

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Orders Reserved On 01.02.2021	Orders Pronounced On 05.02.2021
----------------------------------	------------------------------------

T.C.A.No.535 of 2019
and
C.M.P.No.16211 of 2019

M/s.Tatia Sky Line & Health Farms Ltd.,
Now known as M/s.Ashram Online.Com Ltd.,
Rep., by its Chairman cum Director,
Shri. Pannalal Tatial,
Regd., Office No.B-81, 2nd Main Road,
Ambattur Industrial Estate, Chennai-600 058. ... Appellant/Appellant

-VS-

The Assistant Commissioner of Income Tax,
Central Circle III(4), Ayakar Bhavan,
Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.
(Now Re-designed as Company Circle-I(1) ... Respondent/Respondent

Appeal under Section 260A of the Income Tax, 1961 against the
order dated 31.08.1998, made in I.T.A.No.219/Mds/1998 on the file of the

Income Tax Appellate Tribunal Chennai Bench 'C' for the assessment year 1994-95.

For Appellant : Mr.J.Sivananda Raj

For Respondent : Ms.V.Pushpa,
Senior Standing Counsel

JUDGMENT

T.S.Sivagnanam, J.

This appeal, filed by the appellant/assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 31.08.1998, passed by the Income Tax Appellate Tribunal Chennai Bench 'C' (for brevity “the Tribunal”) in I.T.A.No.219/Mds/1998 for the assessment year 1994-95.

2.The appellant/assessee has raised the following substantial questions of law:-

“(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in deciding the issue without taking into consideration the paper book filed by the Appellant, after acknowledging the fact that these papers had been produced before the lower authority?”

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in refusing to either go through the evidence themselves, or to remand the matter for appreciation of evidence, on the suspicion and surmise that the Appellant would fabricate evidence in the event of remand?

(3) Whether on the facts and in the circumstances of the case, the Tribunal after acknowledging the fact that a part of the expenditure was for the purpose of inviting membership of health farm, was right in law in refusing to analyse the evidence to quantify the same or remand the matter to the assessing officer to do the same? and

(4) Whether on the facts and in the circumstances of the case, the expenditure incurred on promoting the membership drive for the health farms can be ignored merely because the members started coming in only in the next financial year?"

3.The assessee, a public limited company, is in the business of running health farms and resorts. For the assessment year under Consideration, AY 1994-95, the assessee, in its return of income, claimed a sum of Rs.1,89,84,676/- as revenue expenditure. The Assessing Officer called upon the assessee to furnish details to which, the assessee responded

stating that the said amount represents the expenses incurred by the assessee for public issue. The Assessing Officer rejected the claim made by the assessee on the ground that expenses incurred for public issue has to be treated as a capital expenditure and in this regard, placed reliance on the decision in *Metro General Credits Ltd., vs. CIT [(1996) 221 ITR 99 (Madras)]*.

4.The assessee further stated that the expenses can be regarded as integral part of the profit earning process and not for acquisition of any assets or a right of permanent character and the decision in *Metro General Credits Ltd.,* (supra) will not apply to the assessee's case.

5.The correctness of the stand was examined by the Assessing Officer, who opined that the details filed in respect of the expenses clearly bring out the capital nature of the expenditure and the assessee-company wanted to raise more capital, hence went in for public issue, which has enduring advantage and has to be regarded as capital expenditure.

6.The assessee preferred appeal before the Commissioner of Income Tax (Appeals)-I, Madras (for brevity “the CIT(A)”). The appeal was dismissed by order dated 28.11.1997. Aggrieved by such order, the assessee preferred appeal to the Tribunal, which has been dismissed by the impugned order. Challenging the same, the assessee is before us.

