

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A.NO.418 OF 2009

The Commissioner of Income Tax-II,
Coimbatore.

... Appellant/Respondent

.Vs.

M/s.Pricol Limited (Formerly known as
Premier Instruments & Controls Limited),
No.1087-A, Avanashi Road,
Coimbatore - 641 037.

... Respondent/Appellant

PRAYER:-

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 20.08.2008 in I.T.A.No.260/Mds/2007, Assessment Year 2003-04 and the Commissioner of Income Tax (Appeals)-I, Coimbatore, dated 01.12.2006 in Appeal No.451/2005-2006, Assessment Year 2003-2004 and against the Order of the Assistant Commissioner of Income Tax Company Circle IV(1), Coimbatore, dated 13.03.2006 in PAN/GIR.No.AABCP2380C, Assessment Year 2003-2004.

For Appellant : Ms.K.G.Usha Rani
Junior Standing Counsel

For Respondent : Mr.R.Meenakshi Sundaram

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 ("the Act") is directed against the order passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, in I.T.A.No.260/Mds/2007 for the Assessment Year 2003-04.

2. The Revenue is the appellant before us and the appeal was admitted on 29.06.2009 on the following substantial questions of law :

"1.Whether on the facts and in the circumstance of the case, the Appellate Tribunal was right in law in setting aside the order of the Lower authorities, even though the amount written off was incurred in the course of assessee's business and it was a capital item shown in the assessee company's balance sheet?

2.Whether on the facts and in the circumstance of the case, the Income Tax Appellate Tribunal was right in law in holding that the security deposit of Rs.6 crores written off as irrecoverable was a revenue expenditure is valid?"

3. We have heard Ms.K.G.Usha Rani, learned Standing Counsel for the appellant/Department and Mr.R.Meenakshi Sundaram, learned counsel appearing for the respondent/assessee.

4. The assessee is a company which was engaged in the business of manufacturing Dash Board instruments, sensors accessories, auto components, etc. The return of income for the Assessment Year under consideration, AY 2003-04, was processed under Section 143(1) on 10.12.2003, and subsequently, the case was taken up for scrutiny and notice under Section 143(2) was issued on 13.10.2004. On such scrutiny assessment, the Assessing Officer pointed out that the assessee had deposited a sum of Rs.6 Crores as security with M/s.Terra Agro Technologies Ltd. for leave and license operations to take over the operations of M/s.Terra Agro Technologies Ltd. for a period of 24 months with effect from January, 2001, with monthly lease rent of Rs.50 Lakhs. The assessee was able to carry on the business only for six months, i.e., upto July, 2001 only, and suffered loss and business could not be continued thereafter. Hence, the assessee wrote off the said security deposit paid to M/s.Terra Agro Technologies Ltd. as irrecoverable security deposit for the previous Assessment Year relevant to AY 2003-04. The Assessing Officer disallowed the return of income on the ground that it was not incurred in the course of the assessee's business and it was a capital item reflected in the assessee's balance sheet. Against such order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals)-I, Coimbatore, who dismissed the appeal by order dated 01.12.2006. Aggrieved by the same, the assessee preferred an appeal before the Tribunal, which has been allowed by the impugned order.

5. The Tribunal, in our considered view, has done thorough factual exercise as to the nature of business activities of the appellant and this has been brought out by the Tribunal in Para No.16 of the order, the operative portion of which, reads as follows :

"16. ... As per the details mentioned in the assessment order, the assessee suffered a loss of more than Rs.1.19 Crores within 6 months of the operation taken over by the assessee. It is clear that if the assessee continued the business, the assessee had to pay at least Rs.12 Crores as license fee for the entire 24 months license term and at least Rs.5-6 Crores more loss incurring as the operations under the leave and license for dehydrated vegetables. The lower authorities have not disputed the details regarding income and expenditure furnished by the assessee. But, the A.O. has concluded that since the security deposit is in the nature of capital, the same cannot be allowed as revenue expenditure or business loss. Even the A.O. has not disputed the genuineness of transaction between the parties through the said agreement. We further note that when the income and expenditure from the business was accepted by the revenue authorities for the earlier years, then treating the business activity of dehydrated vegetables as a separate and discontinuation the business of the assessee is not a correct view taken by the lower authorities when the assessee has considered both business activities as its business and offered the income and expenditure for the earlier years which was accepted, then in the circumstances in which the continuation with the operations was not possible for the assessee and the assessee has taken the decision to discontinue the dehydrated vegetables operations to avoid further loss, it cannot be termed as closing or discontinuation of its business. As per the terms of the agreement, the assessee was to continue with operations for at least 24 months. But, when the assessee has discontinued the operation before the expiry of terms of the agreement, that would certainly disentitle the assessee for claiming the security deposit which was made for performance of its obligation under the agreement. Therefore, even otherwise, on the foreclosing of the agreement by the assessee before the expiry of its terms made the assessee disentitled from recovering the deposit and the

same stands forfeited in view of the terms and conditions of the agreement. Though there is no such term about the forfeiture but when assessee agreed to have no right to terminate the agreement before the expiry of terms, then the violation of the said condition automatically led to forfeiture of the security. In these facts and circumstances, we have no hesitation to hold that the security deposit made by the assessee was for the purpose of business of the assessee. The said business for getting the licence to run the operations was only for 24 months - means that the assessee did not acquire any capital asset of permanent nature by depositing such a security or for a capital asset having enduring benefit of permanent nature. Even the assessee has discontinued the operations before the expiry of the terms of the agreement and suffered loss in the shape of non-recovery of security deposit, the same would be a business loss of the assessee and allowable under Section 37 of the Act. It is an undisputed fact that as per the Memorandum of Association of the assessee-company, apart from other business, the business of preservation, dehydration, freeze-drying, etc. and dealing with export, import handle as a principal or as an agent of all kinds of agro products with further objects of the company vide amendment made by the assessee-company in the meeting held on 10.5.1995 and confirmed by the Company Law Board on 18.12.95. Therefore, any expenditure made by the assessee to carry out the business as per the objects of the assessee-company would be treated as business expenditure of the assessee."

6. From the facts noted by the Tribunal as mentioned above, while granting relief to the assessee by treating the expenditure as business expenditure, the Tribunal took note of the fact that the Assessing Officer and the Commissioner of Income Tax (Appeals) have not disputed the details regarding the income and expenditure furnished by the assessee and the Assessing Officer only concluded that, since the security deposit is in the nature of a capital expenditure, the same cannot be allowed as a business loss. Though the Commissioner of Income Tax (Appeals) had rendered a finding that the transaction itself was a sham transaction, the Tribunal rightly noted that the Assessing Officer has not disputed or doubted the genuineness of the transaction. Furthermore, the Tribunal noted that the income and expenditure from business was accepted by the Revenue authorities for the earlier years treating the

business activity of dehydrated vegetables as a separate and discontinuation of the business of the assessee, is not a correct view taken by the authorities when the assessee has considered both the business activities as its business and offered the income and expenditure for the earlier years, which was accepted.

7. In the light of the factual conclusion arrived at by the Tribunal, we find there is no question of law much less substantial question of law arising for consideration. Accordingly, the appeal filed by the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The Income Tax Appellate Tribunal,
Chennai, "A" Bench.
2. The Commissioner of Income Tax (Appeals)-I,
Coimbatore.
3. The Assistant Commissioner of Income Tax,
Company Circle IV(1),
Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Senior Standing Counsel,
S.R.No.37560

TAX CASE APPEAL NO.418 OF 2009

NR(CO)
PBS/25/08/2021