IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF JULY 2012/18TH ASHADHA 1934

ITA.No. 158 of 2011 ( )

ITA.705/COCH/2010 of I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT:

M/S.K.H.FLOOR GALLERY (P) LTD.
111/1057A, MELE MANJALINGAL,
KALLADIPATTA, PATTAMBI,
PALAKKAD - 679 313.REPRESENTED BY
ITS MANAGING DIRECTOR
K.H.ABDUL GAFOOR.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SMT.RUKHIYABI MOHD KUNHI
SRI.R.JAIKRISHNA

RESPONDENT :

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE I, PALAKKAD.

BY ADVS. SRI.P.K.R.MENON,SR.SC,FOR INCOME TAX
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DSV/-

ITA.No. 158 of 2011 ( )

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE-A: COPY OF THE BIT NOTICE CIRCULATED BY THE APPELLANT.

ANNEXURE-B: COPY OF THE ORDER OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE I, PALAKKAD - AY-2007-2008.

ANNEXURE-C: COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS), KOCHI.

ANNEXURE-D: COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, KOCHI BENCH IN ITA 705/COCH/2010.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

DSV/-

THOTTATHIL B. RADHAKRISHNAN &

K. VINOD CHANDRAN, JJ.

I.T.A.No. 158 OF 2011

Dated this the 9th day of July, 2012

J U D G M E N T

K. Vinod Chandran,J

The assessee, the appellant herein, is engaged in the business of sanitary wares, marbles, granites and vitrified tiles. While completing the assessment for the assessment year 2007-2008, the Assessing Officer sought explanation regarding the amounts shown as advance in cash, in the accounts of the assessee coming to Rs.25,48,623/-. The assessee replied stating that the same were advances from persons who had made orders for specified marbles and granites but that the address and details of the persons were not known to them. The Assessing Officer hence made an addition to the income of the assessee for the relevant previous year treating it as unexplained cash credits. The assessee having not been able to furnish details with respect to two sundry creditors exceeding Rs.1,00,000/-, the same was also disallowed and added to the income returned. The assessee having paid the freight charges and not having deducted 'TDS', the freight charge claimed also was disallowed under Section 40(a)(ia) of the Income Tax Act, 1961 (hereinafter called 'the Act'). The assessee having unsuccessfully challenged the additions/disallowance before the two Appellate Authorities is before this court.

2. The assessee has raised three substantial questions of law as hereunder:

> "1. Whether the authorities below are right in law in sustaining the disallowance of Rs.2,02,160/- by invoking Section 40(a)(ia) for non deduction of TDS on freight

> charges particularly when Section 194C has no application to the context?
>
> 2. Whether the authorities below are right in law in invoking Section 41(1) to sustain the addition of Rs.2,19,670/- in the hands of the appellant in as much as the said head was a liability for the appellant and the same has not been ceased during the concerned accounting year?
>
> 3. Whether the authorities below are justified in treating the advance amounts received by the appellant (amounting to Rs.25,48,623/-) received from different customers) for supply of materials as cash credits under Section 68 of the Income Tax Act?”

We have heard Sri.Mayankutty Mather, the learned counsel appearing for the appellant/assessee and Sri. Jose Joseph, the learned Standing Counsel appearing for the Revenue. Sri. Mayankutty Mather would forcibly urge that the disallowance made by the Assessing Officer was on a wrong application of the provisions of the Act. Sri. Jose Joseph, however, would support the orders of the Lower Authorities.

3. The first Question raised by the assessee is with respect to the disallowance of freight charges on account of TDS not being deducted. The assessee would contend that it had no privity of contract with the transporter and since it was the supplier who arranged for shipment of the goods, the liability to pay freight charges was not on the assessee and consequently there was no liability to deduct TDS. The Tribunal, on facts, found that the assessee had made the payment towards freight charges directly to the transporter and it was not a case where such payments were debited to the supplier's account. It was found that the assessee had not produced any

material to establish the contention of the assessee, but from making a bald assertion. It was also found from the records that the assessee had made the payment subsequently after the due date and the Tribunal refused to consider the argument of the assessee that the department had entered the finding of liability to freight charges merely on the fact of the subsequent deposit made. The disallowance was on facts and we are afraid that no question of law arises from the said issue.

4. The next question raised by the assessee is with regard to the two sundry creditors totalling Rs.2,19,670/-; whereagain the assessee had not produced anything to show the subsisting liability towards the alleged creditors. In fact, there was no evidence placed with respect to the payments made

and no consequent acknowledgment of such credits were proved by the assessee. The said addition also, in our opinion, does not give rise to any question of law.

5. The last question urged by the assessee is with respect to the cash credits added on to the income returned. On going through the assessment order, it is revealed that the assessee had contended the cash credits to be advances from customers who had made orders for specified goods. This according to the assessee was received as any prudent businessman would do, towards future delivery of products. However, in the same breath the assessee would contend that the details of the persons who made such advances were not known to them. This display of ignorance would itself belie the contention

of advance received in lieu of future delivery. The department's case that the said advances were cash infused by the assessee into the business to make up the short fall in cash was found by the Tribunal to be a fact evident and emanating from the assessee's books of accounts.

7. The disallowance were made on all counts by valid exercise of authority by the Assessing Officer and the assessee failed miserably in establishing its contentions on a factual basis before all the Lower Authorities. The order of the Tribunal upholding the disallowances and the consequent addition made to the income returned is one purely based on facts. It does not give rise to any question of law. The questions raised by the assessee, extracted above, cannot at all be termed as questions of law. Hence

despite the vehement arguments addressed by the learned counsel appearing for the assessee, we are unable to persuade ourselves to exercise the jurisdiction conferred under Section 260A of the Act. As a consequence the appeal is rejected.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K. VINOD CHANDRAN, JUDGE

/True Copy/

P.A. to JUDGE

DSV/-