7.Mr.J.Sivananda Raj, learned counsel appearing for the appellant submitted that the findings rendered by the Tribunal will clearly show that some portion of the expenditure was incurred by the assessee for the purpose of inviting membership for the then proposed health farm and the Tribunal having noted the same, ought to have examined as to what was the expenditure incurred for inviting membership to the then proposed health farm and without undertaking any such exercise, the appeal has been dismissed by the Tribunal and therefore, it is his endeavour to convince this Court that the matter should be remanded to the Assessing Officer for fresh consideration to take note of all the documents already produced by the assessee before the Assessing Officer as well as before the CIT(A) and the

Tribunal. In this regard, the learned counsel had referred to several portions of the order passed by the CIT(A) and the Tribunal.

8.Further, it is submitted that at the relevant point of time, there was an uncertainty as to whether such expenditure was to be regarded as a capital expenditure or a revenue expenditure and there was a genuine confusion in the mind of the assessee and the matter stood settled only after the decision of the Hon'ble Supreme Court in **Brooke Bond India Ltd., vs. CIT [(1997) 10 SCC 362]**. Therefore, it is submitted that the matter may be remanded to the Assessing Officer to reconsider the documents and arrive at a proper decision.

9.Per contra, Ms.V.Pushpa, learned Senior Standing Counsel for the Revenue submitted that for the first time before the CIT(A), the assessee claimed that all expenses are revenue expenditure and did not relate to the public issue and the correctness of the submission was tested by the CIT(A) and a finding was rendered upon examination of the printed accounts, which showed that the assessee had described the deferred revenue expenditure as

expenditure on public issue only and not even one rupee was collected as membership subscription by the assessee during the accounting year, when the membership drive is supposed to have taken place along with the public issue in September, 1993 and the postage expenditure of Rs.20.20 Lakhs on the actual despatch of brochures for membership was claimed to have been incurred in November/December, 1993. The membership subscription of Rs.42,34,900/- was received only during the accounting year 1994-95. Therefore, it is submitted that the contention advanced by the assessee, before the CIT(A) for the first time, was rightly rejected as an afterthought. Once again, the finding rendered by the CIT(A) was examined by the Tribunal and after assigning elaborate reasons, the Tribunal has rejected the appeal. Even before the Tribunal, the assessee argued for remanding the matter for fresh consideration, which was independently considered by the Tribunal and held that there is no necessity for remanding the issue to the Assessing Officer for fresh consideration. Therefore, it is submitted that no substantial question of law arises for consideration in this appeal.

10.We have elaborately heard the learned counsels for the parties and carefully perused the materials placed on record.

11.Since the learned counsel for the appellant has confined his argument praying for remand of the matter to the Assessing Officer, we shall proceed to consider the issues raised before us from that perspective.

12.The sheet anchor of the argument of Mr.J.Sivananda Raj, is on the observations of the Tribunal in paragraph 5 of the impugned order. It is his submission that the Tribunal having held that there was expenditure for the purpose of inviting members for the proposed health farm, the Tribunal could not have brushed aside the same stating that it is a small expenditure incurred by the assessee and it is not for the Tribunal to consider whether the expenditure is a large expenditure or a small expenditure, as the said matter should be looked from the eyes of the assessee.

13.The second limb of the argument of Mr.J.Sivananda Raj rests upon the decision in the case of **Brooke Bond India Ltd.** (supra), and it is argued

that at the relevant time, there was an uncertainty in the legal position and therefore, the assessee was advised to claim the expenses as revenue expenditure.

14.Perusal of the assessment order shows that in the statement of computation of total income, the assessee claimed a sum of Rs.1,89,84,676/- as deferred revenue expenditure. The Assessing Officer called for details from the assessee, in response to which, it was stated that the expenditure represents public issue expenditure. The Assessing officer tested the stand of the assessee for its correctness and by applying the decision in ***Metro General Credits Ltd.***, (supra), held that the expenditure incurred for augmenting the capital of the assessee-company by public issue has an enduring effect and therefore, to be treated as capital expenditure.

15.For the first time before the CIT(A), the assessee appears to have given certain breakup details and stated that such of those expenditure was apart from the expenditure incurred by them for the public issue and such expenditure cannot be regarded as a capital expenditure because, it was for

conducting a membership drive for enlisting members in one of their projects. Thus, it could be seen that for the first time before the CIT(A), the assessee sought to bi-circulate the expenditure into one, which was incurred for the public issue and the other for the membership drive.

