IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.1035 to 1038, 1065, 1066, 1072 & 1073 of 2007

Commissioner of Income Tax, Chennai. .. Appellant in all the appeals

Vs.

M/s. Sapthagiri Traders Ltd., 9, Bazullah Road, Chennai - 17. .. Respondents in TC.Nos.1035 & 1036/07

M/s. Satya Traders Ltd., 9, Bazullah Road, Chennai - 17. .. Respondents in TC.Nos.1037 & 1038/07

M/s. Venkatadri Traders Ltd., 9, Bazullah Road, Chennai. .. Respondents in TC.Nos.1065 & 1066/07

M/s. Krishnaveni Traders Ltd. 9, Bazullah Road, Chennai - 17. .. Respondents in TC.Nos.1072 & 1073/07

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 30.09.2005 in ITA Nos.2119, 2120, 2123, 2124, 2121, 2122, 2126 and 2127/Mds/1998 for the assessment years 1993-94 and 1994-95 respectively.

against the order of the Commissioner of Income Tax (Appeals)I chennai in I.T.A.No.76,96-97 and 54/97-98 order dated 7.9.98 against the order of the Assistant Commissioner of Income tax Central Circle III (3) Madras in P.A.No.(G.I.No.47-096-CT-2979, 47-096-CT-2976 respectively date of order 29.3.1996 and 27.3.1997 respectively (Prayer in TC(A)No.1035, 1036/07)

against the order of the Commissioner of Income Tax (Appeals)I chennai in I.T.A.No.79/96-97 55/97-98 and 73/98-99 order dated 7.9.98 against the order of the Assistant Commissioner of Income tax Central Circle III (3) Madras in P.A.No.(G.I.No.47-096-CQ-2980 dated 27.3.1997, 29.3.1996 respectively (Prayer in TC(A)No.1037, 1038/07)

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against the order of the Commissioner of Income Tax (Appeals) Chennai in I.T.A.No.74/96-97 and 70/97-98 order dated 7.9.98 against the order of the Assistant Commissioner of Income tax Central Circle III (3) Madras in P.A.No.(G.I.No.47-095-CN-5799, order dated 29.3.1996 and 27.3.1997 respectively (T.C.(A) 1065, 1066/07)

against the order of the Commissioner of Income Tax (Appeals)I chennai in I.T.A.No.77,96-97, 53/97-98 and 72/98-99 order dated 7.9.98 and 29.4.98 against the order of the Assistant Commissioner of Income tax Central Circle III (3) Madras in P.A.No.(G.I.No.47-092-CY-0523, order dated 29.3.1996 and 27.3.1997 respectively (Prayer in T(A)No.1072, 1073/07)

For Appellant : Mr.J.Narayanasamy
Jr. Standing Counsel

COMMON JUDGMENT

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal dated dated 30.09.2005 in ITA Nos.2119, 2120, 2123, 2124, 2121, 2122, 2126 and 2127/Mds/1998 for the assessment years 1993-94 and 1994-95 respectively.

2. The Revenue is the appellant. The relevant assessment years are 1993-94 and 1994-95. The assessees are in the business of purchase and sale of IMFL products. The assessees had shown as if they had purchased the packing materials biz bottles etc., had given it to M/s. Mcdowell and Company, got the liquor filled and then sold them. For the assessment years 1993-94 and 1994-95, the assessees claimed deduction of the cost towards the packing materials for IMFL. The Assessing Officer, finding that the packing materials were readily available in the market at a far lower prices, the principal of the assessee companies had purchased the packing materials at a far lower price, the cost of packing material claimed by the group company Balaji Distilleries was far lower than the claim of the assessees, the assessee companies had deliberately routed its purchases of packing materials through the intermediary companies with the intention to inflate the purchase price and thereby reduced the income liable to tax and that the intermediary companies were not in the business of dealing with the packing materials for the IMFL, by assessment orders dated 29.3.1996 and 27.3.1997, disallowed the claim of the assessees. Against the said assessment orders, the assessees preferred appeals before the Commissioner of Income-Tax (Appeals), who by common order dated 7.9.1998, following the decision of the Tribunal dated 18.3.1997 made in I.T.A.No.2189/Mds/1995 and holding that there is no doubt as to the reality of purchasing of the packing materials as the payments were made to the parties only by way of cheques, allowed the appeals and directed the Assessing Officer to allow the claim of the assessees for both the assessment years. Against

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that order, the Revenue preferred further appeals before the Income-tax Appellate Tribunal. The Appellate Tribunal following its earlier order in the assessee's own case, which remain unchallenged and therefore become final, dismissed the appeals.

3. Aggrieved by the same, the Revenue has preferred the above appeals raising the following substantial question of law:

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee had not inflated the cost of the packing materials for the IMFL and allowing the inflated expenditure as a deduction?"

4.1. It is not in dispute that both the assessees and the Revenue agreed before the Income-tax Appellate Tribunal that the issue involved in these appeals had already been decided against the Revenue and in favour of the assessees by the Tribunal by order dated 18.3.1997 made in I.T.A.No.2189/Mds/1995 and the same also had reached finality. Unfortunately, Mr.J.Narayanasamy, learned standing counsel appearing for the Revenue even today is not in a position to state whether the earlier order of the Tribunal had been reversed.

4.2. That apart, on facts, we find that it was not for the Revenue to question the decision of the assessee to purchase the goods from a particular concern unless it is established that the transaction involved pushing back of part of the profit to the assessee itself.

4.3. Our attention was also brought to the ratio laid down by the Apex Court in Sassoon J. David & Co. P. Ltd. v. Commissioner of Income-tax (118 ITR 261), wherein it is held that it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. The fact that somebody other than the assessee is also benefitted by the expenditure should not come in the way of an expenditure being allowed by way of deduction under section 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law.

4.4. The decision of this Court in Commissioner of Income tax v. Gopald Motors Service (P) Ltd., 100 ITR 240 was also brought to our notice, wherein it was held that in order to entitle a deduction under Section 37 of the Income-tax Act, two conditions must be satisfied viz., (a) the expenditure should have been incurred wholly and exclusively for the purpose of the business and (b) such expenditure shall not be in the nature of a capital expenditure."

4.5. In our considered opinion, both the conditions are satisfied by the assessees in the instant case. Once such a

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conclusion is reached in favour of the assessees, we do not see any reason to deny the deduction which should have been followed as a matter of course.

4.6. That apart, the Tribunal held that the transaction or purchase of packing materials were not proved to be sham or that the price paid was different from those shown in the books of account of the appellant and therefore, there is no doubt as to the reality of the purchasing of the packing materials as the payments were made to the parties only by way of cheques.

4.7. In view of the above factual findings, we do not see any reason to deny the deduction under Section 37 of the Act, as rightly allowed by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, following its earlier decision referred to above, as fairly agreed by the learned Standing Counsel for the department.

Finding, therefore, no substantial question of law that arises for our consideration, these appeals are dismissed. No costs. Consequently, M.P.Nos.2 of 2007 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench, Rajaji Bhavan, Besant Nagar,
Chennai-20.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals)-I, Chennai.34

4.The Assistant Commissioner of Income-tax
Central Circle III(3), Chennai.

3 ccs to MRs. Pushya Sitaraman, SR. 42048, 42050, 42049

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MRD (CO)
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