IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

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

TCA.NO.29 OF 2012

M/s.A.M.Transport Corporation,
No.329, Thambu Chetty Street,
Parrys, Chennai - 600 001.

... Appellant

Vs

The Additional Commissioner of Income-tax,
Business Range-VIII,
No.611, Anna Salai,
Chennai - 600 006.

... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai “B” Bench, dated 16.09.2011 in I.TA.No.220/Mds/2011 for the assessment year 2007-2008.

Against the order dated 08.11.2010 made in ITA.No.119/2009-2010 on the file of the Commissioner of Income-tax (Appeals)-IX, Chennai-34 PAN.GIR.No.AAHFA2077Q for the assessment year 2007-2008 against the order dated 24.12.2009 made in PAN.GIR.NO.AAHFA2077Q on the file of the Additional Commissioner of Income-tax, Chennai-6 for the Assessment Year 2007-2008.

For Appellant	:	Mr.N.Muthukumar
For Respondent	:	Mr.T.Ravikumar Senior Standing Counsel

JUDGMENT

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

This tax case appeal has been filed by the appellant / assessee, challenging the order dated 16.09.2011 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in I.T.A.No.220/Mds/2011, relating to the assessment year 2007-08.

2.The appellant is a partnership firm and is engaged in the business of transport contract. For the assessment year 2007-08, they filed its return of income at Rs.17,77,727/-. During the scrutiny proceedings, the assessing officer raised certain queries regarding the expenditure claimed by the appellant herein. According to the appellant, the expenditure is genuine and incurred wholly in connection with its business. Though the said explanation was accepted, the assessing officer took a view that 10% of the expenses has to be disallowed, on the premise that the complete set of vouchers have not been produced. Accordingly, the assessing officer disallowed 10% of the expenditure incurred and assessed the income of the appellant by order dated 24.12.2009. Challenging the said order of assessment, the appellant filed an appeal, which was dismissed by the Commissioner of Income Tax (Appeals)-IX, Chennai, on the ground that the possibility of inflation of expenditure cannot be ruled out. Aggrieved over the same, the appellant went on further appeal before the Tribunal, which restricted the disallowance on account of the loading and unloading expenditure to a sum of Rs.5,00,000/- and accordingly, partly allowed the appeal. Being dissatisfied with the same, the appellant is before this court with this tax case appeal.

3.The following substantial questions of law are framed in this tax case appeal for consideration of this court:

> (i) Whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal is right in law in disallowing a sum of Rs.5,00,000/- out of the loading and unloading expenditure notwithstanding its observation that the expenses are not faulty and fully vouched?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not adjudicating the grounds of appeal in connection with the disallowance of Rs.2,53,186/- being expenses incurred on business promotion, general, travel, office and miscellaneous requirements?

4.Heard both sides and perused the materials available on record.

5.It could be seen that the appellant produced its books of accounts and vouchers in support of its claim relating to the assessment year in question. However, the assessing officer concluded that the expenses incurred by the appellant were in the nature of wages paid to loading and unloading workers and were supported only by self-made vouchers; the said claim could not be allowed fully in the absence of proper evidence, though the appellant's business cannot be carried on without incurring such charges; and hence, 10% of the loading and unloading expenses was disallowed. The said order of the assessing officer was confirmed by the CIT(A), after having observed that the possibility of inflation cannot be ruled out. Taking note of the orders passed by the assessing officer and the CIT(A), the Tribunal was of the view that no specific voucher has been found to be faulty; and considering the possible inflation in the expenditure, an ad hoc addition of Rs.5 lakhs would meet the interest of justice. Accordingly, the Tribunal reduced the disallowance of 10% towards loading and unloading charges made by the assessing officer as confirmed by the CIT(A), to Rs.5 lakhs, by order dated 16.09.2011, which is impugned in this writ appeal.

6.Having regard to the admitted fact that the appellant is involved in the business of transport contract, the preparation of self made vouchers by them towards the loading and unloading expenses, could not be said to be against the trade practice and the method of accountancy. Further, the vouchers produced by the appellant were not disputed by the authorities below. In such event, the course adopted by the assessing officer by disallowing 10% of loading and unloading charges, which was reduced to Rs.5 lakhs by the Tribunal on ad hoc basis, without proper verification of the same, cannot be countenanced by this court.

7.In similar circumstances, a co-ordinate bench of this court, by order dated 05.02.2021 in TCA No.612 of 2019, in the case of V.C.Arunai Vadivelan v. Assistant Commissioner of Income Tax, Chennai, has observed as follows:

> "7...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 assessment 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.”

8.Following the aforesaid judgment, which is squarely applicable to the facts of the present case, this court is of the opinion that the adhoc disallowance of Rs.5,00,000/- made by the Tribunal is not correct and hence, the order of the Tribunal requires interference by this court. Accordingly, the first substantial question of law involved herein is answered in favour of the assessee and the matter is remanded to the

Assessing Officer for fresh consideration, who shall pass orders, after a thorough verification of all the documents filed by the appellant. Such an exercise shall be done by the assessing officer, within a period of eight weeks from the date of receipt of a copy of this judgment.

9.This tax case appeal stands disposed of in the above terms. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   "B" Bench, Chennai

2. The Additional Commissioner of Income -tax,
   Business Range-VIII,
   No.611, Anna Salai,
   Chennai - 600 006.

3. The Commissioner of Income Tax (Appeals) IX
   121, Mahatma Gandhi Road,
   Chennai-34.

+1cc to Mr.G.Baskar, Advocate, S.R.No.16024
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.15646

TCA.No.29 of 2012

GMR(CO)
PM/01/04/2022