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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2025

PRONOUNCED ON : 22.01.2025

CORAM:

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

T.C.(A) No.638 of 2011

M/s.HM Brothers (P) Ltd.,
Rep. by its Director B.K.Bagdi
No.13, Errabalu Chetty Street,
Chennai - 600 001.

...

Appellant / Respondent

versus

Deputy Commissioner of Income Tax,
Company Circle II(2),
Chennai - 600 034.

...

Respondent / Appellant

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench Chennai dated 04.02.2011 in I.T.A.No.1490(Mds)/02, Asst.year 1996-97.

For Appellant : Ms.T.C.A.Sangeetha

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel



JUDGMENT

[*Judgment* of the Court was made by **G.ARUL MURUGAN, J.**]

The appellant / assessee was trading in ball bearings and had filed return of income on 02.12.1996 for the assessment year 1996-97 admitting a loss of Rs.33,210/-. The return was processed and selected for scrutiny. A notice was issued under Section 143(2) of the Income Tax Act [hereinafter referred to as “the Act”]. The hearing was adjourned to various dates due to non-cooperation of the assessee in failing to participate in the enquiry and filing the necessary materials. The Assessing Officer [in short “AO”] completed the assessment under Section 144 of the Act and the assessment order was passed on 19.03.1999, disallowing the depreciation claim on machinery.

2. The assessee preferred an appeal before the CIT (Appeals) and by order dated 18.07.2000, the appellate authority remitted the matter back to the AO on the ground that no material was brought on record by the AO to suggest that the assessee was not entitled for depreciation. The AO was directed to afford an opportunity to the appellant/assessee to place all information relating to depreciation within a period of 15 days from the date of receipt of the order, which the assessee wants to be considered by the AO



and considering the same, the AO shall pass fresh orders in respect of the disallowance.

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3. On remand, the AO had issued notice and since the assessee did not produce any records, a summon was issued under Section 131 of the Act on 20.12.2000, which also did not evoke any response and as such the AO had visited the business premises of the assessee and had recorded a sworn statement on 22.12.2000. In the statement, since the Director of the assessee company had stated that he will file the purchase invoices of machinery but however failed to file the invoices, the AO had visited M/s.Operating Lease and Hire Purchase Ltd. and M/s.South Asian Finance Exchange Ltd. to obtain copies of purchase invoices based on which the assessee company had claimed depreciation.

4. The AO visited the premises of the seller M/s.R.D.Enterprises (P) Ltd. and recorded the sworn statement of its Director Mr.Gopal Damani, wherein he stated that they did not sell any machinery to the appellant and only to avail the finance, the invoice has been issued without actual sale of machinery. On concluding that there was no purchase of machinery by the assessee and as such there could not be any depreciation, the statement was furnished to the appellant. Mr.Gopal Damani was also summoned to enable the appellant to cross-examine him.



5. Mr.B.K.Bagdi, Director of the appellant company along with his auditor gave a letter dated 19.02.2001 stating that they do not wish to cross-examine Mr.Gopal Damani and admitted that the assessment can be completed by disallowing the claim of depreciation and all the above persons have also signed the order sheet. Based on the admission, the AO completed the assessment and passed the assessment order dated 05.03.2001 under Section 143(3) of the Act.

6. Again the assessee preferred an appeal before the CIT (Appeals) and the appellate authority by order dated 07.06.2002 allowed the appeal on the ground that the AO had travelled beyond the directions issued in the earlier order. The appellate authority held that the earlier assessment order was not set aside in a strict technical sense, but the same was also only restored to the AO for the limited purpose of deciding the appellant's claim in regard to depreciation and further the AO had only verified the proforma invoice in respect of one financier. As such, the appellate authority deleted the disallowance made in respect of the depreciation claim on machinery to the tune of Rs.48,65,360/-.

7. In the appeal preferred by the Revenue before the Income Tax Appellate Tribunal [in short "ITAT"], the assessee had not participated in enquiry and the Tribunal, based on the records produced, by order dated



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17.03.2009, allowed the appeal and restored the assessment order in respect of disallowance for depreciation claim on machinery. Assailing the orders passed by the ITAT, the assessee company had preferred the above Tax Case (Appeal).

8. By order dated 03.01.2012, the appeal has been admitted by this Court on the following substantial questions of law:-

“(1). Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in treating an order passed under section 143 (3) read with section 250 which ought to have been passed under section 144 read with section 250 of the Income Tax Act as "purely technical" error?

