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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 18.04.2022

DATED : 08.06.2022

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

AND

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.103 OF 2022

M/s.Ankit Ispat Private Limited,
No.9, AML Towers, 6th Street,
Gopalapuram,
Chennai - 600 089.

...Appellant

Versus

The Assistant Commissioner of Income Tax (OSD),
Corporate Range 1,
Chennai - 600 034.

...Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal Madras "D" Bench in I.T.A.No.2792/Chny/2019 dated 11.11.2021.

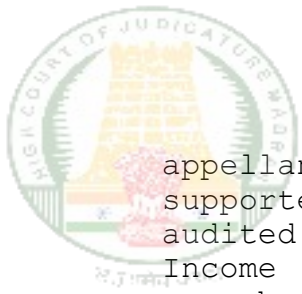
Appeal against the order passed by the office of the Assistant Commissioner of Income Tax (OSD), Corporate Range 1, Room No.603, 6th floor, Wanaparthi Block, 121, Aayakar Bhavan, Mahatma Gandhi Road, Chennai - 34, made in PAN.No.AAFCA3639E dated 30.11.2016 Assessment Year 2014-2015.

Appeal against the order passed by the Office of the Commissioner of Income Tax (Appeals)-4(i/c), 121, Mahatma Gandhi Road, Chennai - 34, made in ITA.No.470/16-17/CTI(A)-4/A4-2014-2015 date of order 15.07.2019 Assessment Year 2014-2015.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.T.Ravikumar,
Senior Standing Counsel





appellant/assessee for the assessment year in question, were supported by necessary bills and vouchers and the same were audited by an Accountant as required under section 44AB of the Income Tax Act; and as per the report of the auditor, there is no adverse comment on books of accounts as well as supporting evidence for various expenses including purchases debited into profit and loss account. Further, the relevant records for the assessment year in question were washed away in 2005 flood and hence, the appellant/ assessee could not gather all the information relating to purchase details. However, the assessing officer as well as the CIT(A) made adhoc additions, without bringing on record any evidence to prove that the appellant / assessee has inflated purchases. Therefore, the learned counsel sought to allow this appeal by setting aside the orders passed by the authorities below.

5.Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the respondent submitted that when there was no supporting evidence, the CIT(A) ought not to have restricted the adhoc disallowance determined by the respondent / assessing officer to 2.5% of the total turnover and sustained the disallowance of Rs.1,32,85,764/- and deleted the balance addition of Rs.2,22,71,708/-. Stating so, the respondent preferred appeal, which was dismissed by the Tribunal, by the order impugned herein. The learned counsel further submitted that the Tribunal being a fact finding authority, has to decide the issue, only after a careful examination of evidence and material produced before it, whereas in the instant case, the Tribunal failed to do so. Therefore, the learned counsel prayed for appropriate order in this tax case appeal.

6.Heard the learned counsel appearing for both sides and also perused the materials available on record.

7.In the present case, the assessing officer, while completing the assessment for the assessment year 2014-15, made disallowance of 10% on purchases on adhoc basis. On appeal, the said disallowance was restricted to 2.5% of the total turnover, by the CIT(A) on estimate basis and the same was also affirmed by the Tribunal, by order dated 11.11.2021, which is impugned herein.

8.For effective adjudication of the issue involved herein, the findings of the appellate authorities are quoted below for ready reference:

Commissioner of Income Tax (Appeals):

"....For want of the books of accounts or other details in support of the income returned, the



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Assessing Officer was not able to verify the correctness of the income. The assessment was taken up for scrutiny only because the profit was very less when compared to the turnover. The profit before tax Rs.16,71,741/- on the turnover of Rs.53.14 cr. The net profit ratio works out to 0.30% which is very low. Even as per the appellant, the gross profit rate has come down to 23.27% against 25.77% shown in the earlier year. In the absence of any details furnished by the AO, the assessing officer was handicapped with determining the correct income of the appellant. Considering the financial results and the low gross and net profit, I estimate the gross profit at 25.77% as in last year against 23.27% shown in this year. The fall in gross profit rate works out to 2.50%. Adopting this rate on the sales turnover of Rs.53,14,30,550/-, the addition to the gross profit works out to Rs.1,32,85,764/-. I therefore sustain an addition of Rs.1,32,85,764/- made by the assessing officer under purchases account and delete the balance estimated disallowance of Rs.2,22,71,708/- and allow the grounds partly."

