IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) No.736 of 2019

C.Jayantilal
Proprietor, Sha Kantilal Jayantilal
No.41/7, Strotten Muthiah Mudali Street
Chennai – 600 079. .. Appellant

v.

The Income Tax Officer
Business Ward X(2)
Chennai – 600 006. .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 17.12.2008 made in ITA.No.1886/Mds/2007, for the assessment year 2005-2006.

For Appellant : Mr.S.Ramesh Kumar

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

JUDGMENT

(Delivered by *The Hon'ble Acting Chief Justice*)

The assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 aggrieved by the order dated 17.12.2008 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in ITA.No.1886/Mds/2007.

2. The proposed substantial questions of law raised in the present appeal, as suggested in the memo of appeal, are quoted below for ready reference:

> *"1. Whether on the fact and in the circumstances of the case the Income Tax Appellate Tribunal was right of law in disallowing and bad debts written off by the appellant as the same was irrecoverable for the financial year 2004-2005 relating to the bad debts for the assessment year 2001-2002 is correct in law?*
>
> *2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in confirming the disallowance of interest without considering the material documents like TDS Certificate*

and other documents is correct in law?

3. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in rejecting allowance claimed in the expenditure head towards telephone and vehicle maintenance expenses is correct in law?

4. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in confirming the addition on the low drawings without assigning any legally acceptable reasons is correct in law?

5. Whether on the facts and in the circumstances of the case the Hon'ble Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) without recording independent finding based on the material facts and circumstances pleaded and argued by the appellant is correct in law?"

3. The relevant portion of the order passed by the learned Income Tax Appellate Tribunal is also quoted below for ready reference:

"2. The grounds raised by the assessee in his appeal are that the CIT (Appeals) has erred in confirming the addition of Rs.10,36,129/- by way of bad debts written off, Rs.93,773/- towards interest, Rs.21,351/- by way of disallowance of expenditure and Rs.25,000/- on the ground of low drawings.

3. On the other hand, the grounds raised by the Revenue are that the CIT (Appeals) is not justified in deleting the addition of Rs.17,71,932/- on account of excess stock and also another addition of Rs.20 lakhs on account of amount declared in the assessee's letter. Another ground raised by the Revenue is that the CIT (Appeals) is not justified in deleting the addition made on account of gross profit of Rs.7,05,469/- and also the addition of Rs.11 lakhs made against unexplained cash credit.

4. We hard both sides in detail. The additions/disallowances made by the Assessing Officer in the assessment order have been systematically discussed by the CIT (Appeals), item by item, in his appellate order. He has recorded ample reasons for deleting various disallowances. Reliefs were granted *only on the basis of valid grounds successfully explained by the assessee.*

5. Therefore, in the facts and circumstances of the case, we find that the issues involved in both these appeals are factual issues, adjudicated by the CIT (Appeals) fairly and reasonably on the basis of materials available on record. His findings are not perverse. Therefore, we do not find any reason to disturb the order passed by the first Appellate Authority."

4. The matter was placed before the Bench of this Court on 24.9.2019 for condonation of delay of 40 days in filing the appeal. The delay was condoned on 24.9.2019 and that is why the matter has been placed for admission before the Bench today, though the impugned order of the learned Income Tax Appellate Tribunal is of very old date, namely, 17.12.2008.

5. Having perused the order of the learned Income Tax Appellate Tribunal and after hearing the learned counsel for some time, we are of the clear opinion that such a cryptic and non speaking order of the

learned Income Tax Appellate Tribunal cannot be sustained at all. The learned Income Tax Appellate Tribunal, which is the final fact finding body, ought to have discussed the facts of the case; grounds raised; contentions raised on behalf of the assessee and the Revenue, and then arrived at a finding of fact, giving their own reasons.

6. We do not find any such discussion in the three page order passed by the learned Income Tax Appellate Tribunal, which has given raise to five substantial questions of law, as stated above. Therefore, we are inclined to remit the matter back to the learned Tribunal without expressing any opinion on the merits of the contentions sought to be raised before us. Further, it is expected of the learned Income Tax Appellate Tribunal to pass a speaking order showing application of mind to the relevant facts and law.

7. The appeal is, accordingly, disposed of without answering the substantial questions of law at this stage. No costs.

A copy of this judgment may be sent to the President of the Income Tax Appellate Tribunal as well as the Law Secretary of the Ministry of Law and Justice, Union of India, for information.

(V.K.,ACJ.) (C.S.N.,J.)
03.10.2019

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To:

1. The Registrar,
   Income Tax Appellate Tribunal,
   Madras "A" Bench,
   Chennai.

2. The Commissioner of Income Tax (Appeals)-IV
   Chennai – 600 034.

3. The Income Tax Officer
   Ward X(2), Chennai – 600 006.

THE HON'BLE ACTING CHIEF JUSTICE
AND
C.SARAVANAN, J.

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