IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2014

CORAM

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

T.C.(A).Nos.339 and 340 of 2014

The Commissioner of Income Tax
Central Circle II
Chennai – 600 034. .. Appellant

Vs.

R.S.Suriya .. Respondent

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 23.8.2013 made in I.T.A.Nos.1197 and 1198/Mds/2013 for the assessment years 2007-2008 and 2008-2009.

For Appellant	:	Mr.M.Swaminathan Standing Counsel
For Respondent	:	Mr.N.V.Balaji

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

The Revenue has filed these appeals challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 23.8.2013 made in I.T.A.Nos.1197 and 1198/Mds/2013 for the assessment years 2007-2008 and 2008-2009, by raising the following questions of law:

(i) Whether on the facts and circumstances of the case, the Tribunal is justified in allowing certain expenditures on adhoc basis though the assessee failed to discharge the onus and establish that the liability rests in him and no on the producer to incur such expenditure?

(ii) Whether on the facts and circumstances of the case, the Tribunal is justified in allowing expenditure on adhoc basis when the assessee failed to adduce proof of having incurred such expenditure wholly and exclusively for the purpose of his business?

(iii) Whether on the facts and circumstances of the case, the Tribunal is correct in upholding the order of the Commissioner of Income Tax (Appeals) who has allowed further relief while the assessee has not produced any evidence either before the Assessing Officer or before the Appellate Authorities?

(iv) Whether on the facts and circumstances of the case, the Tribunal is correct in upholding the order of the Commissioner of Income Tax (Appeals) who has allowed further relief when the Assessing Officer has determined the expenditure based on the books of accounts and bank statements?

2. Though the wordings of the Tribunal giving reasons in support of the order dismissing the appeals filed by the Revenue before the Tribunal may not be appropriate in language, we find that there is some justification to accept the plea made by the respondent/assessee for

certain allowable expenditure, which he had claimed before the Assessing Officer and the Commissioner of Income Tax (Appeals) and was partly allowed by the Commissioner of Income Tax (Appeals) in favour of the assessee.

3.1. The facts in a nutshell are as under: The assessee claims to be a leading film artist. There was a search under Section 132 of the Income Tax Act, 1961 (for brevity, "*the Act*") in the premises of the assessee on 19.1.2010. In response to the notice under Section 153A of the Act, the assessee filed his return of income for the assessment years 2007-2008 and 2008-2009 admitting total income of Rs.5,21,64,811/- and Rs.6,48,51,620/- respectively.

3.2. The assessee claimed professional expenditure to the tune of Rs.2,42,44,718/- for the assessment year 2007-2008. The Assessing Officer made a disallowance of Rs.89,00,962/- for want of evidence in respect of the expenditure incurred. Likewise, for the assessment year 2008-2009, the assessee claimed professional expenditure to the tune of Rs.3,61,57,151/- and the Assessing Officer made a disallowance of Rs.97,26,722/- for want of evidence.

3.3. As the assessee failed to submit any evidence in support of his claim of expenditure as above, the assessments were completed under

Section 143(3) read with Section 153A of the Act for both the assessment years on 30.12.2011.

3.4. Assailing the orders passed by the Assessing officer, the assessee preferred appeals. The Commissioner of Income Tax (Appeals), by order dated 27.3.2013, held that though there is no supporting evidence, the incurring of expenditure by the assessee, who is an actor, at different places where shooting takes place cannot be ruled out. He further held that the assessee is required to incur expenses on costumes and make up, wig material, health and gymnasium, dance and fight master, stills and publicity, telephone charges, travelling expenses, etc. The Commission of Income Tax (Appeals), considering the nature of expenses incurred by the assessee, deleted the addition of Rs.25,00,000/- and Rs.35,00,000/- for the assessment years 2007-2008 and 2008-2009 respectively.

3.5. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the department preferred appeals before the Tribunal, which confirmed the order passed by the Commissioner of Income Tax (Appeals) and dismissed the appeals filed by the department. Hence, the Revenue has filed these appeals on the questions of law, referred supra.

