addition of the estimated variation in consumption of raw materials?

ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the appellant had not established the increase in consumption of raw materials, in spite of the break-up of raw materials and production details furnished by the appellant? and

iii) Whether, on the facts and in the terms of the case, the Tribunal was justified in law in holding that the contribution made to Lady Ampthill Hospital by which the employees were entitled to concessional facilities, is not an allowable deduction?"

4. The learned counsel Mr.Venkat Narayanan appearing for the Assessee sought to urge that the learned Tribunal was not justified in upholding the disallowances of the expenses made by the lower Appellate Authority.

5. The learned Senior Standing Counsel Mr.T.Ravikumar appearing for the Revenue contended before us that in the absence of any evidence produced by the Assessee during the course of assessment proceedings and even the appeal proceedings, the Authorities below were justified in answering the questions against the Assessee, particularly on the issue of contribution made to the tune of Rs.3,00,000/- to Lady Ampthill Hospital.

6. The learned counsel appearing for the Assessee sought to urge that the contribution was made for the benefit of the employees of the Assessee and therefore, it ought to have been allowed as a business expenditure under section 37 of the Act.

7. The learned Senior Standing Counsel appearing for the Revenue urged that for want of evidence that the employees of the Assessee are benefited by the contribution made by the Assessee, it was not admissible as a business expenditure.

8. Having heard the learned counsel appearing for the parties, we are of the opinion that the findings of facts are rendered by the learned Tribunal upholding the findings of the two Authorities below and thus, all the three Authorities have concurrently held against the Assessee that only for want of production of relevant evidence by the Assessee, the Authorities below came to the conclusion that the expenses incurred by the Assessee on various items as well as the contribution made to

Lady Ampthil Hospital were not allowable expenses and the additions made on variation in the raw materials and production was also justified and unless such findings rendered by the Tribunal are found to be perverse by this court, the Appeals under Section 260A of the Act are not maintainable.

9. Even though these Appeals were admitted on the questions of law quoted above, we do not find them to be really questions of law arising from the order of the learned Tribunal.

10. Therefore, we are satisfied that there is no merit in the present Appeals filed by the Assessee and in the absence of any relevant evidence produced by the Assessee, the Authorities had no other option, but, to draw an adverse inference against the Assessee. Therefore, the Appeals of the Assessee are dismissed and questions, as framed, are answered against the Assessee and in favour of the Revenue.

Sd/-
Assistant Registrar(C.S.VI)

/True copy/

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax(Appeals -III),
   121, Mahatma Gandhi Road, Chennai -34.

3. The Deputy Commissioner of Income Tax,
   Special Range-IX,
   121, Nungambakkam High Road,
   Chennai 600 034.

+1cc to Mr.M.Swaminathan, Advocate Sr.No.6263
+1cc to Mr.T.Ravi Kumar, Advocate Sr.No.6992

AKM/05.03.2020 /6P-6C/