IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.629 of 2008

Commissioner of Income Tax
Central II
Chennai. .. Appellant

Vs

M/s. Jaya Publications
C-8, Thiru Vi-Ka Industrial Estate,
Guindy,Chennai – 32. .. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Madras "A" Bench dated 30.11.2007 in I.T.A.No.1151/Mds/2002.

For Appellant	:	Mrs.R.Hemalatha Senior Standing Counsel
For Respondent	:	Mr.Srinath Sridevan Senior Counsel for Ms.Vandana Vyas

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This order disposes Tax Case (Appeal) No. 629 of 2008 filed by the Income-Tax Department challenging the order of the Income Tax Appellate Tribunal ('Tribunal') dated 30.11.2007 disposing cross-appeals filed by the Assessee (‘Assessee’/’Respondent’) as well as the Income-Tax Department in respect of Assessment Year (AY) 1995 - 96.

2. The substantial questions of law that have been admitted for consideration on 30.04.2008 are as follows:-

> *“Whether on the facts and circumstances of the case the Tribunal is right in not adjudicating the specific grounds raised by the revenue in spite of the binding decision of the High Court, in the case of M/s. South India Surgical Co., Pvt Ltd., vs ACIT in 263 ITR 5, where it was held that a total non-consideration by the appellate tribunal of specific ground raised before it entitles a substantial question of law and the High Court in an appeal u/s 260A of IT Act is entitled to interfere.”*

3. Though grounds have been taken in relation to two issues, Scheme Deposit Collection and Inflation in purchases/ bogus purchase, we find a single question of law has been raised in regard to both the issues.

4. The first issue relates to scheme deposit collection. In order of assessment dated 12.02.2001, the assessing authority has made an addition of a sum of Rs.5,57,37,000/- relating to receipts under 'Scheme Deposit' (in short, ‘Scheme’/‘Scheme Deposit’).

5. The assessee had called-for interest free deposits in multiples of Rs.3,000/- repayable on demand. In consideration of the deposits, three newspapers were to be given to AIADMK/Namathu MGR party headquarters for circulation to party cadres throughout Tamil Nadu. Opportunities were given to the assessee to produce evidence in regard to the membership of the party cadres and details of the Scheme.

6. The Assessing Officer records that despite various opportunities, no evidence was produced. Towards the fag end of the assessment period, the Authorized Representative had produced xerox copies of about 500 forms and 500 receipts, as well as a list of names of 3789 members who, according to the Appellant, were the scheme depositors. No accounts or collection registers had been produced. Dissatisfied with the evidences produced, the entirety of the deposits were brought to tax under the head 'other sources'.

7. In appeal, the Commissioner of Income tax (Appeals) (CIT(A)) had considered the submissions of the Assessee and sought a remand report from the Assessing Officer, being of the view that the enquiry caused by the Department at the first instance had been insufficient. The CIT(A) also took note of the position that the investigation by the Assessing Officer had not been proper in so far as the material initially collected by the Department had not been put to the Assessee to rebut. In any event, the Assessee had produced the list of depositors and other material before the officer and the CIT(A) was of the view that the evidences must be verified.

8. In remand, statements of bank accounts and ledgers had been produced by the Appellant. The CIT(A) also notes that for AY 1994–95, 1996–97 & 1997–98, ie., periods both prior and subsequent to the subject Assessment Year, detailed verification of the deposits had been undertaken by the Officers revealing that only 41 persons had denied

having made any contributions. Hence in the previous years, deposits to that extent alone had stood rejected. Out of the total amount of Rs.3,53,37,000/-, the deposits of 41 persons amounted to a sum of Rs.5,53,000/- which is 1.5% of the total deposits.