“(2). Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in disallowing the depreciation claimed to the extent of Rs.48.65 lakhs for the assessment year 1996-97 in the assessment of the appellant merely on the basis of statement recorded from one of the suppliers when there were 5 others who did not deny such supply of machinery?”

9. Ms.T.C.A.Sangeetha, learned counsel for the appellant mainly contended that when an assessment order was already passed under Section 144 of the Act, the appellate authority had without setting aside the assessment order, remitted the matter back to the AO only to consider the documents to be submitted by the assessee in respect of the disallowance of the depreciation claim on machinery. On remand, the AO had exceeded the jurisdiction and travelled beyond the scope of remand by visiting the



premises and obtaining statements from the vendor and passed a fresh assessment order under Section 143(3) which is without jurisdiction.

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10. It is her further contention that the Director of the appellant company had not voluntarily admitted and given a statement but the statement had been obtained only by coercion and therefore that cannot be a basis for disallowing the depreciation claim. Learned counsel further contended that the AO did not have any power to record a statement from the supplier by issuing summon under Section 131 of the Act in the remand proceedings and therefore, the appellate authority rightly set aside the disallowance made by the AO, however the Tribunal failed to appreciate the facts in proper perspective and allowed the appeal.

11. Mr.T.Ravikumar, learned Senior Standing Counsel for the revenue contended that when the whole issue was in respect of disallowance of the depreciation on machinery, the CIT (Appeals) remitted the matter back to the AO to consider all the materials to be produced by the assessee and pass a fresh order on merits. Only since the assessee failed to submit the materials with respect to the purchase made by them and after providing ample opportunities, the AO had complied with the directions of the appellate authority by issuing summons under Section 131 to the assessee and on



failure, the AO had visited the premises of the assessee and recorded sworn statement on 22.12.2000.

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12. As the machineries were not available and the assessee has not submitted any purchase invoices and had taken contrary stands, the AO visited the finance company who had financed the assessee for purchase of the machinery. Based on the sworn statement recorded from the seller, the assessee was given sufficient time and opportunity to respond to the statement that no machinery was sold to them and that the invoice was prepared and issued only for the purpose of availing the loan. Only since the assessee company along with their auditor did not wish to cross-examine the seller who was present and further had admitted by their letter dated 19.02.2001 that the assessment could be completed by disallowing the claim of depreciation, the AO had passed the assessment order by disallowing the depreciation claim on machineries.

13. As such the AO has not exceeded the jurisdiction and in fact when the matter was remanded back to the AO for considering the issue in respect of the disallowance of the depreciation, he had to necessarily gather all the materials in the absence of the same being supplied by the assessee to pass the fresh order as directed by the CIT (Appeals). In support of his



contentions, the learned Senior Standing Counsel relied on the following decisions:-

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- i.Ramanlal Kamdar Vs. Commissioner of Income Tax reported in (1977) 108 ITR 0073 (Madras)*
- ii.P.R.Narahari Rao Vs. Commissioner of Income Tax reported in (2008) 299 ITR 400 (Kerala)*
- iii.Anjuga Chit Fund (P.) Ltd. Vs. Deputy Commissioner of Income-Tax reported in (2009) 318 ITR 121 (Madras)*
- iv.Avasarala Technologies Ltd. Vs. Joint Commissioner of Income-tax reported in (2016) 66 taxmann.com 377 (SC)*

14. Heard the rival submissions of the respective counsels and perused the materials available on record.

15. The main dispute in the appeal is in respect of the disallowance of the depreciation on machinery for a sum of Rs.48,65,360/-. The assessee had filed the return for assessment year 1996-97 by admitting a loss of Rs.33,210/-. The return was selected for scrutiny and the notice under Section 143(2) was issued on 21.07.1998 by fixing the hearing on 06.08.1998 and subsequently to other dates. The assessee had neither submitted the necessary particulars nor participated in the enquiry, except in few hearings where the assessee had sought for adjournment. In spite of adjourning the hearing to nearly 14 occasions and providing a final opportunity, the assessee did not turn up for the enquiry by filing relevant materials. Since no material was forthcoming and the assessee did not cooperate with the assessment proceedings, the AO completed the assessment



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under Section 144 of the Act by assessment order dated 19.03.1999. The claim of depreciation on machinery for a sum of Rs.48,65,360/- and loss on sale of car for a sum of Rs.1,12,000/- was disallowed.

