

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.4.2021

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNAM

and

THE HONOURABLE MS. JUSTICE R.N. MANJULA

Tax Case Appeal No.236 of 2021

The Commissioner of Income
Tax, Chennai

...Appellant

Vs

Shri Paul Devaraj

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 24.3.2016 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.No.885/Mds/2013 for the assessment year 2009-10.

For Appellant:

Mrs.R.Hemalatha, SSC

For Respondent:

Mr.A.S.Sriraman

Judgment was delivered by T.S. SIVAGNAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 24.3.2016 made in I.T.A.No.885/Mds/2013 on the file of

the Income Tax Appellate Tribunal, Chennai 'C' Bench ('the Tribunal' for brevity) for the assessment year 2009-10.

2. The Revenue has filed this appeal by raising the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the rejection of the accounts by the Assessing Officer was not proper ?

ii. Is not the finding of the Tribunal bad by holding peak credit adopted was the only method to find out the cash balances especially when the Assessing Officer has rejected the books of accounts ?

iii. Whether the finding of the Tribunal is proper especially when the books of accounts were rejected due to negative balances, inflation of expenses, unproved purchase, unidentified trade credit and due to publicity expenses incurred were not relating to the assessee's business?

iv. Whether the reasoning and finding of the Tribunal is proper especially when the assessee has not furnished details pertaining to the date on which the cash was withdrawn, the account number from which it was withdrawn especially when the books of

accounts shows no cash withdrawals except on the said dates contra entries were made in the cash books ?

v. Whether the finding of the Tribunal is proper especially when the Assessing Officer had granted allowance for secondary packing, given wastages in respect of polythene case and also took into account the arithmetical calculation of the estimated sales which come to 21,61,000 Kgs ?

vi. Whether the finding of the Tribunal is correct especially when the assessee is not maintaining proper books of account and details of unaccounted purchase were arrived at by looking into the purchase bills of the packing materials which is 17.2% of the turnover and the said bills were submitted by the assessee himself? And

vii. Whether the finding of the Tribunal is correct by deleting the additions made by the Assessing Officer on account of unaccounted purchases that too without any rational basis?"

3. We have elaborately heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.A.S. Sriraman, learned counsel accepting notice for the respondent/ assessee.

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4. The assessee is a dealer in turmeric powder. They filed the return of income for the relevant assessment year namely 2009-10 on 30.9.2009 admitting a total income of Rs.12,31,580/-. The case was selected for scrutiny, a notice was issued to the assessee and details were called for. The books of accounts, which were summoned, were produced before the Assessing Officer. The Assessing Officer found from the cash book that the assessee has negative cash balance in the cash book on various dates after 01.12.2008. After noting the other details, the Assessing Officer was of the view that the assessee was not able to give proper clarification or explanation regarding unaccounted cash inserted in the books of accounts, but merely stated that the assessee had withdrawn the cash from the bank. Thus, holding that there was no proper explanation, the Assessing Officer opined that the assessee inflated bogus expenses.

5. The assessee was called upon to produce necessary details and proof with regard to the cash paid for the purchase of turmeric. The assessee was stated to have given the addresses of 76 creditors, to whom cash had been given. However, the Assessing Officer disbelieved the same on the ground that the transactions of purchase recorded in the books have not been proved and accordingly treated the same as unproved purchases. After considering the other issues,

ultimately, the assessment was completed by order dated 30.12.2011 under Section 143(3) of the Act and the assessed income was determined at Rs.17,57,25,071/-.

6. Aggrieved by the said order of assessment dated 30.12.2011, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-IV, Chennai [for short, the CIT(A)]. During the pendency of the appeal, the CIT(A) called for a remand report from the Assessing Officer and thereafter, taking into consideration the stand taken by the assessee and the contents of the remand report, the CIT(A) allowed the appeal by order dated 27.12.2012. Aggrieved by that, the Revenue preferred an appeal before the Tribunal seeking to sustain the assessment order. The Tribunal, after taking note of the facts, dismissed the appeal filed by the Revenue. Challenging the same, the Revenue is before us by way of this appeal.

7. After carefully going through the impugned order as well as the order passed by the CIT(A), we find that the matter is entirely factual and the grounds, which have been raised before us, are all factual grounds and not questions of law much less substantial questions of law. We say so taking note of the findings recorded by the Tribunal in paragraphs 5, 9, 13, 17 and 20.

8. By way of illustration, we refer to the findings rendered by the Tribunal with regard to enhancement of turnover and estimating profit of the assessee.

9. The Revenue contended before the Tribunal that the Assessing Officer, by comparing the packing material consumed by the assessee vis-a-vis the actual quantity of turmeric powder sold, estimated the gross profit. The assessee claimed that 19,75,166.60 kgs of turmeric powder was sold in the market. However, the Assessing Officer calculated the probable sale of turmeric powder in the market at 37,90,500 Kgs, which was based on the packing material consumed by the assessee and accordingly, the total sales were estimated for the year under consideration at Rs.18,19,44,000/- as against the sale declared by the assessee at Rs.11,83,40,941/-. After considering the total sales, the Assessing Officer estimated the gross profit on the enhanced turnover at 18% and after allowing the overhead expenses, the net profit was determined at Rs.2,57,81,465/- as against Rs.11,82,054/- declared by the assessee.