9. Since the practice followed for the previous and subsequent years was to reverse 1.5% of the total deposits, following the same as a thumb rule, and in the interests of consistency, the CIT (A) in the present year too reversed the addition to an extent of 1.5%, sustaining an addition of Rs.8,50,000/-. The findings and conclusion of the CIT(A) in order dated 28.03.2002 are as follows:

> *''8.3 I have carefully considered the submissions made by the Appellant in the light of the facts and circumstances of the case as brought out in the assessment order. I have also perused the list of scheme deposits as on 31.3.1995 which contained 3789 names of the subscribers and the details of dates on which their deposits were made. I have also gone through the bank books and the ledger folios detailing the transactions relating to the scheme deposit. It is pertinent to mention here that when the Appellant had actually furnished the list of depositors, the Assessing Officer should have initiated further investigation process for verifying these deposit transactions, either through summons or through any other mode of enquiry, as was done during the proceedings for the assessment years 1994-95, 1996-97 and 1997-98 earlier. Instead, he has chosen to reject the claim of scheme deposit in its entirety which, in my opinion, was not a correct approach. As a matter of fact, scheme deposit is a common issue for all the assessment years from 1991-92 to 1998-99, and the appeals are pending before me for a decision on this issue. In order to adjudicate upon this issue, I had requisitioned the assessment records including the confidential folders (44 Nos) containing details of investigations*

made by the Assessing Officer. In the context of assessment year 1996-97 wherein the appellant had claimed to have collected scheme deposits to the extent of Rs.3,53,57,000/- from 2250 persons, it was found that 41 persons had denied of having contributed any amount towards the said scheme. The total amount of deposits claimed to have been collected from these 41 persons amounted to Rs.5,53,000/- out of the total claim of scheme deposits amounting to Rs.3,53,37,000/-. In terms of percentage, it worked out to 1.5%. In fact, the Assessing Officer, Shri G.Gurusamy, assisted me in analysing the relevant facts. Having regard to the facts and circumstances as brought out in the assessment order and keeping in view the percentage of denials to the extent of 1.5%, I deem it fit to apply the same percentage for the disallowance i.e., 1.5% on the total claim of Rs.5,57,37,000/- which works out to Rs.8,36,055/- or a round sum of Rs.8,50,000/-. The Assessing Officer is directed to substitute Rs.8,50,000/- in place of Rs.5,57,37,000/-. In the result, the Appellant gets a relief of Rs.5,48,87,000/-."

10. As against the order of the CIT (A), cross-appeals were filed by both the assessee as well and the Income Tax Department before the Tribunal. The findings and conclusions of the Tribunal in order dated 30.11.2007 are as follows:

''8. We have heard both the sides and perused the records available with us including the written submissions filed by the learned Counsel for the Assessee. We have gone through the finding of the CIT (Appeals). From the impugned order it is not clear as to on what basis, the first appellate authority worked out the percentage of 1.5% to give relief to the Assessee. It is pertinent to note that the Assessee had claimed to have collected Scheme Deposits from 2250 persons and filed complete details of the names and addresses of the depositors. We find that the CIT (Appeals) accepted

these deposits as genuine because the statements were obtained behind the back of the Assessee without giving an opportunity of being heard. Therefore, we are of the view that the matter requires investigation at the level of the Assessing Officer and we are not commenting on the merits of the case. Keeping in view the facts and circumstances of the case and in the interest of justice, we set aside the matter to the file of the Assessing Officer with direction to decide the issue in dispute after re-investigation in respect of 41 persons only and after giving reasonable opportunity of being heard. Accordingly, the Assessee's appeals on this issue is allowed for statistical purposes. Since, we have set aside identical issue in the Assessee's appeal, the Revenue's appeals are dismissed.''

11. The Tribunal has noted that the particulars in respect of all the depositors had been produced. However, the matter was ultimately remanded to the file of the assessing authority with a direction to decide the same after re-investigation of the 41 persons who had denied making the deposits, after giving the Appellant a reasonable opportunity of being heard. The assessee's appeal were allowed for statistical purposes and the appeals of the Revenue were dismissed assailing which the present appeal has been filed by the Revenue. Incidentally, the appeals of the Revenue for the previous and subsequent assessment years have been closed on account of low tax effect.