16. On the appeal preferred by the assessee in ITA No.140/1999, the appellate authority by order dated 18.07.2000 allowed the appeal on the ground that the AO ought not to have come to the conclusion that the machinery was not installed and the depreciation claim was false, only because the details were not furnished before him and therefore held additions made by the AO cannot be sustained. The assessee was directed to furnish all the details before the AO within a period of 15 days from the date of receipt of a copy of the order and the AO was directed to afford opportunity relating to the depreciation and consider the same and pass a speaking order. The relevant portion of the order is extracted hereunder:-

“2.4. On going through the record and submissions of the learned counsel, I find that there was sufficient justification for the Assessing Officer to pass an ex parte Order under section 144 of the Income Tax Act. However, it is to be noted that even in an ex parte Order, the Assessing Officer will have to weigh the evidence on record and the attendant circumstances and facts before deciding to add any income or to deny claims. In the instant case, the only reason for effecting the additions seems to be that the details were not furnished before the Assessing Officer. Beyond this, the Assessing Officer has not gone into or found out any facts calling for disallowance of substantial depreciation of the order of Rs.50 lakhs. It is to be noted that the appellant is a Limited Company and its accounts had, in fact, been audited under the Companies Act. Therefore, just because certain details were not furnished before the Assessing Officer, the Assessing Officer cannot jump to a conclusion that the machinery were not installed and depreciation claims were false. No material has been brought on record by the Assessing Officer even to remotely suggest that the



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*appellant was not entitled for depreciation. Considering the summary manner in which the Assessing Officer has proceeded to disallow substantial depreciation exceeding Rs.50,00,000/-, loss on sale of car of Rs.1,12,000/- and adding interest income only on the ground that it was not shown separately in the Return of Income, in the interest of justice, the additions made by the Assessing Officer cannot be sustained. The Assessing Officer is, therefore, directed to give the appellant an opportunity to place before him all the information relating to the accounting of interest Income as also the depreciation and loss on sale of car. **The Assessing Officer should consider all the facts so presented and then, pass a speaking Order on the point bringing out the reasons for the conclusion that he has drawn. The appellant is directed to furnish to the Assessing Officer within 15 days of receipt of this Order, all the details which it wants the Assessing Officer to consider before giving effect to this Order.***

17. On remand the assessee did not submit any particulars within 15 days, as per the directions of the CIT (Appeals). However the AO had fixed the hearing on 01.09.2000, calling upon the assessee to submit the necessary particulars regarding depreciation. In spite of the enquiry being adjourned to 15.09.2000, 20.09.2000, 18.10.2000, 23.10.2000, 07.11.2000 and 08.12.2000, the authorised representative of the assessee has appeared and promised that he will file the day book, ledger and purchase invoice by 18.12.2000, however no records were forthcoming and as such the AO issued a summon under Section 131 dated 20.12.2000 calling upon the assessee company to produce the above records on 03.01.2001. The assessee had not responded to the summons.



18. As the assessee was not cooperating and being left with no other option, the AO had visited the premises of the assessee company wherein a sworn statement was recorded on 22.12.2000. In the statement, the Director of the assessee had stated that he will file the purchase invoices on 26.12.2000 and for the first time he took a stand that the day book and ledger got destroyed by white ants, when even as on 07.11.2000 they had sought time for submitting these records.

19. Since the machinery were not found in the premises on the day of recording the sworn statement, when questioned about the whereabouts, it was responded that some of the machineries were destroyed due to the collapse of the building and they had requested for time to submit all the relevant records. As the assessee failed to submit purchase invoices and also failed to submit any other relevant records for completing the proceedings, the AO proceeded with the enquiry by visiting the finance company who had financed the assessee for purchase of the machinery. From the financiers M/s.Operating Lease and Hire Purchase Ltd. and M/s.South Asian Finance Exchange Ltd., the AO had collected the invoice based on which the assessee claimed depreciation.

20. As per the invoice, one M/s.R.D.Enterprises (P) Ltd., at No.65, Pantheon Road, Egmore, Chennai, had supplied the machinery in which



Mr.Gopal Damani was the Director. To ascertain the genuineness of the sale of machinery, the AO on visiting the address found that only a textile showroom by name M/s.Abhishek was available in the premises. Based on the same, the AO had recorded the sworn statement of Gopal Damani on 30.01.2001 in which he had stated that they have not sold any machinery to the appellant based on the invoices relied on by them and since the Director of the assessee was his maternal uncle, he had simply issued this invoice to enable them to avail the finance from the finance company which amount he had withdrawn and given to the assessee. There is no such manufacture of machinery at all in their company and hence the question of selling that machinery to the assessee does not arise. To be noted that M/s.R.D.Enterprises (P) Ltd., is only dealing with the sale of Bombay Dyeing Textiles.

