IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HON'BLE MR.JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.Nos.103 and 104 of 2014
and
MP.No.1 of 2014

Commissioner of Income Tax,
Chennai ...Appellant in both T.C.As/ Appellant

Versus

Shri Shaik Usman Ali,
Prop M/s Shah Sanitary STores,
No.B (Old No.19) Vannier Street,
Chennai - 600 001. ...Respondent in both T.C.As/ Respondent

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, “A” Bench, dated 08.09.2011 in I.TA.Nos.1149 & 1150/Mds/2011 against the order of the Commissioner of Income Tax (Appeals)-IX, Chennai-34 dated 02.03.2011 and made in ITA.No.68 & 67/2010-11 for the Assessment year 2005-2006 and 2008-2009 against the order of the Assistant Commissioner of Income Tax, Business Circle IX, Chennai dated 31.12.2010 and 27.12.2010 and made in PAN/GIR.No.ABQPS2245G for the Assessment year 2005-2006 and 2008-2009.

In both T.C.As

For Appellants : Mr.M.Swaminathan,
Senior Standing Counsel
and for Mrs.V.Pushpa,
Junior Standing Counsel

For Respondents : Mr.R.Kumar
for Mr.T.R.Kumaravel

COMMON JUDGMENT

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

These tax case appeals have been filed by the appellant / Revenue, challenging the order dated 08.09.2011 passed by the Income Tax Appellate Tribunal, Bench 'A', Chennai, in I.TA.Nos.1149 & 1150/Mds/2011, relating to the assessment years 2005-06 and 2008-09.

2.By order dated 21.04.2014, this court admitted the present appeals on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the burden of proving excess stock is on the revenue when the assessee himself has admitted the availability of excess stock and thereby deleting the addition of investment in unexplained stock."

3.The brief facts of the case are that the assessee is a dealer in sanitary wares. For the sake of higher loan limit, they were in the habit of furnishing inflated stock. On 09.01.2001, a search under section 132 of the Income-tax Act, 1961 was conducted in the business premises of the assessee and physical inventory of stock was taken. During the course of which, no unaccounted excess stock was found. However, the assessing officer added the difference between the real declared book stock and inflated stock furnished to the bank and also reopened the earlier and subsequent assessments. Ultimately, the assessing officer completed the assessment by making additions as unexplained investment in stock. Challenging the same, the assessing officer preferred appeals before the CIT(A), who by order dated 02.03.2011, allowed the appeals. Aggrieved by the same, the Revenue preferred appeals before the Tribunal, which dismissed the same, following the earlier order in respect of the assessee's own case in ITA No.2013/Mds/2005 for the assessment year 2001-02, relating to addition on the difference between stock as per books and stock furnished to the bank. Therefore, the present appeals by the Revenue.

4.The learned counsel for the appellant/Revenue fairly submitted that the issue involved herein is covered against the Revenue in view of the judgment dated 25.02.2015 passed by this court in T.C.A.No.1526 of 2007 in respect of the assessee's own case (ITA No.2013/Mds/2005 for the assessment year 2001-02). The relevant passage of the said judgment can profitably be extracted below:

> "8.The primary reason for the Department to file the present appeal stems from the earlier order

> of the Tribunal in respect of the assessee's own case for the earlier year, wherein the Tribunal had remanded the case back to the Assessing Officer. However, in the present case, the appeal has been allowed and, therefore, no uniformity has been maintained.
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> 9.Though the above plea has been made by the Department, this Court is not inclined to entertain this appeal on the question of law raised at this point of time in view of the subsequent decision of this Court, which is also on the same issue, rendered in the case of Commissioner of Income Tax – Vs – Smt. Sakuntala Devi Khetan (2013 (352) ITR 484 (Mad)), wherein it has been clearly held that the Assessing Officer has to adopt the figures and turnover finally assessed by the sales tax authorities. Similar issue was also considered in the case of CIT – Vs - Anandha Metal Corporation (2005 273 ITR 262 (Mad)), and held in favour of the assessee, which decision has been followed by the Tribunal in assessee's own case for the earlier year, wherein the matter was remanded back. In view of the consistent view of this Court as could be found from the above decisions, this Court is of the considered view that the contention of the Department has to fail. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.
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> 10.In the result, the appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs."