12. The crux of the submissions advanced on behalf of the Department is that the Tribunal ought to have directed the verification of all the depositors as, according to them, no material was available with

the authorities to warrant acceptance of the deposits as projected by the Assessee. They are aggrieved by the fact that the Tribunal has directed verification of only the 41 depositors who had denied making the deposits. Per contra, the Assessee would rely on the findings of the CIT(A) pointing out that all relevant material had been placed on record in the first appeal.

13. In order to consider the rival submissions made, as well as ascertain the impact of the remand order by the Tribunal, we had sought the order of the Assessing Officer giving effect to the directions of the Tribunal in order dated 30, November 2007. No order has been passed and we are given to understand that effect has not been given to the same. Hence the Department is, today, in no better a position than what it was in 2007.

14. This is unfortunate, as, had the exercise as directed been conducted, it would have assisted in placing the proceedings in proper perspective before us. It is also impractical for the exercise to be conducted now as the Assessment Year in question is 1995-96 and the transactions are thus thirty years old as on date. Investigation in regard to the deposits/depositors, or even 41 depositors, is thus not feasible today.

15. The mere fact that section 153(3) as it stood at that time, provided for completion of assessments *'at any time',* does not, in our view, permit the Department to sit tight on matters for inordinate lengths of time, in this case for 18 long years. It is for the Department to obtain necessary directions or interim orders from the Court during the pendency

of the appeal, particularly in cases such as the present, where evidence is to be collected and witnesses may become unavailable over time.

16. It is true that the relevant material in regard to the deposits was not placed before the Assessing Officer in time. The Assessee appears to have collated the same and placed the material before the officer only towards the fag-end of the limitation for completion of the assessment. However, all records were in fact, placed before the CIT(A) for his appreciation.

17. The matter was remanded to the Assessing Officer and a Report had been sought. The order of the CIT(A) reveals that the documents had been verified by the Officer and it is only on a consideration thereof that the CIT(A) has accepted the details in respect of the depositors barring 41 depositors who had denied having made any deposits. The findings of the Tribunal extracted supra reveal that there has been application of mind to the facts at issue.

18. We are thus of the considered view that it would be an exercise in futility to confirm the directions of the Tribunal to carry out the investigation now, at a distance of thirty years from the Assessment Year in question. Hence, and instead, we proceed to sustain the addition of 1.5% as per the order of the CIT(A).

19. As far as the Substantial question is concerned, it does not touch upon the merits at all but only agitates the non-consideration of the grounds of appeal raised before the Tribunal. As for that, and as we have

already indicated supra, the issue has been considered by the Tribunal that has taken note of the findings of the CIT(A).

20. We have perused the grounds raised before the Tribunal. One of the grounds relates to the alleged lack of opportunity to the Assessing Officer to respond to the additional evidences filed in first appeal. This ground is clearly misconceived as the CIT(A) has forwarded the evidences to the Assessing Officer and sought a remand report thereupon.

21. Hence it is incorrect to state that the Assessing Officer has not been heard in that regard. In fact, the CIT(A) has specifically referred to the assistance provided by the Assessing Officer, in appreciating the evidences produced by the Assessee in the remand proceedings.

22. Yet another ground raised is that the CIT(A) had not considered the evidences produced by the Department in support of the disallowances. We are unaware of what such evidences are as no such material is produced before us to demonstrate that the conclusions of the CIT(A) and Tribunal are erroneous. In light of the discussion in the paragraphs supra, we answer the first substantial question of law in favour of the Assessee and against the Revenue.