21. From the invoice procured from the two financiers and the visit made to the seller company which resulted in the recording of the sworn statement on 30.01.2001, it became evident that there had been no actual sale / supply of machinery to the appellant company and the sale invoice was issued by the seller without actual supply but for the purpose of availing hire purchase loan. The sale price was withdrawn by the assessee after depositing



it in the sellers account and again by using the invoice without actual supply of machinery, the assessee had made the claim of depreciation on machinery.

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22. On finding that there has been no actual supply of machinery and the bogus claim has been made towards depreciation of machinery based on the invoice, the AO had issued summons under Section 131 to Mr.Gopal Damani, to appear for enquiry on 30.01.2001 which he failed to appear. Later when the Director of the appellant Mr.B.K.Bagdi appeared for enquiry along with his Chartered Accountant, Mr.K.S.Raghunath for the hearing on 14.02.2001, a copy of sworn statement of Mr.Gopal Damani was furnished for the response. After taking an adjournment, the appellant along with the Chartered Accountant and Mr.Gopal Damani had appeared for enquiry on 19.02.2001 and the appellant was provided with an opportunity to cross examine Mr.Gopal Damani who was present, in respect of the sworn statement given by him.

23. Again on 19.02.2001, Mr.Gopal Damani had submitted a letter reiterating that they had neither manufactured those machineries nor purchased from anybody and therefore there was no question of supplying the machineries to the appellant. The appellant had thereafter given a letter dated 19.02.2001 stating that they did not wish to cross-examine Mr.Gopal Damani and had admitted that the assessment can be completed by



disallowing the claim of depreciation, based on which, the AO had completed the assessment and passed the assessment order dated 19.02.2001. The order sheet had also been signed by the appellant along with the auditor and the Director of M/s.R.D. Enterprises (P) Ltd., the seller in the invoice. The relevant portion of the order is extracted hereunder:-

*"From the above statement, it could be seen that Mr.Gopal Damani has only issued sale invoices without actually supplying the machinery. The modus operandi adopted by the assessee Company to claim bogus depreciation is cheques received from the financiers was deposited in M/s.R.D.Enterprises (P) Ltd., and Mr.Gopal Damani withdraws this money to be handed over to Mr.B.K.Bagdi of M/s.H.M. Bros. (P) Ltd. **There is no purchase of machinery by assessee Company and consequently there is no depreciation.** For claiming bogus depreciation and there by to reduce the taxable income, the assessee Company's director has utilised this Private Limited Company of his nephew. It could be seen that M/s.R.D.Enterprises (P) Ltd., has given this "Accommodation" to other Companies and thereby actively co-operated in reducing the taxable income of other Companies. For example, a sworn statement was recorded from Mr.Gopal Damani on 25.7.98 where he has admitted that he gave "Bogus invoices" to M/s.Operating Lease and Hire Purchase Ltd. Based on these invoices M/s.Operating Lease and Hire Purchase Ltd., (M/s.OLHPL) has also claimed depreciation which was disallowed while completing the assessment of M/s.OLHPL. Consequent to this, M/s.OLHPL has paid taxes on this bogus depreciation claim which strengthens the Department's case of bogus depreciation (Incidentally, Mr.Gopal Damani gave a sworn statement to the undersigned only in the case of M/s.OLHPL).*

Now, summons u/s.131 were issued to Mr.Gopal Damani, coming to our case to appear before the undersigned on 30.1.2001. But, Mr.Damani also did not appear in this office in response to summons, obviously at the behest of Mr.B.K.Bagdi of M/s. H.M.Bros. (P) Ltd.

