IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Judgment Reserved On 11.01.2021	Judgment Pronounced On 05.02.2021

T.C.A.No.612 of 2019

Shri V.C.Arunai Vadivelan
PAN: BJEPA6920P .. Appellant

Vs.

The Assistant Commissioner of Income Tax,
Non Company Circle - 11,
Chennai. .. Respondent

Appeal under Section 260A of the Income Tax, 1961 against the order dated 22.03.2018 made in I.T.A.No.2282/Chny/2017 on the file of the Income Tax Appellate Tribunal Bench -C-, Chennai for the assessment year 2014-15, against the order of the Commissioner of Income Tax(Appeals)-13, Chennai dated 18.07.2017 in PAN.No.BJEPA6920P for the Assessment year 2014-15 against the proceedings of the Assistant Commissioner of Income Tax, dated 28.11.2016.

For Appellant : Mr.A.S.Sriraman
for Mr.S.Sridhar

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

JUDGMENT

T.S.SIVAGNANAM,J

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ['the Act' for brevity] is directed against the order dated 22.03.2018 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai ['the Tribunal' for brevity'] in I.T.A.No.2282/Chny/2017 for the assessment year 2014-15.

2.The appeal has been filed by raising the following substantial questions of law:

"1.Whether the respondent/the Assessing Officer has possessed the power within the scope of section 143(3) Income Tax Act, 1961 for making adhoc disallowance of expenses despite the availability of the audited financial statements?

2.Whether the Respondent/the Assessing Officer is empowered/justified in ignoring the incurring of expenses through proper banking channel after complying all statutory prescriptions on the wrong presumption of non production of few bills and vouchers pertaining to the expenses incurred and disputed in completing the assessment u/s. 143(3) of the Income Tax Act, 1961?

3.Whether the Appellate Tribunal is correct in re-estimating the adhoc disallowance of expenses without noticing the judicial trend on the power of the respondent/the Assessing Officer in making such additions in the computation of taxable total income and further without noticing the availability of complete details proving the perversity in the recording of facts?"

3.The assessee is the proprietor of M/s.Arun Steel Agencies engaged in the trading of steel and other related items. The assesee filed the return of income for the assessment year under consideration, AY 2014-15 declaring a total income of Rs.1,44,52,330/-. The return was initially processed under section 143(1), subsequently selected for scrutiny and notice under section 143(3) of the Act was issued. During the course of hearing before the Assessing Officer, the assessee was directed to furnish the copy of the return of income along with schedules, profit and loss account, balance sheet, stock summary ledger, etc. The assessee produced the documents called for. The Assessing Officer on perusal of the profit and loss account, noted that the assessee has debited a sum of Rs.6,76,049/- on account of the business promotion expenses. The assessee was directed to submit details pertaining to the said business promotion expenses. According to the Assessing Officer, the assessee did not submit the details to prove the genuineness of such expenses. Accordingly, 20% of the expenses debited in the profit and loss account was disallowed and added back to the returned income. Further, the Assessing Officer noted that the assessee has debited a sum of Rs.4,03,770/- towards expenditure on account of the weighing and unloading charges. The Assessing Officer held that some of the vouchers were hand made and some vouchers were not available and hence 20% of the expenses was disallowed and added back to the returned income. Further, in the profit and loss account, the assessee claimed expenses towards transport charges to the tune of Rs.2,93,46,961/-, for which bills were directed to be submitted and on verification of the bills, the Assessing Officer held that the vouchers were self made/hand written and some vouchers are not produced. Therefore, 10% of the expenses claimed by the assessee was disallowed and added back to the returned income. Thus, the assessment was completed under section 143(3) of the Act vide order dated 28.11.2016.