16.The CIT(A) examined the matter for its correctness, perused the printed accounts of the relevant accounting year and held that not even one rupee was collected as membership subscription by the company during the accounting year, when the membership drive is supposed to have taken place along with the public issue in September, 1993. Further, the CIT(A) held that from the prospectus of the public issue, issued in September, 1993, the assessee had only finalized plans for bulk marketing through three contracting parties and from the subsequent annual report for the accounting year 1993-94, these balances were shelved and as of June, 1994, publicity material was under preparation. Therefore, the CIT(A) concluded that the assessee's claim that the expenses classified as 'public issue expenses' included expenses of membership drive embarked upon simultaneously, is an afterthought for which there is no basis.

17. Before the Tribunal, the assessee canvassed the same grounds raised before the CIT(A), but with more vehemence and the Tribunal appears to have heard the matter at great length, perused the copies of various documents placed by the assessee in the form of a paper book during the course of hearing. The Tribunal by an elaborate order, has dismissed the appeal. The Tribunal in paragraph 6 has noted that the assessee is a public limited company, its accounts were prepared and finalized by the In-house Finance and Accounts Department, who have certified that the entire expenditure was towards public issue. The said accounts were approved by the Board of Directors of the assessee as per the report dated 27.06.1994. The Chartered Accountants of the assessee agreed with the Board of Directors and certified that the accounts give a true fair view of the state of affairs of the company. Thereafter, the accounts were placed before the shareholders at the General Body Meeting and the same was also approved. Thus, the Tribunal concluded that all these events clearly prove that the expenditure was for public issue of shares and not partly for public issue and partly for membership drive of the health farm as contended by the assessee.

18.Further, after referring to all the bulk documents produced before the Tribunal, it held that the assessee miserably failed to establish the tenability and truthfulness of its claim that the expenditure was revenue in nature and hence, allowable. The Tribunal approved the finding of the CIT(A) with regard to the effect of the judgment in **Brooke Bond India Ltd.**, (supra).

19.From, paragraph 7 of the impugned order, we find that the assessee had made an elaborate submission requesting the Tribunal to remand the matter back to the Assessing Officer for fresh consideration. The Tribunal rightly noted the various decisions of this Court and the Hon'ble Supreme Court, which have cautioned that orders of remand should be passed only in cases, where the original authorities have not passed orders in accordance with law, but in no case, remand should be made to enable an assessee to fill in the blanks or lacuna in the case which remains present. After noting various decisions on the power of the Tribunal to remand matters to the authority and under what circumstances can the Court pass orders of remand, the Tribunal, on facts, was convinced that there is no

case made out by the assessee to remand the matter back to the Assessing Officer for fresh assessment. Further, the Tribunal accepted the argument of the Revenue that if the plea of remand is to be accepted at such a belated stage (1998), there is likelihood of tinkering with the evidence and remand will be prejudicial and detrimental to the interest of revenue and accordingly, rejected the prayer for remand.

20. We have set out the above facts to show that no question of law, much less substantial question of law arises for consideration in this appeal. The entire factual matrix has been examined by the Assessing Officer at the first instance, based upon the stand taken by the assessee. Before the CIT(A), for the first time, the assessee set up a case as if portion of the expenses was not relatable to public issue. The CIT(A) would have been well justified to pin down the assessee to their original claim in the return of income filed and reject their case. However, in order to ensure that the assessee gets a fair deal and the correct income needs to be taxed, the stand taken by the assessee was examined for its correctness. After elaborately considering the matter, the CIT(A) found that the assessee miserably failed

to establish the tenability and truthfulness of its claim that the expenditure was revenue in nature. Once again before the Tribunal, the assessee made further attempt on the same grounds, which were considered by the Tribunal in great length and it was rejected.

