IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

Tax Case (Appeal) Nos. 585, 586, 587 and 588 of 2009

M/s. Babu Apparels
3(1), Saraswathi Layout
Dharapuram Road
Tirupur - 641 0608
represented by Partner
P. Kumaresan ..Appellant in all the Tax Case Appeals

Versus

The Income Tax Officer
Ward 1 (1)
Tirupur ..Respondent in all the Tax Case Appeals

TC (A) No. 585 of 2009:- Appeal filed under Section 260-A of The Income Tax Act, 1961 against the Order dated 25.03.2008 passed in ITA (SS) A.No. 1509/mds/2006 on the file of Income Tax Appellate Tribunal, Madras "D" Bench, Chennai relating to Assessment year 1999-2000.

TC (A) No. 586 of 2009:- Appeal filed under Section 260-A of The Income Tax Act, 1961 against the Order dated 25.03.2008 passed in ITA (SS) A.No. 1807/mds/2006 on the file of Income Tax Appellate Tribunal, Madras "D" Bench, Chennai relating to Assessment year 2000-2001.

TC (A) No. 587 of 2009:- Appeal filed under Section 260-A of The Income Tax Act, 1961 against the Order dated 25.03.2008 passed in ITA (SS) A.No. 1808/mds/2006 on the file of Income Tax Appellate Tribunal, Madras "D" Bench, Chennai relating to Assessment year 2001-2002.

TC (A) No. 588 of 2009:- Appeal filed under Section 260-A of The Income Tax Act, 1961 against the Order dated 25.03.2008 passed in ITA (SS) A.No. 1809/mds/2006 on the file of Income Tax Appellate Tribunal, Madras "D" Bench, Chennai relating to Assessment year 2002-2003

T.C.A. 585 to 589/2009 against the order of the Commissioner of Income Tax (Appeals)II, Coimbatore dated 30.03.2006 made in I.T. Appeal Nos. 160, 154, 155 & 156-C/05-06 respectively and as

against the order of the Assistant Commissioner of Income Tax (OSD) dated 28.03.2005 in PAN/GIR No. AACFB6277C (GIR No. B-13022/Ward-I(1)/TPR) for the Assessment year 1999-2000, 2000-2001, 2001-2002 and 2002-2003 respectively.

For Appellant	:	Mr. Niranjan Rajagopalan for M/s. G.R. Associates in all the appeals
For Respondent	:	Mr. M. Swaminathan Senior Standing Counsel for Ms. V. Pushpa in all the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

All these appeals are filed by the assessee questioning the validity of the common order dated 25.03.2008 passed by the Income Tax Appellate Tribunal, Madras "D" Bench relating to the assessment years 1999-2000, 2000-2001, 2001-2002 and 2002-2003 respectively.

2. The assessee is engaged in the business of manufacture and sale of hosiery inner garments. During the year 2003-2004, a survey under Section 133A of The Income Tax Act, 1961 was conducted in the business premises of various establishments in Tiruppur, including the assessee. During such survey, various purchase bills in the names of non-existing business concerns were recovered from the premises of the assessee. Thereafter, a notice was sent to the assessee to explain as to why the value mentioned in the fake bills should not be added as income, but, the assessee did not submit any explanation and therefore, the Assessing Officer passed an orders of assessment and made additions.

3. Aggrieved by the same, the assessee filed Appeals before the Commissioner of Income Tax (Appeals) and the appellate authority restricted the disallowance to 25%.

4. As against the order passed by the Appellate Authority, the revenue took the matter on appeal before the Tribunal contending that once it is established that the deduction was

claimed on the basis of fake bills, the disallowance is proper and in such event, the Appellate Authority ought not to have restricted the disallowance to 25% by treating the fake purchases as cash purchases. Accepting the aforesaid plea made on behalf of the revenue, the Tribunal, by the common order dated 25.03.2008, which is impugned in these appeals, allowed the appeals filed by the Revenue by holding that when it is proved that the purchases made by the assessee are fake, the appellate Authority ought not to have invoked Section 40A(3) of the Act for reducing the disallowance. Aggrieved by the order dated 25.03.2008 passed by the Tribunal, the assessee is before this Court with these Tax Case Appeals.

5. On 26.06.2009, these tax case appeals were admitted by this Court by framing the following substantial questions of law namely

(i) Whether the Assessing Authority can proceed to assess, solely based on an alleged admission made during a survey under Section 133-A of the Income Tax Act?

(ii) Whether a statement made during survey under Section 133-A of the Income Tax Act is admissible in law?

6. When these appeals are taken up for hearing today, the learned counsel for the assessee brought to the notice of this Court that during the pendency of these appeals, the assessee has filed Tax Case (Appeal) Nos. 1056 to 1059 of 2009 before this Court contending that the estimated addition at 70% by the Assessing Officer is arbitrary and the appellant alone has been treated differently. It was also contended that the similarly placed persons like the assessee, whose business premises were also inspected, have been imposed with addition of only 20% to 25% of the purchases made by using fake bills and there is no justification to treat 70% of the purchase made by the assessee as bogus. Accepting such plea of the assessee, the Division Bench of this Court, by judgment dated 29.01.2013, remanded the matter back to the Assessing Officer to compare the case of the assessee with that of similarly placed assessees and to arrive at a conclusion. It is submitted that pursuant to the order dated 29.01.2013, the Assessing Officer completed the entire assessment proceedings and passed final orders of assessment for the relevant assessment years. Therefore, the learned counsel for the assessee would submit that in view of the subsequent developments that had taken place after filing these appeals, there is nothing survives for adjudication in these appeals.

7. In the light of the submission of the learned counsel for the assessee, we are of the view that there is nothing survives for adjudication in these Tax Case Appeals. Accordingly, all the Tax Case Appeals are disposed of. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Income Tax Officer
Ward 1 (1)
Tirupur

2. The Income Tax Appellate Tribunal
D Bench, Chennai

3. The Commissioner of Income Tax (Appeals)II
Coimbatore

4. The Assistant Commissioner of Income Tax (OSD)
Coimbatore

+1 CC to M/s.G.R. Associates sr 7766
+1 CC to Mr.M.Swaminathan, Advocate sr 7944.

TC (A) Nos. 585 to 588/2009

SPD(CO)
SP(11/03/2022)