

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2014

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THE HON'BLE **MR.JUSTICE R.SUDHAKAR**
AND
THE HON'BLE **MR.JUSTICE R.KARUPPIAH**

T.C.(A).No.424 of 2014

Commissioner of Income Tax
Coimbatore.

.. Appellant

Vs.

Shri.K.Thirumoorthy,
prop. M/s.Aravind Bottle Suppliers,
7/25, Bangaru Complex,
NSN Palayam, Coimbatore - 641 031.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 17.10.2013 in I.T.A.No.965/Mds/2013 for the assessment year 2009-10.

For Appellant : Mr.T.R.Senthilkumar
Standing Counsel for
Income Tax

J U D G M E N T

(Delivered by *R.SUDHAKAR, J.*)

This Tax Case (Appeal) is filed by the Revenue challenging the order of the Income Tax Appellate Tribunal for the assessment year 2009-10, raising the following substantial questions of law:

(2)

- (i) Whether under the facts and circumstances of the case, the Tribunal was right in confirming the order of the CIT(A) directing the assessing officer to delete the addition made towards unexplained cash credit to the extent of Rs.41,38,474/-?
- (ii) Whether based on the material available before it, the Tribunal could have arrived at a conclusion that the assessee had made payments to the creditors in the subsequent year and that the credits are genuine?"

2. The respondent/assessee is an individual trading in old bottles. In completing the assessment of income for the assessment year 2008-09 under Section 143(3) of the Income Tax Act, the Assessing Officer added a sum of Rs.47,58,616/- as unexplained credits holding that the credits appearing in the name of various parties as unconfirmed balances. Aggrieved by the said order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who partly allowed the appeal directing the Assessing Officer to delete the addition to the extent of Rs.41,38,474/-. While doing so, the Commissioner of Income Tax (Appeals) took note of the payments made by the assessee to the creditors by NEFT/RTGS through the State Bank of India, Narasimhanaickenpalayam branch, the details of which are set out in paragraph 7 of the order of the Commissioner of Income Tax (Appeals). Aggrieved by the said order of the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal.

(3)

3. The Tribunal extracted the details of the trade creditors, which was extracted by the Commissioner of Income Tax (Appeals). For better clarity, the same is reproduced below:

"6. I have gone through the submissions made by the appellant and also the order of the Assessing Officer. During the course of assessment proceedings, the Assessing Officer verified the balances of sundry creditors. The Assessing Officer issued letters to the parties as per the addresses mentioned in the confirmation letter. The confirmations were received from Sri.Karpaga Vinayaga Bottle Co., Salem, M/s.Vijay Krishnan Enterprises, Chennai and Supreme Bottle Suppliers, Coimbatore. Some of the parties did not respond to the letters issued by the Assessing Officer. The Assessing Officer asked the assessee to prove the genuineness of these credits by furnishing the bank statements to subsequent year reflecting the payments. The appellant submitted the bank statement of subsequent year and A.O. on verification stated in the order "Though there are fund transfer from these accounts, there is no clear indication as to whom these funds were transferred. The A.O. also received confirmation letters from M/s.Varsha Bottle Suppliers, ARavind Traders, Kubera Trading Service and Shajid Traders. On observing these confirmation letters the A.O. doubted the genuineness of these confirmation letters. The A.O. after verification of all the details summarized the unconfirmed balance of 14 creditors amounting to Rs.47,58,616/- and made the addition.

7. During the course of appellate proceedings, the AR submitted the details creditor wise showing the payments made to the trade creditors by NEFT/RTGS through the SBI, Narasinhanaickenpalayam branch.

(4)

(i) Aravind Traders: In this case, the amount disallowed by Assessing Officer is Rs.7,54,572/-. The appellant furnished the details of payments made to the creditor in the subsequent year 2009-10. Copies of paid cheque with bank stamp and also the bank statements showing the debits were furnished. From all these details, it is clear that the outstanding balances were paid by the appellant. Hence, the addition has to be deleted.