23. We now advert to the second question, on inflation in purchases/bogus purchases. In the order of assessment, the assessing authority has dealt with this issue between paragraphs 6 and 15 thereof. The crux of the issue relates to claim of a sum of Rs.1,92,58,797/- towards purchase of newsprint. Various details were called for and the

assessing officer identified the suppliers of newsprint as follows:-

1.Media Traders, 14, Venkatraman Street, Chennai – 17.
2. Karpagam Agencies, 23, Chinnathambi Street, Chennai – 108.
3. S.M.R.L. Paper Co., 256/A, Arcot Road, Vadapalani.
4.Unna Agencies, 21, Kalavi Street, Chindadripet, Chennai – 2.
5.M.G.K.Stores, 85, Samypillai Street, Choolai, Chennai – 112.
6.Balaji Traders, 19/2, Stringer Street, Chennai – 108.
7.Bright Agencies, 157, Angappa Naicken Street, Chennai – 1.
8.Raja Traders, 46, Mofuskhan Garden Street, Chennai – 1.

24. He conducts an enquiry that revealed, according to him, the position that the suppliers did not exist. Neither was the assessee in a position to produce the same before the Assessing Officer. Some of the xerox copies of purchase bills were produced by the assessee, which he disbelieved. As no other contemporaneous or primary evidence was produced, the assessing officer rejects the claim of cash purchases, allowing the amounts transferred by bank.

25. That is to say, he accepts a sum of Rs.19,39,632/- and held the remainder, a sum of Rs.1,65,65,295/- as bogus expenditure, disallowing the same. The assessee filed an appeal before the CIT (A) who called for a remand report. In remand, the assessee had produced further evidences in support of its claim. It also appears that summons had been issued by the assessing officer to the eight suppliers of newsprint and it was found

that they not only did they exist, but that they were registered with the Sales Tax Department and operated bank accounts.

26. The following particulars figure in the order of the CIT (A):

	Sales Tax Regn.No	Bank A/c With
Balaji Traders	TNGST No. 041051	Central Bank of India
Raja Traders, Chennai	TNGST No. 609514	Central Bank of India
Karpagam Agencies	TNGST No. 034592	Central Bank of India
MGK Stores	TNGST No. 109082	Central Bank of India
Unna Agencies	TNGST No. 070282	Central Bank of India
Media Traders	TNGST No. 119673	Karur Vysya Bank
Bright Agencies	TNGST No. 000383	Central Bank of India
SMRL Paper Company	TNGST No. 088910	Central Bank of India

27. Hence the CIT(A) concluded that the suppliers were not fictitious but they were registered Assessees dealing in newsprint. The CIT (A) also records that the suppliers had brought before the Inspector of the Income-Tax attached to the office of the assessing officer (as he was not available in his office on the date of enquiry, 10.11.1999) and had confirmed their supplies.

28. The accounts were tallied and there is finding of fact in the order of the CIT (Appeals) at paragraph 4.2 to the effect that all the details were reconciled to the satisfaction of the officers. In this connection it would be appropriate to extract the relevant paragraph of

the order of CIT (Appeals) as follows:-

> *"4.2 I have carefully considered the submissions made by the Appellant in the light of the facts and circumstances as brought out in the assessment order. I have also kept in view the Remand Report submitted by the Assessing Officer. In support of the purchase transactions, the Appellant furnished the statement of accounts from the concerned parties viz., M/s.Balaji Traders, Raja Traders, Karpagam Agencies, MGK Stores, Unna Agencies, Media Traders, Bright Agencies, SMRL Paper Company – copies of which were stated to have been submitted by the respective parties to the Assessing Officer on 10.11.1999 before the then Assessing Officer. Regarding the claims of purchases from the above-mentioned parties, the Learned Counsel furnished the account copies of the Appellant as appearing in their books of accounts, as well as the details of their sales-tax registration and bank accounts. As already observed in para 4.1(iii), the Appellant had produced before the Assessing Officer copies of the purchase bills as well as the copy of the entire stock register. Further, the suppliers of the newsprint viz., Balaji Traders, Raja Traders, Karpagam Agencies, MGK Stores, Unna Agencies, Media Traders, Bright Agencies, SMRL Paper Company were state to have appeared before the Inspect of Income-Tax attached to the office of the Assessing Officer, Joint Commissioner of Income-Tax and the Assessing Officer on 9.11.199 & 10.11.1999 & 22.11.1999, 16.3.2000 and 22.3.2000 respectively. In support of the appearance before the above authorities on the various dates as mentioned above, the Learned Counsel furnished copies of confirmation letters addressed to the Assessing Officer by Balaji Traders, Raja Traders, Karpagam Agencies, MGK Stores, Unna Agencies, Media Traders, Bright Agencies, SMRL Paper Company. Thus, it would appear that the purchase transactions from the concerned parties were confirmed through statement of accounts as well as through personal appearance before the above authorities. An analysis of these facts along with the strike orders and the certificates issued by the Registrar of*

