IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

Income Tax Tribunal Appeal No.278 of 2010

Income Tax Tribunal Appeal Under Section 260-A of the Income Tax Act, 1961 against the Order dated 18.12.2009 passed in ITA No.719/Hyd/2008 for the Assessment Year 2004-05 on the file of the Income Tax Appellate Tribunal, Bench-A, Hyderabad preferred against the order dated 29.02.2008 passed in Old Appeal No.510/W-6(1)/CIT(A)/06-07 (New ITA.No.180/W-6(1)/HYD/(CIT(A)-1/VSP/07-08 on the file of the Income Tax (Appeals)-I, Visakhapatnam.

Between:
Sri Rajesh Rawtani, Prop Zedds, The Show Shoppe, R/o.Road No.1, Banjara Hills, Hyderabad.

...Appellant.

AND

The Income Tax Officer, Ward-6 [1], Hyderabad.

...Respondent.

I.A. NO: 2 OF 2010(ITTAMP. NO: 69 OF 2010)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased grant stay of collection of disputed tax of Rs.8,16,127/- and interest of Rs.5,95,293/- for the assessment year 2004-05, pending disposal of the above ITTA.

Counsel for the Appellant: Sri K.Raji Reddy.

Counsel for the Respondent: Ms. Bokaro Sapna Reddy (Senior SC Income Tax)

The Court made the following: **JUDGMENT:**

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

INCOME TAX TRIBUNAL APPEAL No.278 of 2010

DATE OF JUDGMENT: 17.12.2025

Between :

Mr. Sri Rajesh Rawtani.

...Appellant

AND

The Income Tax Officer,
Ward 6(1), Hyderabad.

...Respondent

JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Prudhviraj Mattepally, learned counsel appearing on behalf of Mr. K.Raji Reddy, learned counsel for the appellant / assessee; and Bokaro Sapna Reddy, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondent / Revenue.

2. The instant appeal has been filed by the appellant / assessee under Section 260-A of the Income Tax Act, 1961 (for short 'the

Act') assailing the order dated 18.12.2009, in I.T.A.No.719/Hyd/2008, passed by the Income Tax Appellate Tribunal, Hyderabad, Bench 'A' (for short the 'ITAT'), for the assessment year 2004-05.

3. The question of law to be considered in the instant appeal is "whether the ITAT was correct in not following the contention of the appellant that the goods which remained unsold for the assessment years 2001-02 to 2003-04 from the purchase made from outside the books of accounts and when the same was assessed in the said three years and the same cannot be assessed again in the year 2004-05 which amounts to double taxation in the hands of the appellant, since the same were sold in subsequent assessment years?"

4. In the instant case, the Assessing Officer, the Commissioner of Income Tax (Appeals), as also the ITAT, have all decided the matter against the appellant.

5. The appellant herein carries on the business of footwear. For the assessment year 2004-05, the appellant submitted its returns on 27.08.2004 admitting an income of Rs.2,75,959/-. However, the

Assessing Officer, subsequently on scrutiny found that the assessment made by the appellant was not proper, and thereafter, *vide* order dated 28.12.006 passed an assessment order raising demanc of Rs.10,31,794/- which is inclusive of interest both under Section 234-B and 234-C of the Act. While passing the said assessment order, the Assessing Officer rejected the contention of the appellant to treat the creditors liability as unexplained income.

6. In the course of assessment, the Assessing Officer found that there were lot of differences in the trade liabilities. This according to the appellant were certain unrecorded purchases and the liabilities of which standing in the books of accounts of the creditors was not properly appreciated by the Assessing Officer while passing the assessment order on 28.12.2006.

7. It was contended by the learned counsel for the appellant that the returns have been filed on the estimated basis of 5% on the turnover under Section 44AF of the Act. According to the learned counsel for the appellant, the difference in the balance of creditors under Section 69 of the Act has to be treated as unexplained income.

8. According to the learned counsel for the appellant, this issue arose because of the stocks lying with the appellant and these stocks were those which were sold in the previous year, but could not be delivered within time and those were also shown as balance outstanding in the books of accounts on 31.03.2004.

9. Learned Senior Standing Counsel for Income Tax Department, opposing the appeal, referred to the findings arrived at by the three forums, all of whom have given a concurrent finding of fact. According to the learned Senior Standing Counsel, the appellant himself had in a correspondence made with the Department on 26.12.2004, contended that the said correspondence did not disclose any plausible explanation in respect of the so-called persons against whom outstanding credit is reflected in the books of accounts.

10. Learned Senior Standing Counsel for Income Tax Department referring to the order passed by the Assessing Officer at the first instance submitted that the said findings are findings of fact since there was no justification and satisfactory explanation given by the appellant in respect of the outstanding balances reflected in the books of accounts and the contention of the appellant that those

were in respect of the subsequent sales made is also not a convincing argument. Thus, requested the Court to refuse said contention of the appellant.