On 14.2.2001, Mr. B.K.Bagdi has appeared in this office along with his Chartered Accountant, Mr.K.S.Raghunath and Mr.B.K.Bagdi was given a copy of sworn statement recorded from Mr.Gopal Damani, Mr.B.K.Bagdi was asked whether the contents of the letter are correct or not, for which he has stated that he needs time till 19.2.2001 and hence the case was adjourned to 19.2.2001 (Annexure 8). After lot of pursuation, both Mr.Gopal Damani and Mr.B.K.Bagdi have appeared in this office on



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19.2.2001 alongwith Mr.K.S.Rahunath, FCA. Mr.B.K.Bagdi was given a copy on 19.2.2001 of sworn statement of Mr.Gopal Damani, and specifically asked whether he wants to cross examine Mr.Gopal Damani, who was also present n 19.2.2001. This question was asked in the presence of Mr.K.S.Raghunath, F.C.A. On 19.2.2001, Mr.B.K.Bagdi, has given a letter stating that he does want to cross-examine Mr.Gopal Damani, (Annexure 9). On 19.2.2001 Mr.Gopal Damani has also submitted a letter in this office stating that he has given bills for Rs.93,48,000 to M/s.H.M.Bros. (P) Ltd., as if machinery was sold to it (Annexure 10). He has further stated in his letter that he neither manufactured these machineries nor purchased from anybody and hence there is no question of supplying this machinery to M/s.H.M.Bros (P) Ltd.

Since there is no alternative to the assessee Company, they have finally admitted that the assessment can be completed by disallowing the claim of depreciation. Mr.B.K.Bagdi of H.M.Bros. (P) Ltd., Mr.Gopal Darmani of M/s.R.D.Enterprises (P) Ltd and Mr.Raghunath, C.A., have all signed this Order sheet on 19.2.2001 (Annexure 11-Order sheet).

In view of the above, the claim of depreciation on the machinery is disallowed and the assessment is completed.”

24. In the further appeal preferred by the assessee in I.T.A.No.14/2001-02, the appellate authority by order dated 07.06.2002 had allowed the appeal and had deleted the disallowance in respect of depreciation claim on machinery. The CIT (Appeals) had allowed the appeal on the ground that when the matter was remanded back to the AO he was only directed to give the appellant an opportunity to place all materials relating to depreciation and decide on the basis of the facts so presented, but the AO wanted details from the appellant for making an assessment. The AO had travelled beyond the directions contained in the remand order as the earlier assessment was not set aside in a strict sense. Further, the AO had only



verified the proforma invoice in respect of one financier and had not considered the other materials and thereby had deleted the disallowance.

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25. In fact, when the return was selected for scrutiny and notice under Section 143(2) was issued, as referred earlier, the assessee had failed to furnish any relevant materials even after providing nearly 14 opportunities by fixing the hearing on various dates and only as the appellant failed to co-operate with the enquiry, assessment came to be completed under Section 144 of the Act and an order was passed by disallowing the depreciation claim on machinery to the tune of Rs.48,65,360/-.

26. When the matter was remanded by the CIT (Appeals) by order dated 18.07.2000 only on the ground that the disallowance should not have been made merely because of the non-submission of the materials, the AO was directed to afford an opportunity to the appellant to furnish the relevant materials relating to the claim of depreciation on machinery within 15 days from the order, which would be considered by the AO and a speaking order on that point bringing out reasons for the conclusion had to be passed.

27. As referred earlier, it is clear that on remand, the appellant was given ample opportunity but he has not availed the same by submitting the records within the time as set out in the order of CIT (Appeals). Still the AO



had fixed the hearing on various dates to enable the assessee company to produce the relevant materials, but no record was forthcoming and there was only scope of the earlier order being reiterated. However to comply with the directions of the CIT (Appeals) to pass a speaking order in respect of the claim of depreciation of the assessee company, the AO on 20.12.2000 has issued a summon under Section 131 of the Act calling upon the assessee company to attend the hearing along with day book, ledger and original invoices of machinery etc. There was no response for the summons. Only under such circumstances, as the assessee company was not co-operating to finalise the proceedings as per the directions of CIT (Appeals), the AO had visited the business premises of the appellant and since no records were submitted to him, a sworn statement was recorded on 22.12.2000.

28. However the assessee had not submitted the invoice for the purchase of machinery or any other materials and had been taking contrary stands. In order to complete the proceedings, the AO proceeded to visit the finance company for collecting a copy of invoice and from the invoice, it came to light that the seller in the invoice is not dealing with the products mentioned as supplied. Based on the sworn statement recorded from the Director of the supplier, the *modus operandi* of the assessee who had obtained an invoice without actual supply of the machinery for the purpose of



availing finance surfaced and also the further bogus claim for depreciation on the machinery was also ascertained.

