IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE DR.VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.No.631 of 2017

Commissioner of Income-tax,
Chennai. ..Appellant/Respondent

Vs

M/s.S.Albert & Co. P.Ltd.,
No.13/1, Whannels Road,Egmore,
Chennai 600 008. .. Respondent/Appellant

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "B" Bench, dated 13.04.2016 in ITA.No.2201/Mds/2015. Against the order of the Principal Commissioner of Income Tax, Chennai-6 dated 03.11.2015 made in C.No.6119(22)/PRCIT-6/2015-16. Against the order of the Deputy Commissioner of Income Tax Company Circle-VI(1) Mahathma Gandhi Road, Chennai-34 dated 31.03.2014 in PAN/GIR.No.AADCS9670C for the Assessment year 2011-2012.

For appellant : Mr.J. Narayanasamy,
Standing Counsel

For Respondent : Mr.A.S. Sivaraman
for S.Sridhar

JUDGMENT

(Order of the Court was made by Dr.Vineet Kothari, J.)

The present appeal has been filed by the Revenue against the order of the learned Tribunal dated 13.4.2016 raising the following purported substantial questions of law.

> '1.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the revision order u/s.263 solely on the

ground that the finding was based on Audit Objection?

2.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the order u/s.263 is bad in law, without appreciating the fact that Assessment Order u/s.143(3) is erroneous and prejudicial in nature in as much as the depreciation and interest were allowed as deduction after estimation of income thereby allowing double deduction to the assessee?'

2.The learned Tribunal has set aside the revisional order passed by the learned Principal Commissioner, Income Tax, under section 263 of the Act and restored the order passed by the Assessing Authority in the case of the assessee with the following observations:-

> '6. We have heard the rival submissions and carefully perused the materials available on record. On perusing the order of the learned assessing Officer, we find that the learned Assessing Officer has estimated the profit of the assessee at 8% on its turnover and further granted the benefit of depreciation and allowed the interest expenditure as deduction and thereafter estimated the profit of the assessee consciously at Rs.47,95,054/-The entire process of assessment made by the learned Assessing Officer was based on estimation considering the facts of the relevant case before him. In these circumstances, we do not find strength in the comments made by the audit party citing certain decisions wherein the facts of the case were not discussed to be identical to that of the case of the assessee. It appears that the learned Principal Commissioner of Income Tax has been simply influenced by the audit report of the Revenue without examining the facts involved in case of the assessee. In these circumstances, we do not find merit in the order of the learned Principal Commissioner of Income Tax. Therefore, we hereby set aside the order of the learned Principal Commissioner of Income Tax passed under section 263 of the Act and reinstate the order of the learned assessing Officer.'

3.In the present case, the assessee, who was carrying on the business of clearing and forwarding agent, declared its profit at the rate of 1.56 % and produced the regular books of accounts for verification before the Assessing Authority, who found that there was some discrepancies in the books of accounts maintained, and therefore he resorted to best judgment by adopting 'market standards' and applied 8% rate of profit as income from business and thereafter, allowing deduction on interest and depreciation, computed the net income. The assessment even then resulted in refund of tax on account of excess TDS made by the Awarder of the contract.

4. Even this best assessment order was found to be erroneous by the learned Principal Commissioner of Income Tax under Section 263 of the Act, who passed the revisional order on 3.11.2015, holding that once the net income was estimated at the rate of 8%, the learned assessing authority could not have allowed any further deduction on interest and depreciation and to that extent the best judgment assessment order was erroneous and prejudicial to the interest of Revenue and therefore liable to be revised under section 263 of the Act.

5.Aggrieved by the revisional order of the learned Principal Commissioner, Income Tax under section 263 of the Act, the Assessee took up the matter further before the learned Tribunal, which however, restored the said order of the assessing authority and set aside the revisional order passed by the Principal Commissioner of Income Tax under section 263 of the Act.

6.The Revenue is therefore, in appeal before us.

7. Learned counsel for the Revenue Mr.J. Narayanasamy submitted that the learned Principal Commissioner was justified in adopting the course of section 263 of the Act on the basis of the audit objection raised against the assessment order and following the High Court decision in the case of Indwell Constructions V. Commissioner of Income Tax (1998) 232 ITR 776 (AP), the learned Commissioner was justified in setting aside the assessment order and directing the assessing authority to pass fresh orders on the ground that once the net profit rate of 8% was adopted, there is no justification for giving further deductions on account of the interest and depreciation. He therefore submitted that the learned Tribunal could not have set aside the said revisional order under section 263 of the Act,

passed by the Commissioner.