Newspapers of India would go to prove that the purchase transactions involving the above parties, were not bogus......".

29. However, and having stated the above, the CIT (A) sustains 15% of the total cash purchases, for the following reason:-

4.2 ..... Further, the Assessing Officer's decision to restrict the claim of purchases to the extent evidenced in the bank statement i.e., purchase through cheque payments at Rs.19,39,632/- is not based on legal principles. The Income-Tax Act, 1961 per se never prohibits cash transactions upto certain stated limits. However, for want of verification of purchase rates or even quantities purchased in substantial cash transactions as in the case of the Appellant, the possibility of inflation or excessive claims in purchases cannot be completely ruled out. In this view of the matter, I deem it fit to sustain an addition calculated at 15% of the total cash purchases of Rs.1,65,65,295/- which works out to Rs.24,84,794/-. In the result, the balance addition on this account viz., Rs.1,40,80,501/- (Rs.1,65,65,295 minus Rs.24,87,784/-) stands deleted."

30. The narration at paragraph 4.2 reveals that the officers of the Department have looked into the relevant materials and rendered a categoric finding to the effect that the suppliers exist, they are registered for the purposes of sales tax and operated bank accounts. The conclusion is thus to the effect that there are no bogus transactions/purchases.

31. We also find merit in the submission that if the entirety of the purchase of newsprint was to be treated as bogus, as a consequence, the question of income from sales of the newspaper itself, would not arise. The CIT(A) notes the above position at paragraph 4.1 as follows:-

"4.1 (iv) The Appellant had purchased totally 6,77,571 Kgs of newsprint valued at Rs.1,85,04,927/-. According to the Assessing Officer, the purchase of newsprint to the extent of Rs.1,65,65,295/- are fictitious which approximately works out to 6,06,550 Kgs of news print. If the purchase of newsprint worth Rs.1,65,65,295/- (6,06,550 Kgs approx) were fictitious, it would not have been possible to print 60,000 copies of newspaper per day. Further, the Appellant had sold 1,52,700 kgs of newsprint to Anjaneya Printers (P) Limited for Rs.37,00,000/- which is included in the sales of the Appellant. If the purchases are found to be bogus, it would not have been possible for the Appellant to effect this sale of newsprint also."

32. Having stated so, the assessing officer has sustained 15% of the total cash purchases on the ground that there was some lacunae in the verification of the transactions, such as non-verification of the purchase register and cash purchases. There is a finding of fact in that very order to the effect that the cash transactions are within the limit and admittedly, no action in terms of 40A(3), Section 269SS or 269T has been initiated.

33. Hence, we are unable to see any justification for the sustenance of 15% of the disallowance. The disallowance is adhoc and sans any basis. In appeal, (cross-appeals have been filed by the Assessee and the Department), and the Tribunal has reduced the addition from 15% to 5% by order dated 30.11.2007. The Assessee has accepted the disallowance and it is only the Department that is in appeal.

34. As already indicated by us, we see no basis for the adhoc disallowance even to the extent of 5%. However, seeing as the assessee

has accepted the same, we sustain the order of the Tribunal. No submissions have been advanced on the question of law that has been admitted that would persuade us to intervene. The second substantial question of law is also answered is in favour of the assessee and against the Revenue.

35. This Tax Case (Appeal) is disposed in terms of the above order. No costs.

[A.S.M., J]   [G.A.M., J]
18.11.2024

Index:Yes
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

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