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29. The appellant was also afforded an opportunity to cross-examine the Director of the seller company, who had given a sworn statement that no such machinery was supplied. But the appellant gave a written statement that they do not wish to cross-examine him and thereby they were not ready to avail the opportunity to controvert the evidence and further they have admitted the non-supply and submitted for finalisation of the assessment by disallowing the claim of depreciation and pursuant to which the assessment order came to be passed.

30. Therefore, the finding of the CIT (Appeals) that AO had exceeded his jurisdiction and the matter was remanded only to consider the claim of depreciation without setting aside the assessment order cannot be sustained. The disallowance of depreciation claim was deleted and was remanded back to the AO for passing a fresh speaking order on the claim of depreciation by considering the materials to be placed. When the relevant records have not been placed before the AO inspite of providing sufficient opportunities, we find no error in the approach of the AO in issuing the summon under Section 131 of the Act calling upon the assessee to produce the invoice and the relevant materials and as the same was not responded, in

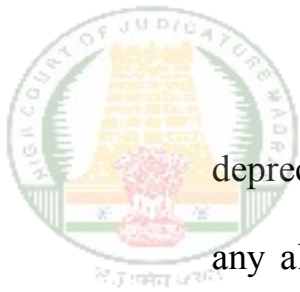


visiting the premises of the assessee, which led to conclusion of the proceedings.

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31. On the appeal preferred by the Revenue, the ITAT by order dated 04.02.2011, rightly allowed the appeal and restored the disallowance towards depreciation claim on the machinery. The Tribunal had considered all the above materials in respect of non-supply of the machinery to the appellant, the sworn statement recorded by the Director of the supplier in invoice and the statement furnished by the appellant along with the Chartered Accountant expressing their unwillingness to cross-examine the seller and also admitting for completing the assessment by disallowing the depreciation claim.

32. Further in respect of the arguments advanced by the appellant counsel that the statement was only obtained by coercion, the same has not even been raised neither before the ITAT nor in this appeal. After a sworn statement was recorded from the seller to the effect that no actual supply of machinery was made and that the invoice was only prepared and issued for availing finance and when the supplier was summoned and the Director of the appellant was furnished with the sworn statement and he was permitted to cross-examine the seller, the appellant along with the representative had in writing expressed their unwillingness to cross-examine him and also further gave a statement admitting to complete assessment by disallowing the



depreciation claim. The statement of the appellant was never retracted nor any allegation of coercion was made before the appellate authority. As the submission alone was made that too only before the Tribunal alleging that the AO had resorted to coercion, the same was also dealt with by the Tribunal and rejected as in spite of ample opportunity for the appellant to submit evidence, the same was not availed and the AO had only the limited role to enquire and pass a speaking order in the remand proceedings. The relevant portion of the order of ITAT is extracted hereunder:-

“12. We support the above opinion because the assessee admittedly accepted before the Assessing Officer in writing and should not have any grievance in contesting the issue. The allegation that Assessing Officer resorted to coercion etc. cannot be accepted as the Assessee got enough opportunity to submit evidence /make its claim in the scrutiny proceedings, but not availed. It is also not search proceedings /original assessment proceedings. These are remand proceedings and the Assessing Officer had limited powers to enquire and make a speaking order. Considering the issue in that context the assessee's allegation that there was a promise by the AO for not initiating the penalty proceedings before surrender, can not be accepted. It is for the assessee to submit the evidence at the appropriate time in support of the claim. Assessee did not co-operate in the original scrutiny proceedings nor furnishing any evidence as directed by the CIT(A) and not forthcoming in furnishing the necessary evidences support of claim. Considering that the Assessing Officer did make enquiry to establish the genuineness or otherwise of purchase of machinery, but only in one case do indicate that it is the assessee who is not co-operating and confronted had no option than to surrender. It is also admitted that no hire charges were received so as to show the usage of machinery. Be that as it may, since on merits the assessee has not submitted any details before the Assessing Officer as per directions of the CIT(A), to that extent that depreciation disallowance made by the Assessing Officer in the order 144 should get confirmed. The CIT(A) was not correct in allowing depreciation



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with out establishing the purchase and usage of machinery and even without the purchase invoices on record. Accordingly, we have no hesitation in setting aside the order of the CIT(A) dt. 16.7.02 and restoring that of Assessing Officer.”