4. We have heard Mr.M.Swaminathan, learned Standing Counsel

appearing for the Revenue and Mr.N.V.Balaji, learned counsel appearing for the assessee.

5. The primal contention of the learned counsel for the Revenue is that the Commissioner of Income Tax (Appeals) as well as the Tribunal erred in allowing the expenditure on ad hoc basis when the assessee has failed to adduce proof of having incurred expenditure for costumes, make up, wig material, etc.

6. For the two assessment years, we find that the assessee had claimed expenses under various heads. The Assessing Officer disallowed some of the expenses claimed by the assessee in excess of Rs.20,000/- in terms of Section 40A(3) of the Act and other expenses claimed were disallowed for want of evidence. But, the Commissioner of Income Tax (Appeals) was of the view that the claim of the assessee for the two assessment years was justified on account of his professional calling as a leading cinema artist. The Commissioner of Income Tax (Appeals), taking note of the nature of the assessee's professional occupation, partly allowed the appeal and the addition to the tune of Rs.25,00,000/- and Rs.35,00,000/- for the assessment years 2007-2008 and 2008-2009 respectively was deleted and the balance addition was confirmed. The relevant portions of the orders passed by the Commissioner of Income Tax (Appeals) read as under:

"I.T.A.No.196/11-12/A.II, dated 27.3.2013 (Assessment Year 2007-2008)

6.4. The next issue is disallowance of other expenses of Rs.89,00,962/- by holding them as not relevant for the purpose of business and also on the ground that the expenses were not supported by necessary evidences. In this regard, the ld.AR has admitted that there are no supporting evidences to prove the claim. However, considering the nature of expenses which a film actor incurs, he requested to take a lenient view. I have duly considered the matter. Additions of Rs.11,27,100/- and Rs.24,65,149/- have already been sustained in this order. There is no dispute regarding rendering of professional services by the appellant. He has also offered professional receipts as his income. Though there is no supporting evidences, the incurring of expenditure by the appellant actor at different places where shooting takes place cannot be ruled out. He is required to incur expenses on costumes and make-up expenses, wig material, health and gymnasium, dance and fight masters, stills and publicity, telephone charges, travelling expenses etc. It would be fair and reasonable if further expenses of Rs.25,00,000/- is allowed towards this end. Accordingly, addition of Rs.25,00,000/- is deleted and the balance addition is confirmed. Hence, the ground is partly allowed."

I.T.A.No.197/11-12/A.II, dated 27.3.2013 (Assessment Year 2008-2009)

6.3. The next issue is disallowance of other expenses of Rs.97,26,772/- by holding them as not relevant for the purpose of business and also on the ground that the expenses were not supported by necessary evidences. In this regard, the ld.AR has admitted that there are no supporting evidences to prove the claim. However, considering the nature of expenses which a film actor incurs, he requested to take a lenient view. I have duly considered the matter. Additions of Rs.6,77,900/- and Rs.1,60,99,940/- have already been sustained in this order. There is no dispute regarding rendering of professional services by the appellant. He has also offered professional receipts as his income. Though there is no supporting evidences, the incurring of expenditure by the appellant actor at different places where shooting takes place cannot be ruled out. He is required to incur expenses on costumes and make-up expenses, wig material, health and gymnasium, dance and fight masters, stills and publicity, telephone charges, travelling expenses etc. It would be fair and reasonable if further expenses of Rs.35,00,000/- is allowed towards this end. Accordingly, addition of Rs.35,00,000/- is deleted and the balance addition is confirmed. Hence, the ground is partly allowed."