21.As was argued by Mr.J.Sivananda Raj before us, the learned counsel for the assessee argued before the Tribunal for remanding the matter to the Assessing Officer. This prayer was rejected and rightly so. The Tribunal rightly noted the decisions on the point that an order of remand is not for the asking and superior courts should be slow in remanding a case to the authority, unless it is shown that the case warrants reconsideration on the already available material or when important legal issue was not considered and that cannot be considered by the Court because disputed facts have to be gone into otherwise, prayer for remand should be rejected.

WEB COPY

22.The Tribunal upon reconsideration of the factual position, found no justifiable reason to accept the prayer of the assessee to remand the

matter to the Assessing Officer and also rightly observed that the assessee cannot fill up the gaps and blanks by seeking for a remand. Further, the Tribunal also agreed with the submission of the Revenue that there is a likelihood of tinkering of the evidence in the meantime and if the same is permitted, it would be prejudicial and detrimental to the interest of the Revenue. Hence, we are not persuaded by the submissions made on behalf of the assessee both on merits as well as with regard to the prayer for remand and above all, we find no question of law, much less substantial question of law arising for consideration in this appeal.

23. Accordingly, the appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(T.S.S., J.) (R.N.M., J.)

05.02.2021

Index: Yes/ No
Speaking Order : Yes/ No

abr

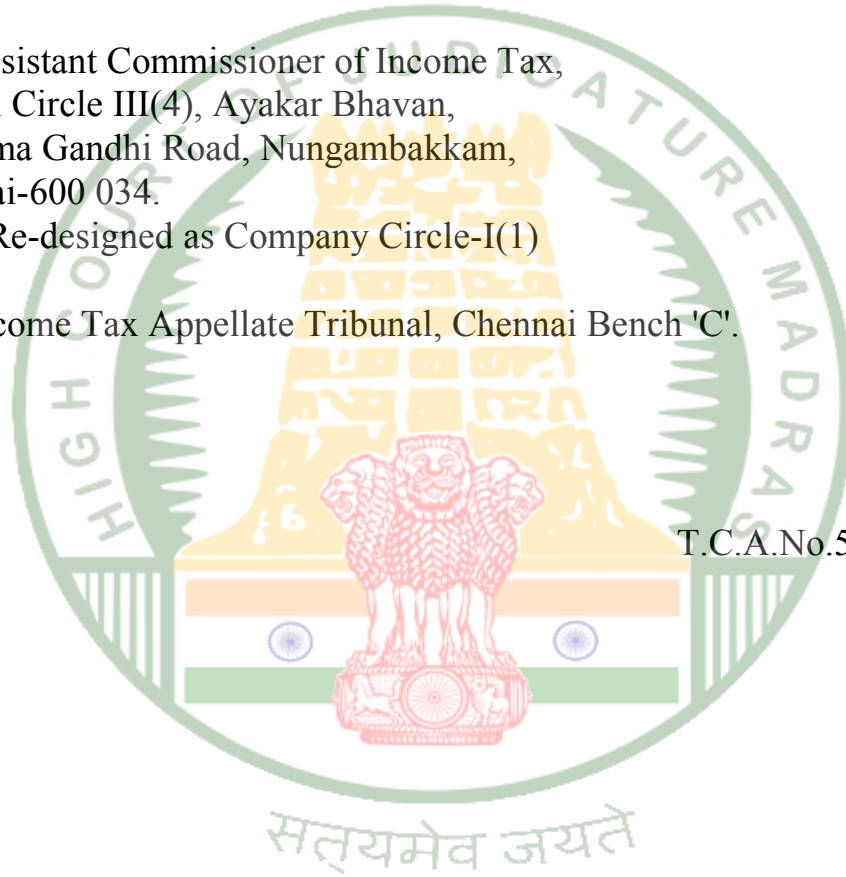
T.C.A.No.535 of 2019

T.S.Sivagnanam, J.
and
R.N.Manjula, J.

(abr)

To

- 1.The Assistant Commissioner of Income Tax,
Central Circle III(4), Ayakar Bhavan,
Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.
(Now Re-designed as Company Circle-I(1))
- 2.The Income Tax Appellate Tribunal, Chennai Bench 'C'.



T.C.A.No.535 of 2019

WEB COPY

05.02.2021