IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-01-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.416 of 2022

Commissioner of Income Tax,
Central Circle – 2,
Madurai. ... Appellant

-vs-

M/s.Standard Press (India) Private Limited. ... Respondent

Appeal against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 19.10.2022, in I.T.A.No.1618/Chny/2019.

For Appellant : Mr.M.Swaminathan

For Respondent : No appearance

JUDGMENT

This Tax Case Appeal is filed, raising the following questions of law :

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in rendering its decision on the basis of incorrect

claim made in the paper book of the assessee that relevant documents were produced before the Assessing Officer during the course of assessment proceedings without verifying the authenticity of the claim of the assessee ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the CIT (A), when the CIT (A) has admitted the additional evidence without affording opportunity to the Assessing Officer in violation of the Income Tax Rule 46A ?

2. Very briefly, the facts are that the respondent assessee, who is a leading printer in Sivakasi, filed its return of income on 28.09.2013, admitting "Nil" income, for the Assessment Year 2013-2014. The case was selected for scrutiny under CASS and a Notice under Section 143 (2) of the Income Tax Act,1961, in short, "the Act", dated 04.09.2014, was issued to the respondent assessee. There was a search and seizure under Section 132 of the Act in the group concerns of the respondent assessee. During the course of survey, it was found that the verification of the profit and loss account, which was impounded, revealed that the net profit was Rs.6,83,00,406/-, while the assessee had admitted the net profit as Rs.76,14,663/- in the return of income tax filed on 28.09.2013. The difference was added to the income by treating as profit undisclosed by the assessee.

3. Aggrieved over the order of the Assessing Officer, the respondent assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals), who found that the discrepancy was in view of the fact that the branch loss was not taken into account, although relevant material was produced before the Assessing Officer, and had the same been considered, the alleged discrepancy might not exist.

4. In this regard, it is apt to refer to relevant portion of the order of the first appellate authority, which reads as under :

"5.2. In the P&L A/c for YE 31-3-2013 Net Profit before tax and after tax of Head office Sivakasi is shown at Rs.6,83,00,406 which is the figure as per impounded P&L A/c. In the consolidated P&L A/c., Loss of Mumbai Branch (started on 23-10-2012) is admitted at Rs.6,06,85,739. Consolidating both, NP shown in the consolidated P&L A/c. is Rs.76,14,663/-, which is the figure admitted in the ROI vide extract above, filed before Survey. There are separate P&L A/c for Bombay branch (loss at Rs.6,08,85,738), Head Office Sivakasi (profit at Rs.6,83,00,406) and consolidated P&L of both (NP at Rs.76,14,663) copies of which have all been filed both before A/O and at appellate stage. Thus, the NP as per impounded P&L A/c fully tallies with the NP shown against Sivakasi HO.

5.3. The mistake lies in not considering the Bombay branch loss and not fully perusing the consolidated P&L A/c. Therefore, there is no omission of any net profit as assumed by the learned A/O, who has considered the P&L A/c of Head Office only and the Bombay branch

P&L A/c was omitted to be considered."

5. The matter was carried in appeal by the Revenue before the Income Tax Appellate Tribunal, whereupon, the order of the first appellate authority was confirmed on the premise that all the documents were furnished before the Assessing Officer and that there was no new material. The relevant portion in the order of the Tribunal is relevant and it is extracted below :

> *"9. After hearing rival contentions and going through the above facts narrated, we find that the assessee has filed complete consolidation of both Profit & Loss account i.e., for head office as well as Mumbai Branch. It is clear that there is a loss on Mumbai branch of Rs.6,08,85,738/- and profit of Rs.6,83,00,406/- on head office at Sivakasi. The consolidated figure comes to net profit of Rs.76,14,663/-, which is declared by the assessee. We noted that since the above details were incorporated in the relevant schedules in the audited accounts and return of income is filed much before the survey conducted by the Department u/s.133A of the Act, we find no reason to refer the matter back to the file of the AO particularly, when all the information were filed by the assessee before him. Hence, we find no infirmity in the order of CIT (A) deleting the addition. We confirm the order of CIT (A) and dismiss this appeal of Revenue."*

6. Revenue is in appeal before this Court against the order of the learned Tribunal on the premise that the appellate authorities have erred in permitting the raising of additional evidence without affording an opportunity to the Assessing Officer and in violation of Rule 46A of the Income Tax Rules.

7. We find from the concurrent findings of the first appellate authority and also the Tribunal that the documents assumed to be additional evidence were produced even before the Assessing Officer. As a matter of fact, the same was produced even during survey. Thus, the question of invoking Rule 46A of the Income Tax Rules does not even arise, in view of the fact that the alleged material, which was assumed to be the additional evidence, was always available before the Assessing Officer.

8. In the circumstance, we find no reason to interfere with the order impugned herein, for no question of law arises for consideration. Accordingly, this Tax Case Appeal is dismissed. No costs.

Index : Yes/No (S.V.N.,J.)
(M.S.Q.,J.)
Internet : Yes/No 04-01-2023
Speaking / Non-speaking Order

dixit

S.VAIDYANATHAN,J.
AND
MOHAMMED SHAFFIQ,J.

dixit/ssn

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