10. Thus, the Revenue contended before the Tribunal stating that since the assessee consumed large quantity of packing material, the Assessing Officer rightly computed the gross profit by increasing the total turnover on the basis of packing material consumed.

Therefore, it is contended before us that the CIT(A) committed an error in deleting the addition made by the Assessing Officer under the said head.

11. Per contra, the assessee contended before the Tribunal stating that the Assessing Officer enhanced the turnover by comparing the packing material consumed by the assessee, which is incorrect and that there is an arithmetical error in the calculation done by the Assessing Officer. The Assessing Officer considered the secondary packing material as packing material consumed for the purpose of estimating the probable sales and when the remand report was called for from the Assessing Officer by the CIT(A), in the report dated 09.12.2012, the Assessing Officer confirmed that there was an error in the probable sales calculated in the assessment order. The assessee stated that the total quantity of the sales was 1,25,500 Kgs. However, the Assessing Officer added one more '0' and treated the same as 12,55,000 Kgs. This mistake was accepted by the Assessing Officer in the remand report and on account of such mistake, the figures, which got inflated, had to be necessarily reduced. The Assessing Officer reiterated the stand taken by them before the CIT(A) stating that there were two types of packing materials. One kind of packing material is used to pack turmeric powder in sachet

and the other is called as the primary packing material. The Assessing Officer did not know this important distinction and more particularly when the source of purchase was from two different sources. When this was pointed out to the CIT(A), the cost of the packing material was rightly added and the average sale price of turmeric powder was arrived at Rs.48/- per Kg and it was found that no prudent businessman would intend to add more weight to the packing material. Hence, the assessee contended that the Assessing Officer was not correct in adopting uniform weight for the sachets of different sizes and different weights for the same size. Further, before the Tribunal, the assessee sought to sustain the order passed by the CIT(A) by submitting that it was rightly found that the estimation of turnover was not scientific and that the estimation and enhancement of turnover as done by the Assessing Officer was imaginary.

12. The arguments of the learned counsel on either side were tested for their correctness by the Tribunal, which returned the following findings :

"17. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer estimated the probable sales on the basis of packing material said to be

used by the assessee. The fact remains that the assessee has used two types of packing material, one is secondary secondary packing material and another is primary packing material. The cost of packing material ranged from Rs.72/- to Rs.180/- per Kg whereas the average sale price of the turmeric powder is Rs.48/- per Kg. Therefore, the CIT (Appeals) came to a conclusion that no prudent businessman would add weight to packing material when the contents are of lesser value. The CIT (Appeals) further found that there is an arithmetical error in computing the packing material. The Assessing Officer has committed mistake by himself adding one more '0'. In fact, the actual sale of turmeric powder was 1,25,500 Kgs. However, the Assessing Officer has taken the same as 12,55,000 Kgs. The Assessing Officer confirmed the arithmetical mistake made by him, in the remand report dated 09.12.2012. Therefore, the estimation of the Assessing Officer with regard to sale of turmeric powder was reduced to 26,61,000 Kgs. After elaborately considering the quantity of packing material, the CIT (Appeals) came to a conclusion that some of the packing material consumed during the year under consideration

should not be considered for the purpose of calculating the quantity of sales made during the year. Some of the packing material consumed during the year was actually used for turmeric powder manufactured and packed and was lying in the closing stock. The volume of such closing stock as on 31.03.2009 was 1,15,345 Kgs. The opening stock as on 01.04.2008 was 6,856 Kgs. Therefore, the net closing stock of 1,08,489 Kgs should also be considered as the resultant of the packing material consumed during the year under consideration. Therefore, the Assessing Officer's calculation of 37,90,500 Kgs actually represents the finished product manufactured by the assessee during the financial year 2008-09. To arrive at the probable sales effected during the year, the net increase in the closing stock is to be reduced from the goods manufactured during the year. In view of the above, this Tribunal is of the considered opinion that in the absence of any material on record that the assessee has inflated the purchases or sales, the estimation of probable sales on the basis of the packing material consumed by the assessee is not justified. This Tribunal is of the considered opinion that the estimation of total sales without

considering the actual purchases would inflate the sale, therefore, the CIT(Appeals) has rightly found that the total turnover was 19,75,167.60 Kgs as against 37,90,500 Kgs estimated by the Assessing Officer. Therefore, the CIT (Appeals) has rightly deleted the addition made by the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the CIT (Appeals) and accordingly the same is confirmed."

13. Similarly, all the other issues were also dealt with by the Tribunal in an elaborate manner i.e by examining the factual position, which was examined by the CIT(A) while granting relief to the assessee. Hence, we find that there is no question of law much less substantial question of law involved in this appeal.

14. Accordingly, the above tax case appeal is dismissed as no substantial question of law arises for consideration. No costs.

01.4.2021

To
The Income Tax Appellate Tribunal, 'C' Bench, Chennai.

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T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

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