IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

T.C.A.Nos.84, 85, 86, 87, 89, 90 and 129 of 2023

M/s.Chandan Credits Ltd.
No.6/13, North Avenue
Kesavaperumalpuram
Chennai 600 028
PAN : AAACC6074D ... Appellant in TCA.84 & 89/2023

Gugnani Leasing & Hire Purchase Pvt. Ltd.
No.6/13, North Avenue
Kesavaperumalpuram
Chennai 600 028
PAN : AAACG5972C ... Appellant in TCA.85 & 86/2023

M/s.Growell Hire and Purchase Finance Ltd.
No.6/13, North Avenue
Kesavaperumalpuram
Chennai 600 028
PAN : AAACG4983H ... Appellant in TCA.87 & 90/2023

M/s.Lokesh Secfin Pvt. Ltd.
No.6/13, North Avenue
Kesavaperumalpuram
Chennai 600 028
PAN : AAACG4983H ... Appellant in TCA.129/2023

Vs.

The Assistant Commissioner of Income Tax
Central Circle-2(3)
Chennai 600 034 ... Respondent in all TCAs

TCA Nos.84, 85, 86, 87, 89 and 90 of 2023: Appeals filed under Section 260-A of the Income Tax Act, 1961, against two separate orders dated 25.11.2022 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in I.T.A.Nos.70/CHNY/2022, 71/CHNY/2022, 735/CHNY/2020, 129/CHNY/2022, 736/CHNY/2020 and 128/CHNY/2022 relating to the assessment years 2013-14, 2013-14, 2014-15, 2013-14, 2014-15 and 2012-13 respectively.

TCA. No.129 of 2023 : Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 25.11.2022 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in I.T.A.No.111/CHNY/2022 relating to the assessment year 2013-14.

For Appellant in all TCAs	:	Ms.Vandana Vyas for Mr.R.Sivaraman
For Respondent in all TCAs	:	Mr.Karthik Ranganathan Senior Standing Counsel

COMMON JUDGMENT

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

These tax case appeals arise from two different orders dated 25.11.2022 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in which, the following substantial questions of law have been raised :

T.C.A.Nos.84 & 85 of 2023 :

"(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the addition under

Section 68 of the Income Tax Act, 1961 especially when the sum credited in the bank account were accounted and explained from being out of the cash balance declared in the books of accounts and financials of the preceding assessment year?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, with documents and evidence, the source of the impugned investments inasmuch as they were out of cash balance available in the books of accounts and financials of the preceding assessment years?

(iii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite the additions falling under the nature of an 'investment'?"

T.C.A.No.86 of 2023 :

"(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the addition under Section 68 of the Income Tax Act, 1961 especially when the sum credited in the bank account were out of interest received from M/s.Smita Properties & Investments Pvt. Ltd. declared in the books of accounts and financials?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, with documents and evidence, the source of the impugned investments inasmuch as they were out of interest received from M/s.Smita Properties & Investments Pvt. Ltd. as evident from the financials?

(iii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite the additions falling under the nature of an 'investment'?"

T.C.A.No.87 of 2023 :

"(i) Whether on the facts and circumstances of the case, the

Appellate Tribunal was right in law in confirming the addition under Section 68 of the Income Tax Act, 1961 especially when the sum credited in the bank account were accounted and explained from being out of the cash balance declared in the books of accounts and financials of the preceding assessment year and consultancy income received during the relevant previous year?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, with documents and evidence, the source of the impugned investments inasmuch as they were out of cash balance available in the books of accounts and financials of the preceding assessment years and consultancy income received during the relevant previous year?

(iii) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is perverse inasmuch as it failed to adhere to the doctrine of stare decisis insofar as dismissing the appeal for the impugned Assessment Year 2012-13 wherein it had earlier remanded the appeals for the preceding assessment years to the file of the respondent on identical issues?

(iv) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite the additions falling under the nature of an 'investment'?"

T.C.A.No.89 of 2023 :

"(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the addition under Section 68 of the Income Tax Act, 1961 especially when the sum credited in the bank account were accounted and explained from being out of the cash balance declared in the books of accounts and financials of the preceding assessment year and consultancy income received during the relevant previous year?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, with documents and evidence, the source of the impugned investments inasmuch as they were out of cash balance available in the books of accounts and

financials of the preceding assessment years and consultancy income received during the relevant previous year?

(iii) Whether the order of the Appellate Tribunal is perverse inasmuch as it proceeds on the presumption that the investments are made by the appellant in SBQ Steels Ltd., without considering that the investments are made in another entity i.e., Rai Ispat Private Limited, rendering the impugned order mechanical and perfunctory in violation of principles of natural justice?

(iv) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite the additions falling under the nature of an 'investment'?"

T.C.A.No.90 of 2023 :

"(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the addition under Section 68 of the Income Tax Act, 1961 especially when there was investment made during the subject assessment year?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, that there was no investment made during the subject assessment year and the investment were made in the AY 2011-12, which was once again added in the subject AY 2012-13?

(iii) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is perverse inasmuch as it failed to adhere to the doctrine of stare decisis insofar as dismissing the appeal for the impugned Assessment Year 2012-13 wherein it had earlier remanded the appeals for the preceding assessment years to the file of the respondent on identical issues?

(iv) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite there being no investments during the subject AY 2012-13?"

