IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.1.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN

and

The Honourable Mrs.Justice CHITRA VENKATARAMAN

T.C.(Appeal)No.2716 of 2006

Commissioner of Income Tax
Chennai ...Appellant/ Respondent

-vs-

M/s.Surana Metals & Steels (I) Ltd ..Respondent/ Appellant

Tax Case (Appeal) is against the order of the Income Tax Appellate Tribunal Madras B bench, dated 31.5.2006 in ITA.No. 431/Mds/2000 for the Assessment year 1996-97 (I.T.A.No.235/99-2000 dated 5.11.1999 on the file of Commissioner of Income Tax (Appeals) IV, Chennai against PAN/GIR No.1228-S dated 31.3.99 on the file of Deputy Commissioner of Income Tax, company Circle IV, (4) Chennai-6.

For Appellant : Mrs.Pushya Sitaraman

JUDGMENT

(The judgment of the Court was delivered by CHITRA VENKATARAMAN,J)

This tax case appeal is filed under Section 260-A of the Income Tax Act, 1961 by the Revenue raising the following questions of law:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing the assessee to produce a confidential note of the department in respect of a subsequent assessment year, and relying on the same?

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> 2. Whether in the facts and circumstances of the case, the Tribunal was right in ignoring the factual findings of the assessing officer, and going only by the confidential note in respect of a subsequent assessment year?"

2. The assessee claimed an expenditure of Rs.14.60 lakhs as lease rental payable to various finance companies. The Assessing Authority noted that the assessee had inflated the claim on the value of cost of acquisition on steel rolls from Rs.15,000/- to Rs.60,000/-. Consequently, in respect of assessment year 1995-96, he restricted the claim on lease rentals by Rs.15,000/- as cost of steel rolls. On appeal, the Commissioner of Income Tax Appeals partly allowed the appeal. but rejected the cost of acquisition of each steel rolling mills. In the course of the order, the Commissioner held that the assessee had not rebutted the finding of the Assessing Officer, which was based on the results of the enquiry conducted by him in the case of the financiers that each steel rolling mill could not be higher than Rs.15,000/-. The assessee's contention was that the quality and specification of steel rolls were superior to the steel rolling mills referred to by the Assessing Officer in his enquiry. However, as the assessee had not established through any technical expert he rejected the case of the assessee. The Commissioner further viewed that though in the normal course, proforma invoices on the cost of acquisition of rolling mills could be conceded, yet, since the assessment was based on the results of the enquiry made, mere invoice evidence was not good enough to firmly substantiate that the cost of the rolling mill was not inflated. He also referred to the fact that the assessee was a lessee using the rolling mill given on hire by one of the financiers. Consequently, the Commissioner of Income Tax rejected the appeal.

3. On appeal before the Tribunal, it was noted that the cost of steel rolls in this particular case had not been referred for any valuation. In the course of argument, the assessee referred to the assessment records in his own case for the immediate succeeding year 1997-98. The document relied on by the assessee is related to a note pertaining to the assessment year 1997-98. It was noted therein that the rate for each roll is different depending upon its specifications. The note relied on by the assessee stated as follows:-

> "The value of Rolls utilized in the assessee's factory is more than Rs.60,000/-. The value estimated in the assessment order for 1996-97 is Rs.15,000/- which has been arrived at on erroneous comparison. Since

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> the assessment for 1996-97 has been confirmed by CIT (A) the addition of Rs.58,91,945/- has been made as above in line with the decision taken in that assessment order. However, for the fresh lease transactions entered into this year appropriate action has been taken as mentioned in the order as per discussions held with the Additional CIT. "

4. On the basis of the said notes, on which the heavy reliance is placed by the assessee, the Tribunal noted that the same carried signature of the Deputy Commissioner of Income Tax, Chennai. Consequently, it held that the Revenue had no case and allowed the appeal of the assessee.

5. Aggrieved of this, the Revenue is on appeal before this Court questioning the correctness of the Tribunal' view in allowing the claim of the assessee on the basis of the confidential note of the Department for the subsequent year.

6. The learned counsel appearing for the Revenue submitted that the Tribunal erred in placing reliance on this report which is a confidential one, that as the report admittedly is related to the subsequent assessment year 1997-98, (the appeal was against the assessment for the year 1996-97,)the Tribunal ought not to have accepted the plea. She also submitted that the Assessing Officer had clearly proved on an enquiry that the assessee had inflated the price. She also objected to the Tribunal extracting the confidential note. She further placed reliance on the invoice price for purchase of 12 rolling mills at Rs.1,75,136/- and that the same items had been sold by the Lakshmi Steels, a sister concern of the assessee to Swarnadhara Credit Corporation Limited at Rs.6 lakhs and the same taken on lease by the assessee claiming huge lease rental payments. She contended that instead of going into the question of how the assessee got the copy of confidential note, the Tribunal erred in extracting it as a part of the order to allow the claim.

7. The appeal lacks merits and has to be rejected at the admission stage itself. The objection stated in the appeal is solely on the Tribunal passing its order on the strength of the view of the Department for the subsequent year. We failed to see any trace of unfairness leave alone an illegality in the order of the tribunal in following the opinion expressed in the noteby the deputy commissioner to give rise to a substantive question of law. The admitted statement in the note is that the assessment for the year 1996-97 at Rs.15,000/- had been arrived at on an erroneous comparison, that being so, fairness requires that the

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Revenue should have respected its own file note and desisted from filing this appeal,

8. We do not find any justification to interfere with the order of the Tribunal, unless the Department itself has its own reservation on what it had expressed in the note filed for assessment year 1997-98 as regards the valuation for the year 1996-97. We absolutely find no justification for entertaining this appeal purely on the question of confidentiality.

9. Leaving aside the view of the Officer herein, the note expressed by the Deputy Commissioner of Income Tax, Chennai, deserves its weight. Consequently, the appeal fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Rajaji Bhavan, Shastri Nagar,
Chennai.

2. The Commissioner of Income Tax (Appeals) IV,
121, Mahatma Gandhi Road,
Chennai-34.

3. The Deputy commissioner of Income Tax,
Company Circle IV, (4) Chennai.

4. The Commissioner of Income Tax, Chennai.

1 cc to Mrs. Pushya Sitaraman, Advocate, Sr. 4563

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