IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 13TH DAY OF NOVEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE K.NATARAJAN

INCOME TAX APPEAL No. 283 OF 2010

BETWEEN:

Smt. Madhu Solanki
W/o Sri. Shantilal Solanki
C/o Rajendra Metals
No.2, KRS Road
Mysore. … Appellant

(By Sri A.Shankar and
Sri M.Lava, Advocates)

AND:

The Income –Tax Officer
Ward-1(3)
HMT Bhavan, Ganganagar
Bellary Road
Bangalore-560 032. …Respondent

(By Sri K.V.Aravind, Advocate)

This income tax appeal is filed under section 260-A of I.T Act, 1961 arising out of order dated: 29.03.2010 passed in ITA No.974/BNG/2009 for the Assessment year 1998-99, praying to i) formulate the substantial questions of law stated therein ii) allow the appeal and set aside the order passed by the ITAT Bangalore in ITA No.974/BNG/2009, dated 29.03.2010 and etc.

This income tax appeal, coming on for hearing this day, RAVI MALIMATH J., delivered the following:

J U D G M E N T

The appellant is an individual assessee carrying on business in iron and steel in the name of M/s.Madhu Steels. She filed a return of income for the assessment year 1998-99 declaring income from business at Rs.68,594/- and from other sources at Rs.8,091/-, in all total of Rs.76,685/-. The case was selected for scrutiny and notice under Section 143 (2) was issued. Assessing officer passed an assessment order and determined the total income at Rs.2,27,940/-. Thereafter the premises were subjected to survey under Section 133A of the Income Tax Act. Statements were recorded of the appellant. Based on the submissions the assessments were reopened. The assessing office thereafter proposed to add a sum of Rs.46,61,745/- as bogus creditors in respect of credit purchases made by the appellant from M/s.Magnum Trading Company and M/s.Sharada Enterprises. The assessment order was passed adding the said amounts. Aggrieved by the same, an appeal was filed before the CIT (Appeals) which was dismissed. Aggrieved by the same, an appeal was filed before the Tribunal which was also rejected. Hence, this appeal.

2. By the order dated 28.10.2010, the appeal was admitted to consider the following substantial questions of law:

> *(i) Whether the Tribunal was justified in not adjudicating the ground raised by the appellant, in respect of assumption of jurisdiction for reassessment under Section 147 which is the foundation for a valid assessment, is bad in law on the facts and circumstances of the case?*
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> *(ii) Whether on the facts and circumstances of the case, the notice issued under Section 148 is valid in law?*
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> *(iii) Whether the Tribunal was justified in law in confirming the additions of Rs.18,89,884/- being the amount due to M/s.Magnum Trading company and consequently passed a perverse order by confirming the additions made by the Assessing Officer under Section 68 of the Act, on the facts and circumstances of the case?*
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> *(iv) Whether the Tribunal was justified in law in confirming addition of Rs.27,71,861/- being the amount due to M/s.Sharada Enterprises and*

consequently passed the perverse order by confirming the additions made by the Assessing Officer under Section 68 of the Act, on the facts and circumstances of the case?

(v) Without prejudice whether the Tribunal was justified in law in not holding that the income determined by the Assessing Officer will lead to an absurd Gross Profit ratio and consequently the addition ought to have been deleted on the facts and circumstances of the case?

(vi) Whether the addition of Trade creditors closing balance can be made under Section 68 of the Income Tax Act on the facts and circumstances of the case?

(vii) Whether the authorities below are justified in law in holding that the appellant is liable to pay interest under Sections 234B and 234C of the Act on the facts and circumstances of the case?

3. Both the learned counsels submit that the substantial questions of law require to be re-framed. Therefore, they have addressed arguments with regard to the same.

4. On hearing learned counsels we are of the considered view that the following substantial questions of law arise for consideration in this appeal:

> *(i) Whether the Tribunal was justified in not adjudicating the ground raised by the appellant, in respect of assumption of jurisdiction for reassessment under Section 147 which is the foundation for a valid assessment, is bad in law on the facts and circumstances of the case?*
>
> *(ii) Whether the authorities committed an error in adding a sum of Rs.46,61,745/- as bogus creditors thereby resulting in a gross profit ratio of 58.29%?*

5. Learned counsel for the appellant contends that the question of jurisdiction goes to the root of the case; that the Tribunal has not even considered the contentions regarding the jurisdiction for re-assessment under Section 147 of Income Tax Act. His further contention is that the assessing authority committed an error in adding a sum of Rs.46,61,745/- on the basis that they are bogus creditors. But if such a reasoning is to be accepted, then, in that event, the gross profit ratio would almost amount to 58.29%, which

cannot be accepted. The same is disputed by the learned counsel for the Revenue.

6. Heard learned counsels.

7. In so far as question of jurisdiction for re-assessment under Section 147 of the Income Tax Act is concerned, the Tribunal should have considered the said contention. The plea of the appellant is that the re-assessment could not have been done. Therefore, there was no jurisdiction to pass such an order. Whatever may be the plea of the appellants, non-consideration of the said ground which pertains to jurisdiction has not been considered by the Tribunal. Therefore, non-consideration of the question of jurisdiction is erroneous. In these circumstances, the first question is answered in favour of the assessee by holding that the Tribunal was not justified in ignoring the grounds urged by the appellant with regard to jurisdiction for re-assessment under Section 147 of the Income Tax Act.

8. In so far as second substantial question of law is concerned, learned counsel for the assessee contends that as a consequence to the additions, gross profit ratio would

amount to 58.29%, which is erroneous and that the same cannot be accepted. Therefore, the addition is erroneous, it requires to be reconsidered. Some of the material placed by the assessee have not been considered properly by the Tribunal. The same is disputed by the learned counsel for the Revenue.

9. However, on hearing learned counsels, we are of the view that the contentions of the assessee requires to be accepted. If the amounts are added on then the gross profit ratio would amount to almost 58.29% which is erroneous. It does not arise in the said type of business of the assesee; that there cannot be such a huge profit ratio of 58.29%. Moreover certain material placed by the assessee have not been considered. Therefore, we are of the view that the matter requires to be reconsidered by the Tribunal. Under these circumstances, the second substantial question is answered in favour of the assessee by holding that the authorities committed an error in adding a sum of Rs.46,61,745/- as bogus creditors with respect to the credit purchase made by the assessee. As a consequence to answering both the substantial questions of law, the appeal is

allowed. The order of the Tribunal dated 29.03.2010 passed in I.T.A.No.974/Bang/2009 is set aside. The matter requires to be reconsidered afresh by the Tribunal. All contentions are left open.

Sd/-
JUDGE

Sd/-
JUDGE

Cm/-