IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

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

T.C.(A) No.987 of 2019

The Commissioner of Income Tax
Chennai. .. Appellant / Appellant

Vs.

M/s.Rasi Exports Pvt Ltd.,
No.68, C.P.Ramaswamy Road
Alwarpet
Chennai – 600 018. ..Respondent/ Respondent

Prayer : Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 18.07.2019, passed in ITA.No.2099/Chny/2017, Assessment Year : 2006-2007.

As per against the order at the Commissioner of Income Tax (Appeals)-3, Room No.215, Main Building 2nd Floor, 121, Mahatma Gandhi Road, Chennai, PAN No.AABCR0356E assessment year 2006-07 order dated 28/04/2017.

As per against the order of the Income Tax Officer, Corporate Ward 5(4) Room No.403, Aayakar Bhavan, Main Building, 121 MG Road, Nungambakkam, Chennai.

For Appellant : Ms.Hemalatha, Senior Standing Counsel for Income Tax Department

For Respondent : Mr.A.S.Sriraman

JUDGMENT

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

This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 [the 'Act' for brevity] is directed against the order dated 18.07.2019, passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai in I.T.A.No.2099/Chmy/2017, for the Assessment Year 2006-2007.

2.The Tax Case appeal was admitted on 05.12.2019, on the following substantial questions of law :

> 1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that since the exports were not in dispute and the Assessee could have exported the goods without any purchases especially when the Assessing Officer had clearly established that the export sales was not commensurate with the opening stock and the purchases?
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> 2.Is not the finding of the Tribunal bad, especially when stock that was available on the date of sale were less than the available stock especially when the assessee failed to prove with documentary evidence while granting relief?
>
> 3. Whether, on the fact and in the circumstances of the case, the Tribunal was right in holding that no fresh evidences was produced before the CIT (Appeals) which fact is factually wrong, when the fact remains that the evidences were placed before CIT (Appeals) and no opportunity was granted to the department before passing the order which clearly violates Rule 46A?
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> 4. Whether on the facts and in the circumstance of the case, the Tribunal was right in not considering the fact that the matching principle in terms of income and expenditure is not applicable when cash method of accounting is followed as sine qua non for allowability of expenditure there should be nexus between the income and expenditure reported for the year in question as applicable in terms of Section 36 and 37 of the Income Tax Act?

3. We have heard Ms.Hemalatha, learned Senior Standing Counsel for the Revenue and Mr.A.S.Sriraman, learned counsel for the Assessee.

4. The Assessee is an exporter of cotton garments, cotton fabrics, made-ups and silk fabrics and goods and filed its return of income for the assessment year 2006-2007 on 27.11.2006, admitting the loss of Rs.6,90,20,428/-. The Assessee's case was selected for scrutiny under Section 143(3) of the Act, and the assessment was completed by disallowing sample expenses and addition of undisclosed stocks in relevant to purchases. The Assessee filed an appeal before CIT(Appeals) which was allowed partly, aggrieved which, the Department filed an appeal before the Tribunal. The Tribunal, vide order dated 08.05.2015 remanded the matter back to the Assessing Officer to reconsider the expenditure for made-ups. The Assessing Officer sought details from the Assessee and by order dated 27.12.2016, the Income Tax Department held that the Assessee could not produce the Inventory register to verify the correctness of the claim; the Assessee had not incurred any expenses on lorry receipt in the books and claimed that goods were received on " Paid Lorry Receipt" basis; and that the Assessee could not produce all the lorry receipts to verify the subsequent entries for the goods received; and there were no fresh submissions from the Assessee to prove its claim, and accordingly the assessment was completed.

5. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-III, Chennai, who, by an order dated 28.04.2017 partly allowed the Assessee's appeal. Aggrieved by the same, the Revenue filed an appeal before the Tribunal. The Tribunal once again examined the factual position placed by the Assessee before the Assessing Officer, at the first instance when the assessment was completed, and also verified the details which were culled out during the assessment proceedings after the remand order of the Tribunal in the earlier round of litigation and dismissed the Revenue's appeal.

6. We have carefully examined the order of CIT(A) as well as the Tribunal. As mentioned above, this is the second round of litigation and the first round culminated with the order of the Tribunal, remanding the matter to the Assessing Officer. The Assessing Officer has done some factual exercises. This test was corrected by the CIT(A). The CIT(A) examined the matter and rendered a finding by partly allowing the Assess's appeal. Thereafter, the matter was taken before the Tribunal in the way of appeal by the Revenue, wherein, the findings of CIT (A) was re-examined by the Tribunal, and the Tribunal, after assigning independent reasons, affirmed the order of the CIT(A). Thus, we are of the considered view that there is no question

of law, much less the substantial questions of law arises in this appeal.

7. Accordingly, this Tax Case appeal is dismissed and the order of the the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 18.07.2019, passed in ITA.No.2099/Chny/2017, is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To:

1.The Commissioner of Income Tax (Appeals)3
Chennai.

2. The Income Tax Appeals Tribunal,
Madras 'A'Bench, Chennai.

3. The Income Tax Officer, Corporate Ward 5(4)
Room No.403, Aayakar Bhavan Main Building,
121, MG Road, Nungambakkam, Chennai.

T.C.(A) No.987 of 2019

PP(CO)
GMY(22/10/2020)