4.Aggrieved by such, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-13 [CIT(A)], Chennai. As noted above, there were three issues, namely, disallowance of business promotion expenses, disallowance of weighing and unloading expenses and disallowance to the transport charges to the extent indicated. The CIT(A) confirmed the disallowance of 20% of the business promotion expenses, restricted the disallowance of weighing and unloading expenses to 15% instead of 20% and confirmed the disallowance of transport charges by dismissing the assessee's appeal. On the above terms, the assessee's appeal was partly allowed. Aggrieved by the same, the assessee preferred appeal before the Tribunal. The Tribunal by the impugned order while holding that the entire addition made by the Assessing Officer and as sustained by the CIT(A) is only on estimate, however considering the submissions of the assessee that they had genuinely incurred expenses, the Tribunal granted relief of Rs.6,79,060/- and sustained the addition of Rs.25 lakhs. The assssee filed miscellaneous petition before the Tribunal under Section 254(2) of the Act stating that they had specifically contended that the Assessing Officer during the course of assessment proceedings had scrutinized the bills and details furnished by the assessee with reference to the books of accounts but no defects were noticed during the scrutiny. Further, the details and documents called for by the Assessing Officer was furnished by the assessee which has been admitted by the Assessing Officer. In such circumstances there was no reason for an adhoc disallowance by the Assessing Officer. In support of their contention that adhoc disallowance should not be made, the assessee referred to the decision of the Delhi Tribunal in the case of ACIT vs. Ganpati Enterprises Limited, I.T.A.No.6112 (Delhi) of 2012 dated 15.02.2013 and the decision of the Lucknow Bench of the Tribunal in the case of Mukesh Kumar Mahawar vs. the Income Tax Officer (ITA.No.615/LKW/2014 dated 16.09.2015). With these submissions, the assessee prayed for deleting the adhoc disallowances.

5.Subsequently, another application was filed by the assessee before the Tribunal on 22.06.2018 reiterating that adhoc disallowance in an arbitrary manner is not permissible in law. The Tribunal by order dated 26.06.2018 dismissed the miscellaneous petition stating that even before the Tribunal the assessee has not produced vouchers and other relevant documents in order to establish the genuineness of the expenses incurred towards the transport charges. However, considering the submissions made on behalf of the assessee partial relief was granted and there is nothing to be rectified in the order passed by the Tribunal. This is how the assessee is before us by way of this appeal.

6.We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Ms.V.Pushpa, learned senior standing counsel for the respondent/revenue.

7.The facts which we have noted in the preceding paragraphs would disclose that the assessee had produced the books of accounts, ledgers, purchase and sales registers, stock registers, bills, vouchers for expenses claimed including purchase bills, freight bills as called for by the Assessing Officer. This is admitted by the Assessing Officer in the assessment order. If such is the situation, whether the Assessing Officer could have made adhoc disallowance. Admittedly, the assessee's case was selected for scrutiny under section 143(3) of the Act. If such is the fact situation, the Assessing Officer was bound to scrutinize the documents produced and frame an assessement by granting/refusing eligible/ineligible deduction. We find that the Assessing Officer has made observation that the vouchers are self made/hand written and some vouchers are not produced. This in our opinion appears to be a vague statement. This finding has been recorded by the Assessing Officer with regard to the amount claimed by the assessee as expenses towards transport charges. Given the nature of the industry, we can take judicial notice of the fact that always computer generated vouchers may not be issued by the transporters unless they are an organization owning a large fleet. If the Assessing Officer had any doubt with regard to the genuinity of any one of the vouchers produced he could have drawn sample vouchers and called upon the assessee to establish its genuineness. Without doing so, making an adhoc disallowance by not specifically assigning any reason to a voucher or bunch of vouchers is not legally tenable.

8.Before us, the learned counsel for the assessee has produced a tabulated statement with regard to the deduction claim by the assessee under the head Transport Charges for the assessment year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. We find that for the assessment year 2012-13, 2013-14 and 2015-16, there has been no disallowance and assessment has been completed under section 143(3) based on the documents produced by the assessee and it is only for the assessment year under consideration, namely, 2014-15, there has been disallowance of 10%. The learned counsel has also produced the copy of the service tax ledger account for the period from 01.04.2013 to 31.03.2014 evidencing payment of service tax. Thus, we find that it is not a case where there is no record available with the assessee to justify their claim and had the Assessing Officer taken a little effort to examine the correctness of the vouchers, in all probabilities the assessee might have not been before us by way of this appeal. Thus, we are convinced that the assessement requires to be re-done after a thorough verification of all the documents which may be placed before the Assessing Officer during the denovo consideration including the documents already placed for consideration.

9.For all the above reasons, the tax case appeal is allowed and the substantial questions of law are answered in favour of the appellant/assessee and the matter is remanded to the Assessing Officer for fresh consideration in terms of the observations made above. No costs.

Sd/-
Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

To

1.The Assistant Commissioner of Income Tax,
Non Company Circle - 11, Chennai.

2.The Registrar
Income Tax Appellate Tribunal Bench 'C',
Chennai.

3.The Commissioner of Income Tax(A)-13,
Chennai -13.

+1cc to Mr.M.Swaminathan, Advocate Sr.No.6400

AKM/10.03.21 /5P-5C/

judgment made in
T.C.A.No.612 of 2019
05.02.2021