7. The Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) holding as follows:

"14. .... Being a professional actor, there is substantial merit in the claim of the assessee that travelling expenditure, wig and makeup expenditure would have been incurred by him for keeping up the profile required of an actor. To presume that all the makeup and travelling expenditure of an actor would be met by the producers, would be off the mark. Almost all the professional actors are having their own personal makeup technicians in their support staff and also a dedicated support staff for grooming. Considering these aspects, we are of the opinion that the CIT(Appeals) was justified in giving a relief of Rs.25 Lakhs on the disallowance of Rs.89,00,962/- made by the Assessing Officer. We do not find any reason to interfere with the relief given by the CIT (Appeals).

...

25. As far as Revenue's appeal is concerned, the fact situation is almost similar to the preceding assessment year. The total disallowance made by the Assessing Officer, against expenditure of Rs.3,61,57,151/- claimed by the assesseem, came to Rs.2,83,63,924/-. Out of the above amount, a sum of Rs.59,59,101/- was suo motu disallowed by the assessee in his computation statement. The balance disallowance comprised of sum of Rs.1,60,99,940/- under Section 40A(3), Rs.6,77,900/- under Section 40(a)(ia) of the Act and Rs.56,26,983/- for want of evidence. CIT (Appeals) had given a relief of Rs.35 Lakhs on the disallowance of Rs.56,26,983/-. Break-up of Rs.56,26,983/- shows that it included costume design charges of Rs.8,65,000/-, Dietitian charges of Rs.6 Lakhs, boarding & lodging expenses of Rs.11,98,148/-, Fan Club expenses of Rs.12,63,835/- and Press meeting expenditure of Rs.5 Lakhs. Whole of the claim of Dietitian Charges, costume design charges and boarding & lodging charges were disallowed by the A.O. In the nature of the profession of the assessee, we cannot say that these

> expenditures were not relevant and necessary for maintaining his profile. We are therefore of the opinion that the CIT (Appeals) was justified in giving a relief of Rs.35 Lakhs considering the relevant aspects and also circumstances of the case. We do not find any need to interfere with the order of CIT (Appeals)."

8. The Tribunal, taking note of the various heads under which the expenses were claimed and also considering the merits of the assessee's claim for expenditure incurred on account of travelling, wig material, makeup and other supporting professional expenses, justified the order of the Commissioner of Income Tax (Appeals).

9. The assessee pleaded before the Commissioner of Income Tax (Appeals) as well as before the Assessing Officer that he is professional actor and expended amount on account of wigs, makeup and other accessories for the purpose of his profession as a cine artist and also incurred expenditure on account of his professional calling as an actor. While major part of the claim was disallowed under Section 40A(3) of the Act, the Commissioner of Income Tax (Appeals) found that there is reasonableness in the claim of the assessee insofar as the expenses incurred towards travelling, wig, makeup, costumes, etc. The Commissioner of Income Tax (Appeals) has decided the issue on the basis of the statement made by the assessee and taking into consideration the overall expenditure claimed under various heads, thought it fit to allow the

expenditure in a sum of Rs.25 Lakhs under these heads for the assessment year 2007-2008 and Rs.35 Lakhs for the assessment year 2008-2009. The said finding of fact was confirmed by the Tribunal.

10. We find this is a pure question of fact and there is no substantial question of law involved for us to consider the matter as a tax appeal. It is also not the specific case of the Revenue that the order of the Commissioner of Income Tax (Appeals) as well as the Tribunal is perverse or in violation of any provision of law. The grounds of appeal raised are pure questions of fact and, therefore, we find no merits in these appeals.

In the result, these appeals are dismissed. No costs. Consequently, M.P.No.1 of 2014 in T.C.(A) No.340 of 2014 is closed.

(R.S.J.) (R.K.J.)
27.10.2014

Index : No
Internet : Yes

sasi

To:

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Chennai Bench "B", Chennai.

2. The Secretary, Central Board
   of Direct Taxes, New Delhi.

3. The Commissioner of Income Tax (Appeals) - II
   Chennai.

4. The Assistant Commissioner of Income Tax
   Central Circle II(5)(i/c), Chennai.

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

(sasi)

T.C.(A).Nos.339 and 340 of 2014

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