IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.04.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No. 464 of 2012

Shri P. Amarnath Reddy,
No.1/1, Kothari Road,
Nungambakkam,
Chennai - 600 034. ... Appellant

v.

The Assistant Commissioner of Income Tax,
Central Circle - III (3),
Chennai - 600 034. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1926, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 28.08.2012 in I.T.A.No.926/Mds/2012 for the Assessment Year 2005-2006.

against the order of the Commissioner of Income Tax (Appeals) -XII, Chennai -34 dated 21/02/2012 in ITA No.40/2009-2010, for the Assessment year 2005-2006 against the order of the Assistant Commissioner of Income Tax Central Circle III(3), Chennai -34, dated 31/12/2007 in in P.A.No.AABPR9639K for the Assessment Year 2005-2006.

For Appellant : Ms. Sri Niranjani Srinivasan

For Respondent : Mr. T.R.Senthil Kumar, Sr. Standing Counsel and Mrs. K.G. Usha Rani, Standing Counsel

JUDGMENT
(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.926/Mds/2012 in respect of the Assessment Year 2005-2006 on the file of the Income Tax Appellate Tribunal, Chennai,"A" Bench (for brevity, the Tribunal), the assessee has filed the above appeal.

2.1 The assessee filed its return of income in respect of the assessment year 2006-07 on 31.10.2005 admitting a total income of Rs.6,33,20,125/-. The assessment was completed under section 143(3) of the Income Tax Act on 31.12.2007. While completing the above said assessment, the Assessing Authority, along with other additions, disallowed the foreign travel expenses to the tune of Rs.3,36,739/- incurred in respect of Mrs. Swetha Reddy alleged to be an employee of the company on the ground that she was the wife of the appellant. The Assessing Officer also disallowed the expenses incurred by the appellant for foreign travel to the tune of Rs.4,26,617/- as against the total amount of Rs.21,33,088/- that was claimed. The basis of the disallowance was that Mrs. Swetha Reddy had accompanied the assessee on most of the trips and accordingly the Assessing Officer assumed that certain amount of personal expenditure would be involved.

2.2 The assessee contended that all foreign visits made were for the purpose of business marketing and the expenses were wholly allowable under section 37 of the Income Tax Act. However, the Assessing Officer disallowed the claims made under section 37(1) apart from making other additions.

2.3 Challenging the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax also confirmed the order passed by the Assessing Officer disallowing the expenses incurred on foreign travel of the appellant as well as Mrs. Swetha Reddy .

2.4 Aggrieved over the order passed by the Commissioner of Income Tax (Appeals), the assessee filed an appeal before the Income Tax Appellate Tribunal, and the Tribunal also confirmed the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal. Aggrieved over the same, the assessee has filed the above appeal.

3. The above appeal was admitted on the following substantial questions of law:

> " (i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the disallowances made on account of expenditure incurred and claimed on foreign travel u/s 37 of the Income Tax Act by the employee few the firm Mrs. Swetha Reddy?
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> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the order of the lower authorities to the effect that the expenses incurred on foreign travel and claimed by the appellant under section 37 of the

Act be restricted to 1/5th of the total amount claimed?"

4. Ms. Sri Niranjani Srinivasan, learned counsel appearing for the appellant submitted that though the assessee had produced the details with regard to the salaries, bonus and group gratuity in respect of Mrs. Swetha Reddy for the financial year 2004-2005, the authorities have not considered the same and erroneously came to the conclusion that she was not an employee of the firm M/s.Shoetek Agencies. The learned counsel further submitted that when the assessee had produced the documents as to the salaries, bonus and group gratuity received by Mrs. Swetha Reddy, the Tribunal and the Commissioner of Income Tax(Appeals) should have accepted the case of the assessee and allowed the appeal.

5. Countering the submissions made by the learned counsel appearing for the appellant, Mrs. K.G. Usha Rani, learned Standing Counsel appearing for the respondent submitted that the assessee has not produced any salary certificate of his wife Mrs. Swetha Reddy to establish that she was an employee of the firm, viz., M/s.Shoetek Agencies. Further the learned counsel submitted that the assessee has not raised any substantial question of law with regard to non-consideration of the alleged documents produced before the Assessing Officer.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the Income Tax Appellate Tribunal has categorically stated that at the time of hearing of the appeal, the learned counsel for the assessee filed the P.F. and ESI details relating to the Assessment Years 1994-1995 and 2004-2005 and the said details were not filed either before the Assessing Officer or before the Commissioner of Income Tax (Appeals). Further, the Tribunal observed that no application has been filed before the Tribunal to admit the said documents. That apart, the Tribunal also observed that the evidence filed before it was not sufficient to prove that Mrs. Swetha Reddy was an employee of M/s.Shoetek Agencies for the reason that there was nothing on record to establish as to when she was appointed and what was her salary etc. When the assessee is contending that Mrs. Swetha Reddy is an employee of M/s.Shoetek Agencies, the burden lies on the assessee to establish the said contention. The issue whether Mrs. Swetha Reddy was an employee of M/s.Shoetek Agencies or not is a question of fact and is a matter for evidence and th same was decided against the assessee by the Tribunal as well as by the Commissioner of Income Tax(Appeals) and also by the Assessing Officer.

7. It is pertinent to note that in the Assessment Order, M/s.Shoetek Agencies is the assessee's proprietary concern and is engaged in the business of leather and leather products. In the Assessment Order, though the assessee contended that Mrs. Swetha Reddy went aboard in the capacity of Marketing Executive, he has not produced any document to prove that her visit was exclusively for business purpose. Further, the Assessing Officer observed that since Mrs. Swetha Reddy had accompanied the assessee on several occasions , the element of personal tour cannot be denied. When the assessee is contending that Mrs. Swetha Reddy was an employee of the firm, he should have produced sufficient documents to establish the said contention. Further it is not the case of the assessee that there is perversity in the order passed by the Income Tax Appellate Tribunal, Commissioner of Income Tax(Appeals) and in the order of the Assessing Officer.

8. In these circumstances, we find no ground much less any substantial question of law to interfere with the order passed by the Income Tax Appellate Tribunal and by the other authorities. Hence, the Tax Case Appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj
To
1. The Assistant Commissioner of Income Tax,
Central Circle - III (3),
Chennai - 600 034.

2. The Income Tax Appellate Tribunal,
Chennai,"A" Bench

3.The Commissioner of Income Tax
(Appeals) - XII. Chennai -600 034.
+1 cc to M/s.T.R.Senthil Kumar, Advocate Sr.No. 21817
+1 cc to M/s.G.Baskar, Advocate Sr.No. 22136

T.C.A.No. 464 of 2012

SMI(CO)
RMP(30/04/2021)