8.Per contra, the learned counsel appearing for the Assessee Mr. A.S.Sivaraman submitted that the Assessing Authority was not justified in raising the income from 1.56 % of turnover declared by the Assessee to 8% without bringing on record any evidence for supporting such adoption of 8% of net profit. He further submitted that whether the Assessee filed any first appeal against the assessment order is not within his knowledge. He however supported the order passed by the Tribunal and urged that it is a finding of fact and no question of law arises from the order of the Tribunal.

9. Having heard the learned counsel for the parties, we are prima facie of the opinion that no question of law, as such, arises from the order of learned Tribunal, as the estimation of Income Tax is essentially a fact finding exercise, which becomes final at the hands of the final fact finding authority of Income Tax namely, Income Tax Appellate Tribunal and we would not have entertained this appeal which lies under section 260A of the Act, only on the 'substantial question of law' arising from the order of the learned Appellate Tribunal.

10. But we see glaring perversity in the assessment order itself. The alleged 'market standards' adopted by the assessing authority to jack up the net profit from 1.56% on turnover declared by the Assessee to 8% seems to have been made without any basis whatsoever. There is not even an iota of evidence or reference, to any material or any parallel case referred by the assessing authority to adopt such rate of 8% of turnover. Even grounds or alleged discrepancies which permitted the assessing authority did not appear to be sufficient to reject the books of accounts. The reasons, as discussed in the assessment order are quoted below for ready reference ;

> '3. During the course of assessment, assessee company was asked to submit separate P & L for Import - Export trading business and Clearing and Forwarding business. On perusal of the Separate P and L drawn by the assessee company it was seen that the profit from Clearing and Forwarding business is 1.56%. Therefore to verify the assessee company was asked to produce ledgers and supporting Bills/Vouchers for the expenses related to labours handling and others. The same was produced and on verification the following discrepancies were observed:

1. Bills/vouchers pertaining to the labour charges were self made and made in cash.
2. Applicability of TDS for the labour charges was also discussed.
3. Bills/vouchers pertaining to the Freight Handling were also not properly vouchers.

4. To make short for all these discrepancies, since as per market standards 8% profit is nominal in this line of business, the profits of the assessee company is recomputed at 8% as under:

Turnover of Clearing and Forwarding Business
Rs.18,60,94,923
Net profit @ 8% Rs.1,48,87,594
Less: Interest Rs.81,67,676
Depreciation Rs.19,24,864
Recomputed profit of the Clearing and Forwarding Business

Rs.47,95,054
Less:Net profit as per books in Clearing and Forwarding Business
Rs.29,06,714

Addition as per this order
Rs.18,88,340
Add: Total income returned
Rs.30,71,112

Total Income Assessed as per this Order
Rs.49,59,452
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11. Such arbitrarily assessed income tax by the assessing authority which had no legs to stand upon, cannot be sustained. More surprising is that even this assessment order which was unduly and falsely in favour of Revenue, (God Knows How??) was found to be erroneous and prejudicial to the interest of Revenue by the learned Commissioner and that is beyond our comprehension. Therefore, the entire exercise of the fact finding in the form of estimation of income under the powers conferred upon the Assessing Authorities to make best judgment assessments, where the books of accounts are validly rejected, does not seem to have been adopted by the authorities below. We cannot countenance such an approach on the part of the

revenue authorities of the Act .

12. Therefore, we are inclined to set aside all the three orders passed in the matter in for the AY 2011-12, in the case of the Assessee, namely assessment order dated 13.3.2014, the order dated 3.11.2015 passed under Section 263 of the Act and the order of the learned Tribunal dated 13.4.2016 and remit the matter back to the Assessing Authority to pass fresh assessments in accordance with law giving reasons for particular findings arrived at by the assessing authority.

13. Therefore, with these observations without answering the aforesaid questions of law, we remit the matter back to the assessing authority for passing fresh order. The Tax Case Appeal is disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

msr
To

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

2.O/o.The Deputy Commissioner of Income Tax
Company Circle-VI(1)
7th floor New block
121, Mahathma Gandhi Road
Chennai-600 034

+1 cc to Mr.J.Narayanaswamy Standing Counsel for I.T.Department sr21813
+1 cc to Mr.S.Sridhar Advocate sr20897

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