Income Tax Appellate Tribunal:

"7....Facts borne out from records clearly indicate that the assessee could not substantiate purchases debited into P&L account with necessary supporting bills and vouchers. It is also an admitted fact that the assessee has expressed its inability to file necessary bills and vouchers to justify purchases debited into P&L account. Although, the assessee claims that relevant records for impugned assessment year was washed away in floods, but said claim is not substantiated by any evidences. Therefore, we are of the considered view that when the assessee is unable to justify various expenses including purchases with supporting evidences, then the AO is having every right to dispute expenses debited into P&L account. At the same time, the AO had made adhoc disallowance on purchases without recording any adverse comments on books of accounts maintained by the assessee for the relevant assessment year. Further, the AO has not disputed pleading of the assessee that the auditor has given clean chit to the books of accounts maintained by the assessee and has not made any adverse comments on purchases debited into P&L account. Under these circumstances, we are unable to subscribe to the reasons given by the AO to make adhoc disallowance on purchases. The Ld CIT(A), after considering relevant



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facts and also taken note of fact that there is a decline in gross profit declared by the assessee for the impugned assessment year compared to earlier financial year, has directed the AO to restrict the disallowance on purchases to the extent of 2.5%, fall in rate of gross profit on total turnover for the year. The said findings recorded by the Ld. CIT(A) appears to be logical and on the basis of estimation of gross profit. Therefore, we are of the considered view that there is no error in the reasons given by the Ld. CIT(A) to sustain additions made by the AO towards disallowance on purchases on the basis of fall in gross profit rate declared by the assessee on total turnover. Hence, we are inclined to uphold the findings of the Ld. CIT(A) and reject the appeal filed by the assessee as well as the Revenue".

9. Thus, it is evident from the aforesaid findings of the appellate authorities that the appellant / assessee did not furnish the relevant materials to substantiate their claim before the authorities below and they themselves admitted that they were unable to produce the supporting evidence for purchases, since the relevant records pertaining to the assessment year in question, were washed away in 2015 flood. However, the appellant / assessee filed the auditor's report, as per which, there was no adverse comment on books of accounts maintained by the appellant / assessee and the purchases debited into P&L account, which fact was not disputed by the assessing officer. In such circumstances, the CIT(A), taking note of the fact that there was a decline in gross profit declared by the assessee for the assessment year in question compared to earlier financial year, directed the assessing officer to restrict the disallowance on purchases to the extent of 2.5% of the total turnover. The said finding of the CIT(A) was also affirmed by the Tribunal, based on the evidence adduced before the same. Such well considered findings of the appellate authorities do not warrant any interference at the hands of this court.

10. At this juncture, it is pertinent to refer to the decision of Delhi High Court in *Alpasso Industries Pvt. Ltd. v. Income Tax Officer* [(2019) 410 ITR 0212 (Delhi)], in which, it was observed as follows:

"8. A decision of question of fact depends upon appreciation of evidence and material placed before the authorities, i.e. the Tribunal. The Tribunal, as a final fact finding authority, has to determine and decide question of fact in dispute by examination of evidence and material produced. Inference and conclusion based upon appreciation of fact does not



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give rise to a question of law. In this context that the appellant claims and asserts that the decision of the Tribunal was perverse, and therefore substantial question of law arises from the impugned order. A finding of a Tribunal on fact does not become perverse merely because another finding or conclusion was possible. Test and benchmark of perversity is far stringent and strict. Factual findings can be only interfered with when they are patently unreasonable, not supported by any evidence or are based upon extraneous and irrelevant material. Interference may be justified when the conclusions are based upon mere conjectures and surmises or where no person acting judicially and properly instructed under the relevant law could have come to the same decision and conclusion. In the current factual matrix, having noted the evidence and material before the Tribunal, the final conclusion arrived at, it cannot be said, that Tribunal's conclusion was based upon no evidence to support or was rationally not possible or entirely unreasonable. The conclusion is also not contradictory.

9. For the aforesaid reasons, we do not think any substantial question of law arises in the present appeal and the same is dismissed, without any order as to costs."

11. Therefore, in the opinion of this court, there is no substantial question of law arisen for consideration. Accordingly, this tax case appeal stands dismissed against the appellant / assessee. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrr

To

1. Income Tax Appellate Tribunal "D" Bench,
Chennai.



2. The Assistant Commissioner of Income Tax (OSD),
Corporate Range - 1,
Chennai - 600 034.

3. The Commissioner of Income-Tax (Appeals)-4(i/c),
Chennai-34.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.33384
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.34065

T.C.A.No.103 of 2022

SR II (CO)
PM/15/06/2022