IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.568 of 2018

M/s Rm.K.V.Fabrics,
176F, Trivandrum Road,
Tirunelveli - 627 003 .. Appellant

.Vs.

The Deputy Commissioner of Income Tax,
Central Circle -1(1)
Chennai .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.2471/Mds/2016 dated 26.07.2017 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai for the Assessment Year 2012-2013.

Appeal against the order dated 22.06.2016 made in ITA No.275/2015-16 on the file of the Commissioner of Income Tax (Appeals)-18, Chennai-34 for the Assessment year 2012-13 as against the order passed on the Assistant Commissioner of Income Tax, Central Circle-1(1), Chennai in PAN/GIR No.AAHFB7067M, dated 27.03.2015.

For Appellant : Mr.R.Vijayaraghavan for
Mr.Venkata Narayanan
for M/s Subbaraya Aiyar
Padmanaban

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
M/s.V.Pushpa
Junior Standing Counsel

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This appeal, at the instance of the assessee filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai in ITA No.2471/Mds/2016 dated 26.07.2017 for the Assessment Year 2012-2013.

2. The following Substantial Question of Law was raised for consideration:

> "1. Whether the Tribunal was right in law in not appreciating that addition towards valuation of closing stock would arise only when the stock continues to be held by the assessee in the next year and not in a case where the business of the assessee along with stock was taken over by a company on 08.01.2012?

3. The assessee is in the business of retail sale of garments. For the assessment year, 2012-2013, the assessee filed return of income on 29.09.2012 declaring an income of Rs.1,46,34,570/-. This return was revised on 03.10.2012 declaring the same income. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 19.08.2013. Subsequently, notice under Section 142(1) of the Act was issued along with questionnaire. The assessee produced the details called for pursuant to such notice. The business of assessee's firm was taken over by a private limited company on 08.01.2012 together with all its assets and liabilities, as they stood in the books of the firm at the close of business on 07.01.2012. The fact regarding taking over of the company has not been disputed by the assessing officer rather recorded in the assessment order dated 27.03.2015.

4. The scrutiny assessment was completed under Section 143(3) of the Act by order dated 27.03.2015 for the period from 01.04.2011 to 07.01.2012 determining the total income at Rs.7,54,46,598/-. The assessing officer while completing the assessment made an addition of Rs.2,51,214/- towards valuation of closing stock among others on the ground that the valuation of closing stock does not give the true and correct status of business and profit and the matter relating to allowability of this method of stock valuation was not accepted by the Department in the earlier years and additions were made to the extent of closing stock. Accordingly, the assessing officer held that the closing stamp has been under valued by Rs. 2,51,214/- and this was added to the total income.

5. The assessee aggrieved by such order, preferred an appeal before the Commissioner of Income Tax, [Appeals] 18, [for brevity 'CITA'] Chennai, who by order dated 22.06.2016 confirmed the addition by following the earlier order of the Tribunal in assessee's group cases dated 26.08.2015. Aggrieved by the same, the assessee preferred appeal before the Tribunal, which was dismissed by the impugned order.

6. We have elaborately heard Mr.R.Vijayaraghavan, learned counsel for Mr.Venkata Narayanan, learned counsel for M/s Subbaraya Aiyar Padmanaban, learned counsel for the appellant and Mr.M.Swaminathan, learned senior standing counsel assisted by Ms.V.Pushpa, learned junior standing counsel for the respondent / revenue.

7. Upon going through the material papers placed before us, we find that the assessing officer had noted that on 08.01.2012, the business of the assessee firm was taken over by the company and therefore, assessment period was restricted from 01.04.2011 to 07.01.2012. Before us the endevaour of the assessee is to convince us that the valuation of the closing stock would arise only when the stock continues to be held by the assessee in the next year and not in a case where the business of the assessee along with the stock was taken over by the company on 08.01.2012.

8. It is the further submission that what was relevant to be noted is that it is a sale of the stock and not valuing of stock, which will be continuing with the assessee in the next year. On a reading of the impugned order passed by the Tribunal, we find that though this issue was raised by the assessee before the Tribunal in a slightly different form, than what has been raised before us, the Tribunal did not deal with the said issue, but followed the earlier decision in assessee's case dated 08.02.2017 and dismissed the assessee's appeal.

9. In our considered view the issue with regard to whether valuation of closing stock would arise when the business of the assessee along with the stock was taken over by the company needs to be decided. This is a mixed question of fact and law, which has to be considered because the revenue did not dispute the fact that the business of the assessee along with the stock was taken over by the company on 08.01.2012, therefore, we deem it appropriate to remand the matter to the assessing officer for fresh consideration on this aspect after due opportunity to the assessee.

For the above reasons, the Tax case Appeal is allowed. The impugned order passed by the Tribunal is set aside and the matter is remanded to the Assessing Officer to verify the aspect, which has been pointed out in the preceding paragraphs. Consequently, the substantial question of law is left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
   Madras 'B' Bench, Chennai

2. The Deputy Commissioner of Income Tax,
   Central Circle-1(1), Chennai.

3. The Commissioner of Income Tax (Appeals)-18,
   Chennai-34

4. The Assistant Commissioner of Income Tax,
   Central Circle-1(1), Chennai.

+1cc to M/s.M.Swaminathan, Advocate, Sr.No.32839
+1cc to M/s.Subbaraya Aiyar, Advocate, Sr.No.32964

Tax Case Appeal No.568 of 2018

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