5.The learned counsel for the appellant / Revenue further submitted that the aforesaid judgment was followed by this court in TCA No.910 of 2014 in respect of the assessee's own case relating to the assessment year 2002-03 and by judgment dated 18.01.2016, the appeal was dismissed against the Revenue and in favour of the assessee. The relevant paragraphs of the said judgment are quoted below for ready reference:

> "5. It is the case of the revenue that the stock statement furnished by the assessee to the Bank, at the time of availing loan facility, must be accepted as correct and that the assessee cannot be permitted to go back on the stock statement as it would amount to recognizing bad morality on the part of the assessee.
>
> 5.1. This issue has been answered in the decision of the Hon'ble Apex Court in the case of T.A.Qureshi vs. CIT (287 ITR 547), wherein, it has been held that

cases are to be decided by the Court on legal principles and not on one's own moral views. The Tribunal has also relied upon a decision reported in 26 ITR 159 (Pandit Bros. vs. CIT), wherein, it was held that the fact that profit appeared too low or that no stock register was maintained would not be sufficient material to reject the books of account; these would only be material for provoking further enquiry; the Income Tax Officer must discover other materials and evidence to come to such conclusion.

5.2. When the books of account is good enough for provoking further enquiry and not liable to be rejected on moral views, is there any other way by which the authenticity of the books of account can be checked/counter checked, is the issue to be decided.

5.3. The comparitive analysis and merits of the books of account/stock record, the declaration of stock submitted to the Revenue Authorities/Bank Authorities came to be considered in the decision reported in Shri Mitesh Dugar vs. Income Tax Officer and the relevant observation therein reads as under:

> "Upon a careful consideration of the issue, we find that the authorities below have not detected any mistake or omission in the books of accounts or stock records of the assessee. It is also not the case that bank authorities have verified the assessee's stock in relation to the position as at the close of the year. Under such circumstances, as expounded by the Hon'ble jurisdictional High Court in the case of CIT vs. N.Swamy 241 ITR 363, the burden was upon Revenue to prove that the stock submitted to the Revenue authorities was erroneous. This burden could not be discharged by merely referring to the statement of the assessee to third parties. Under the circumstances and respectfully following the precedent, we set aside the orders of 6 authorities below and decide the issue in favour of the assessee."

5.4.In the said decision, it has been pointed out the authorities did not find any mistake or omission in the books of account of the assessee. Apart from that, the Bank authorities did not claim that they actually verified the assessee's stock. Therefore, the burden shifted on the revenue to prove that the stock statement submitted to the Sales Tax authorities was erroneous. There was no proof available for revenue to show that such statement to Sales Tax Authorities was wrong. Under such circumstances, the assessee contends that the inflated reporting of stock to the Bank should not be accepted, since the inflated statement was for the purpose of obtaining more cash credit facility.

5.5. Which out of the two authorities, whether the Bank Authorities or the Sales Tax Authorities would have been more interested in ascertaining the actual/exact stock maintained by the assessee. The Bank authorities are interested only to the extent of having the stock as security for the purpose of realizing the loan. On the other hand, the Sales Tax authorities are interested more in 7 collecting the tax than in permitting evasion of tax. The Sales Tax Authorities, functioning under the statute, specially interested / empowered in collecting the exact amount of tax, would have been more professional in assessing the stock than the Bank authorities, who are merely interested in the overall value of the asset of the assessee only to ensure that there is enough security for the loan. On this score also, the stock value as accepted by the Sales Tax authorities should be given more credence. If one branch of the officials collecting tax do not accept the valuation by the other branch of the officials collecting tax, then there is no sanctity to the statutory functioning of which there is a presumption attached to the genuiness. Therefore, the contention that the valuation made by the Sales Tax Authorities would not be accepted by the Income Tax Authorities does not stand to reason.

6.It is the case of the Assessee that the closing stock declared by the Assessee and accepted by the Commercial Tax Department has been rightly accepted by the Income Tax Department (the Assessing Officer) and therefore, the confirmation of the same by the Income Tax Appellate Tribunal has to be upheld.

7.The learned counsel for the Assessee has brought to the notice of this Court the decision rendered by this Court in T.C.A.No.1526 of 2007, dated 25.02.2015, relating to the same assessee (for the Assessment year 2001-2002), whereunder, relying upon the decision reported in 2013 (352) ITR 484 (Mad) (Commissioner of Income Tax vs. Sakuntala Devi, Khetan), it has been held that the Assessing Officer has to adopt the figures and turn over finally assessed by the Sales Tax Authorities. This decision is binding upon the Revenue. Therefore, the contention of the Revenue that it has powers to tinker with the stock estimated by the Sales Tax Authorities cannot be accepted. Therefore, the appeal filed by the Revenue fails.”

6.In the light of the aforesaid judgments, which are squarely applicable to the facts of the present case, the substantial question of law raised herein is answered against the Revenue and in favour of the assessee. Accordingly, the tax case appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gba/kas

To

1. The Commissioner of Income Tax,
   Chennai

2. The Income Tax Appellate Tribunal,
   Chennai, “A” Bench.

3. The Assistant Commissioner of Income Tax
   Circle IX, Chennai – 6.

4. The Commissioner of Income Tax (Appeals)-IX,
   Chennai – 34.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.9482

T.C.A.Nos.103 &104 of 2014

SSD(CO)
RGA(10/03/2022)