T.C.A.No.129 of 2023 :

> *"(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the addition under Section 68 of the Income Tax Act, 1961 especially when the sum credited in the bank account were accounted and explained from being out of the cash balance declared in the books of accounts and financials of the preceding assessment year and consultancy income received during the relevant previous year?*
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> *(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in failing to accord a reasonable opportunity to the appellant to substantiate, with documents and evidence, the source of the impugned investments inasmuch as they were out of cash balance available in the books of accounts and financials of the preceding assessment years and consultancy income received during the relevant previous year?*
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> *(iii) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is perverse inasmuch as it failed to adhere to the doctrine of stare decisis insofar as dismissing the appeal for the impugned Assessment Year 2013-14 wherein it had earlier remanded the appeals for the preceding assessment years to the file of the respondent on identical issues?*
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> *(iv) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in invoking the provisions of Section 68 of the Income Tax Act, 1961 despite the additions falling under the nature of an 'investment'?"*

2.The facts of the case would run thus:

2.1. The appellant company in TCA Nos.84 and 89 of 2023 is involved in the production and sale of TMT bars. They filed return of income admitting a total income of Rs.10,030/- for the assessment year 2013-2014, admitting a total income of 'Nil' and claiming a loss of Rs.1,74,344/- for the assessment year 2014-2015.

2.2. The appellant company in TCA Nos.85 and 86 of 2023 is engaged in the business of acquiring shares of other companies and holding it as investment, besides engaging in hire purchase and lease transactions. For the assessment year 2013-2014, return of income was filed admitting a total income of Rs.4,400/- and for the assessment year 2014-2015, return of income was filed admitting a total income of 'Nil' and claiming a loss of Rs.64,363/-.

2.3. The appellant company in TCA Nos.87 and 90 of 2023 is engaged in the business of acquiring shares of other companies and holding it as investment besides engaging in hire purchase and lease transactions. For the assessment year 2013-2014, return of income was filed admitting a total income of Rs.4,280/-. For the assessment year 2012-2013, return of income was filed admitting a total income of Rs.31,480/-.

2.4. The appellant company in TCA No.129 of 2023 is engaged in the business of acquiring shares of other companies and holding it as investment besides engaging in hire purchase and lease transactions. For the assessment year 2013-2014, they filed return of income admitting a total income of Rs.21,940/-.

2.5. While so, search action u/s.132 of the Act was carried out in the business place of the assessee viz., Chandan Credits Ltd., and its group companies on 26.09.2012, during which, it was noticed that the assessee has made investments in share capital of its group companies *i.e.*, SBQ Steels Ltd. and RKKR Steels Ltd., out of the sale proceeds of its share investments. Explanation was called for in respect of the said investments from the assessees. Due to lack of response by the assessees despite several opportunities, the assessment orders u/s.143(3) of the Act came to be passed. The orders of the Assessing Officer were confirmed by the CIT(A). Challenging the same, the assessees went on further appeals before the ITAT, Chennai, which, in turn, dismissed the appeals filed by the assessees in T.C.A.Nos.84, 85, 86, 87, 89 and 90 of 2023 by a common order dated 25.11.2022 and partly allowed the appeal preferred by the assessee in T.C.A.No.129 of 2023 by order dated 25.11.2022. Therefore, the appellants/assessees are before this Court.

3.The learned counsel for the appellants/assessees submitted that the Tribunal has committed a grave error in holding that nothing was produced by the assessees to prove that the investments in shares of SBQ Steels Ltd. by the assessees are out of the explained investments. The appellants during the course of hearing, had stated that the said investments were out of cash balance available in the books and they were in possession of all the relevant documents to substantiate the source of their investments, which they were ready to submit. However, on the date of hearing of the impugned appeals, fifteen other cases relating to the group were also listed and hence, the appellants were not in a position to submit the documents.

4.The learned counsel for the appellants/assessees further submitted that the Tribunal has erred in confirming the addition under Section 68 of the Act, especially when the sum credited in the bank account were out of the cash balance declared in the books of accounts and financials of the earlier assessment year. The learned counsel also submitted that the respondent is questioning the source of investments in the share of SBQ Steels Ltd. and not the source of cash credited in the books of the appellants. Hence, the addition made under Section 68 of the Act is bad in law. Stating so, the learned counsel sought to quash the orders impugned herein.

5.Heard the learned standing counsel appearing for the respondent and also perused the records.

6.The main reason given by the Tribunal in the orders dismissing the appeals is that nothing was produced by the assessees to prove that the investments in the shares of SBQ Steels by the assessees are out of the explained investments. The contention of the learned counsel for the assessees in this regard is that they were ready to submit the relevant documents, but on the date of hearing of the appeals, 15 other cases relating to the group were also listed and due to the same, the assessees were not able to provide the documents.

7.In view of the submission made on the side of the assessees that they are ready to submit the relevant documents, this court deems it appropriate to remand the matter to the Assessing Officer / respondent authority for fresh consideration. The learned standing counsel appearing for the respondent has no serious objection for the same.

8.Therefore, the questions of law raised in all these appeals are left open and the matters are remanded to the respondent authority / assessing officer for fresh consideration. The respondent / assessing officer shall issue notice to the appellants / assessees indicating them to produce all the required documents along with their objections, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On receipt of such notice, the appellants shall file the necessary documents along with objections if any, within a period of two weeks therefrom. Thereafter, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellants, within a period of four weeks therefrom. It is open to the appellants to raise all the grounds before the authority concerned for consideration.

9.Accordingly, all the Tax Case Appeals are disposed of. No costs.

[R.M.D,J.] [M.S.Q, J.]
18.10.2023

Index : Yes / No
Speaking / Non-speaking Order
Neutral Citation : Yes/No
gya

To

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

2.The ACIT, Central Circle - 2(3)
Chennai.

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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T.C.A.Nos.84, 85, 86, 87, 89, 90
and 129 of 2023

18.10.2023