IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.No.410 of 2020

Commissioner of Income Tax,
Circle 1,
Namakkal. ..Appellant

Versus

M/s.K.K.P.Spinning Mills Private Limited
No.88, KKP Building,
Salem Road,
Namakkal 637 001
PAN:AAACK 8959 K ..Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 30.09.2019 made in I.T.A.No.2880/Chny/2018 relating to the Assessment Year 2014-15 against the order of the Assistant Commissioner of Income Tax, Circle-1, Namakkal, dated 31.07.2018 and made in ITA No.E-34/2016-17 for the Assessment year 2014-2015 and against the Assessment order of the Assistant Commissioner of Income Tax, circle-1, Namakkal dated 29.12.2016 and made in PAN NO.AAACK8959K for the Assessment year 2014-2015.

For Appellant : Mr.M.Swaminathan
Senior Standing counsel
For Respondent : Mr.R.Sivaraman

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 30.09.2019 passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.2880/Chny/2018 for the Assessment Year 2014-15. The Revenue has raised the following Substantial Questions of Law for consideration:

"1. Whether the Tribunal was right in deleting the addition made u/s.68 by the Assessing officer when the assessee has not produced the Name, Address & PAN of the so called parties/Commission agents during the assessment proceedings?

2. Whether the Tribunal was right in deleting the addition made u/s.68 by the Assessing officer when the assessee has not proved the cash deposit but changed its stand that the payments were received from various parties and commission agents when such ledger accounts were not maintained by the assessee?”

2. We have heard Mr.M.Swaminathan, learned Senior Standing counsel appearing for the appellant/Revenue and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

3. The assessee is a Spinning Mill, filed their return of income for the Assessment Year under consideration, returning a total income of Rs.1,73,75,250/- under normal computation and has shown deemed total income of Rs.3,05,28,343/- under Section 115JB of the Act and claimed refund of Rs.5,54,620/-. The assessee also declared agricultural income of Rs.2,07,030/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued. During the scrutiny assessment, the assessee had furnished the details of the Bank Account, on perusal of which the Assessing Officer found cash deposits were made. The assessee was called upon to explain such cash deposits and they stated that they received the same from the Tamil Nadu Handloom Weavers Co-operative Society, Chennai. The assessee also furnished further details and ultimately, the Assessing Officer held that the assessee has failed to discharge the primary onus of substantiating the credits by submitting confirmation / ledger account copy of the Tamil Nadu Handloom Weavers Co-operative Society, Chennai and also made certain other findings and ultimately, rejected the explanation offered by the assessee and completed the assessment under Section 143 (3) of the Act on 29.12.2016, holding that a sum of Rs.6,71,19,385/- as unexplained credit under Section 68 of the Act.

4. Aggrieved by such order, the assessee preferred appeal to the Commissioner of Income Tax (Appeals), Salem ['CIT(A)' for brevity]. The CIT(A) called for a remand report, which was submitted by the Assessing Officer and after taking note of the remand report, the assessee was given partial relief and the addition to the extent of Rs.4,67,11,382/- was deleted and the appeal was allowed in part. Aggrieved by the same, the Revenue preferred appeal before the Tribunal, which was dismissed on the ground that the Revenue's appeal is not maintainable. Though such was the finding rendered by the Tribunal, before us, the Revenue has raised the aforementioned Substantial Questions of Law, which pertain only to the deletion of the addition made under Section 68 of the Act.

5. We have elaborately heard Mr.M.Swaminathan, learned Senior Standing counsel for the appellant / Revenue. Though the Tribunal has rejected the appeal filed by the Revenue on the ground of maintainability and in this regard, referred to the decision of this Court in the case of B.Jayalakshmi Vs. ACIT reported in (2018) 407 ITR 0212 (Mad) and decision of the High Court of Bombay in the case of Jivatlal Purtapshi Vs. CIT, reported in (1967) 65 ITR 261 and the decision of the High Court of Mysore in the case of M.M.Annaiah Vs. CIT, reported in (1970) 76 ITR 0582 and ultimately, rejected the appeal filed by the Revenue as not maintainable.

6. Before us, Mr.M.Swaminathan, learned Senior Standing counsel appearing for the appellant / Revenue, has elaborately argued the question of maintainability and submitted that the decision in the case of B.Jayalakshmi (cited supra) is on entirely different set of facts and circumstances and the same could not have been applied to the assessee's case. As pointed out by us earlier, the Substantial Questions of Law raised before us are only with regard to the deletion of the addition made under Section 68 of the Act and technically, we are not required to go into the aspect, whether the appeal filed by the Revenue was maintainable before the Tribunal. With regard to the deletion of the addition made under Section 68 of the Act, as pointed out earlier, the CIT(A) granted partial relief to the assessee. This relief was granted to the assessee based upon an elaborate remand report filed by the Assessing Officer which has been extracted in the order passed by the CIT(A) dated 31.07.2018. The CIT(A) / the First Appellate Authority has re-examined the entire factual position and granted relief to the assessee to the extent warranted. The assessee was not on appeal as against the disallowed portion and it was only the Revenue which challenged the order before the Tribunal to consider the factual scenario. We find that there is no question of law much less Substantial Question of Law, arising for consideration in this appeal and consequently, the appeal should fail. With regard to the issue regarding the maintainability of the appeal before the Tribunal, we refrain from expressing any opinion on the said issue as in our considered opinion, it is an arguable issue and the Revenue having not raised any Substantial Questions of Law on the said issue, we proposed to leave the said question open.

7. In the result, the Tax Case Appeal is dismissed on the ground that no Substantial Questions of Law as framed by the Revenue arises for consideration in this appeal. With regard to the maintainability of the appeal filed by the Revenue before the Tribunal, which was held to be not maintainable since the

said issue does not arise for consideration in this appeal, we leave the question open. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax,
Circle-1, Namakkal.

3. The Assistant Commissioner of Income Tax,
Circle-1, Namakkal.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.38567

T.C.A.No.410 of 2020

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