33. As such it is clear that the appellant was not able to produce the relevant materials either within the period of 15 days as per the order of remand or even subsequently when sufficient time was granted and the appellant was only taking contrary stands. On procurement of the invoice from the financier by the AO, the seller in the invoice was summoned and particulars were sought for which resulted in recording of the sworn statement by which the *modus operandi* of the appellant came to light where the invoice had been issued without actual supply of the machinery.

34. After the facts tumbled out, the assessee did not pursue further and had voluntarily avoided the cross examination of the seller and also admitted for the assessment to be completed by disallowing the depreciation claim. As such the argument that the statement was obtained by coercion deserves no merit and is accordingly rejected.

35. The learned Senior Standing Counsel for the revenue contended that the appellant is not at all an aggrieved person and therefore the appeal itself is not maintainable. The appellant having admitted for completing the assessment, cannot challenge the same. To buttress his submission, he relied



on the decision of this Court in the case of **Ramanlal Kamdar Vs.**

Commissioner of Income Tax reported in **(1977) 108 ITR 0073 (Madras)**,

wherein a reference was sought for by the Tribunal, the Division Bench of this Court held that only if an assessee was aggrieved by the order of the ITO, he had the right to file an appeal before the appellate authority and once the assessment was made pursuant to the statement made by the partner, the assessee could not have any grievance and in such circumstances, even the appeal before the appellate authority was incompetent and consequently the further appeal to the Tribunal was also incompetent. Paragraph 3 of the decision reads as follows:

“3. We are of the opinion that the appeals to the AAC and to the Tribunal, by the assessee, were incompetent. We have already referred to the fact that one of the partners of the assessee, viz., Shri Chandulal Kamdar, appeared before the ITO on 27th Oct., 1967, and stated that the assessee had no objection to the proposed revision. Once the assessee had stated that it had no objection to the proposed revision and the ITO had also revised the original assessment as proposed by him, the assessee could not be said to have been aggrieved by the order of the ITO. Only if the assessee was aggrieved by the order of the ITO, he had the right to file an appeal before the AAC and once the assessee could not have had any grievance in view of the statement made by the partner, the appeal to the AAC was incompetent and equally the appeal to the Tribunal was incompetent. If so, the reference to this Court of the two questions said to arise out of the order of the Tribunal is also incompetent. We may point out in this context the fact that one of the partners of the assessee appeared before the ITO and stated that the assessee had no objection to the proposed revision has not been disputed at any stage and even before us, and every one of the authorities, viz., the ITO, the AAC and the Tribunal has referred to this fact in the course of their orders.”



36 In view of the aforesaid decision, when the Director of the appellant had given a statement admitting to complete the assessment by disallowing the depreciation claim, the appellant cannot be an aggrieved person to file an appeal as against the assessment. Might be only to overcome the same, the appellant would have made a futile submission before the Tribunal that the statement was obtained by coercion.

37. Further the learned Senior Standing Counsel by placing reliance on the decision of the Hon'ble Supreme Court in the case of *Avasarala Technologies Ltd. Vs. Joint Commissioner of Income-tax* reported in *(2015) 373 ITR 34 (SC)* submitted that once the purchase of machinery itself was found to be false and the transaction was sham, the claim of depreciation cannot be sustained. In the instant case also, from the fact that the seller was only dealing with textiles and was not in manufacture of any machinery, the sworn statement recorded to the effect that the invoice was prepared without actual supply of the machinery for the purpose of availing finance, the machineries were not available on the date of visit by the AO and no records were submitted to substantiate the supply of machineries and the appellant taking contrary stands at different points of time, it is clear that no actual supply of machinery was made through the invoice. Further inspite of sufficient opportunities, the assessee failed to submit any records in respect



of the usage of the machinery and therefore the Tribunal had rightly allowed the appeal and deleted the disallowance made by the appellate authority.

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38. In view of the above, both the substantial questions of law are answered as against the appellant and in favour of the Revenue. We see no error or infirmity in the findings arrived at by the Tribunal and accordingly, this Tax Case (Appeal) stands ***dismissed***. There shall be no order as to costs.

[A.S.M.J.] [G.A.M.J.]
22.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

sri



T.C.(A) No.638.c

To

The Deputy Commissioner of Income Tax,
Company Circle II(2),
Chennai - 600 034.



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T.C.(A) No.638 of 2011

Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

sri

Pre-Delivery Judgment made in
T.C.(A) No.638 of 2011

22.01.2025