(ii) Balaji Enterprise: The amount disallowed by the Assessing Officer as outstanding balance was Rs.6,17,169/-. The appellant on 26.6.2009 has paid Balaji Enterprise through RTGS transfer, an amount of Rs.7,00,050/-. Since these payments are reflected in the banks statements, the addition is to be deleted.

(iii) Dharshini Bottles: The addition on account of outstanding balance is Rs.1,01,397/-. In this case also, the appellant paid the trade creditor on 26.6.2009 by RTGS transfer. The addition has to be deleted.

(iv) Jayarahava Traders: The addition made in this case was Rs.56,272. The appellant submitted that on 30.12.2009, an amount of Rs.31,200/- was paid through banking channels. Similarly, the appellant submitted that an amount of Rs.18,000/- was paid by cash on 5.1.2010 and 16.1.2010. However, in the ledger extracts, these cash deleted and the balance amount added is confirmed.

v) Kubera Trading Service: The addition made was Rs.11,42,776/-. The appellant submitted the details of bank account reflecting the RTGS transfer during the financial year 2009-10. On verification of these details, the addition made by the Assessing Officer needs to be deleted.

vi) Pandian Bottle Stores: In this case, the addition made was Rs.64,816/-. The appellant furnished cheque details for payment of these amount on 13.4.2009. Hence, the addition is to be

(5)

deleted.

vii) R.B.I. Bottles: *The addition made by the Assessing Officer was Rs.57,200/-. The appellant submitted that the amounts were paid by cash on 6.4.2009, 17.4.2009 and 4.5.2009. However, the ledger copy furnished did not show the payments on these dues. Hence, genuineness could not be proved by the AR. The addition is confirmed.*

viii) Shajith Traders: *The addition made was for Rs.7,19,166/-. The appellant filed the details of payments made by RTGS transfer along with the bank statement. The appellant paid on various dates through banking channels in the financial year 2009-10. Hence, the addition made by the Assessing Officer is to be deleted.*

ix) *In the case of Southern Bottle Suppliers and Sapthagiri Bottle Suppliers, the appellant could not prove with sufficient proof regarding the cash payments made by him to the traders. The addition of Rs.60,320/- and 72,301/- is confirmed.*

x) Bottle Suppliers: *The addition made on account of sundry creditors was Rs.4,05,248/-. The appellant submitted that during the financial year 2010 and 2011, the payments were made by cash. However, the appellant could not produce further evidences to prove the genuineness of these transactions. Hence, the addition of Rs.4,05,248/- is confirmed.*

xi) Supreme Bottles: *In the case of Supreme Bottles, the addition made was Rs.97,520/-. The appellant filed reconciliation statement along with account copies.*

xii) Varsha Bottle Suppliers: *The AR submitted that the appellant is buying one type of bottle from Varsha Bottle Suppliers and selling them another type of bottles. These transactions were mutually netted off in the subsequent year. Copies of purchase and sales invoices were produced for verification. The addition of*

(6)

Rs.6,09,856/- is to be deleted."

4. After considering the details of the trade creditors, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals). Aggrieved by the said order, the Revenue is before this Court raising the above-mentioned substantial questions of law.

5. Heard Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

6. A faint plea was made that the Commissioner of Income Tax (Appeals) has failed to follow the procedure under Rule 46A of the Income Tax Rules. We find that the Department has raised six grounds in the appeal before the Tribunal, but this issue does not appear to figure therein. They were primarily on merits of the claim of the assessee on unexplained credit balance.

7. We find that the Commissioner of Income Tax (Appeals) has gone into the individual transaction on merits holding that payments were made through banking transactions and deleted the addition. The Tribunal has also once again verified the same and held in favour of the assessee.

8. Being pure question of fact, which was verified by the Commissioner of Income Tax (Appeals) and again verified by the Tribunal

(7)

and confirmed the same, we find no question of law much less any substantial question of law arises for consideration in this appeal.

9. In the result, this Tax Case (Appeal) stands dismissed. No costs.

(R.S.J.) (R.K.J.)
22.12.2014

Index : No
Internet : Yes
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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "D", Chennai.
2. The Commissioner of Income Tax (Appeals) -I,
Coimbatore.
3. The Income Tax Officer,
Ward II (3), Coimbatore

(8)

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

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