11. Learned Senior Standing Counsel for Income Tax Department further referring to the appellate authority's order submitted that there is a finding of fact in the appellate authority's order also. That in spite of repeated opportunities being granted to the appellant to reconcile the differences those are reflected in the books of accounts, the only vague excuse given by him was that these substantial sales being made on unrecorded purchases are not something which could be accepted taking into consideration the magnitude of the so-called unrecorded purchases.

12. Learned Senior Standing Counsel also referred to paragraph No.5 of the Commissioner of Income Tax (Appeal) order, wherein the Commissioner of Income Tax (Appeal) while rejecting the appeal preferred by the appellant, had made a categorical finding of the failure on the part of the appellant in not producing cogent material to substantiate their contention. For ready reference, paragraph No.5 of the Commissioner of Income Tax (Appeals) order is reproduced hereunder, viz.,

".....However, as stated earlier, in the course of the remand proceedings when the Assessing Officer called for the purchase register, stock register and sales register erc., which were not produced. When the appellant made a claim, the onus was on him to establish such claim with required evidences. In the instant case, though opportunity was provided to the appellant for establishing his claim in course of the appeal proceedings by remanding the matter to the Assessing Officer the appellant failed to establish the same with the requisite evidences. On this ground alone the claim of the appellant is liable to be ***'rejected'.***"

13. In addition, the learned Senior Standing Counsel also referred to paragraph No.5.1 of the Commissioner of Income Tax (Appeals) order, which would again give a clear indication of the grounds on which the appellant's claim was rejected. For ready reference, paragraph No.5.1 is reproduced hereunder, viz.,

"In the assessment order, the Assessing Officer treated 20% of such unrecorded purchases as the income of the appellant and assessed the same as such. Whether unrecorded sale itself is income or only a net profit on such sale is the income, would depend upon the facts of each case. Where an assessee makes purchases outside the books and also sales books outside the books, naturally the profit i.e., the difference between the sale price and the expenditure incurred by the assessee, is the income from the unrecorded sale. In the instant case, for the assessment years 2000-01 to 2003-04 since regular books of accounts had not been

maintained, unrecorded purchases were detected and therefore the Assessing Officer made the natural presumption that the appellant had indulged in both unaccounted purchases as well as unaccounted sales. Therefore, the profit on such unrecorded transactions was taken as income. This implies that the unrecorded purchases detected during the assessment years 2000-01 to 2003-04 were treated as unrecorded sales and applying the GP rate income was determined. Under these circumstances, bringing those unrecorded purchases to the books of accounts maintained for the assessment year 2004-05 does not arise at all. The claim of the appellant in this regard is totally unfounded and baseless. Hence, the same is ***'rejected'.***"

14. Subsequently, the learned Senior Standing Counsel for Income Tax Department took the Court through the findings given by the ITAT in paragraph No.4 of its order. For ready reference, the relevant portion of paragraph No.4 of the ITAT's findings is also reproduced hereunder, viz.,

"*.....Therefore, the goods which remained unsold for the asst. years 2001-02 to 2003-04, which were manufactured from the material purchased outside the books of account, cannot be said to be subjected to tax for the earlier asst. years. Therefore, if any addition is made in respect of stock remaining with the assessee which was purchased outside the books of account for the earlier asst. years, the same has to be brought to tax. In such situation, it cannot be said that the same was subjected to tax twice.*"

15. In addition, paragraph No.5 of the ITAT's order also reiterates the same principles, which again for ready reference is reproduced hereunder, viz.,

> *".....Admittedly, the assessee has shown excess liability of Rs.22,83,829. In the absence of any material to show that this liability arose out of the purchase made outside the books of account in the earlier years, in our opinion, the lower authorities have rightly made the addition. From the order of the CIT (A) it appears that a remand report was called for from the AO. The AO gave an opportunity to the assessee to explain how the stocks purchased in the earlier years remained with the assessee. In spite of opportunity, the assessee could not establish the availability of stock purchased outside the books of account in the earlier years. In those circumstances, we do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed."*

16. From the aforesaid factual matrix of the case, and on perusal of the ITAT's order, we do not have any hesitation in reaching to the conclusion that the appellant in fact has failed to substantiate their contention and defence by producing any cogent material before any of the authorities concerned in support of his contentions, be it from the books of accounts or from any other records or registers which were maintained by the appellant. For

the said reason, we are not inclined to interfere with the impugned order.

17. Another reason which goes in favour of the Revenue is the concurrent findings of fact given by the Assessing Officer, the Commissioner of Income Tax (Appeals) and subsequently by the ITAT giving reasons for reaching to the said conclusion and which predom nantly was on the failure on the part of the appellant in showing substantial material in support of his contentions.

18. The instant appeal therefore fails, and is accordingly, dismissed. The question of law framed accordingly stands answered in favour of the Revenue and against the assessee affirming the order passed by the Assessing Officer, the Commissioner of Income Tax (Appeals) and lastly by the ITAT.

19. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

SD/- R. KARTHIKEYAN
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The file of the Income Tax Appellate Tribunal, Bench-A, Hyderabad
2. The Income Tax (Appeals)-I, Visakhapatnam.
3. One CC to Sri K.Raji Reddy, Advocate [OPUC]
4. One CC to Ms. Bokaro Sapna Reddy (SENIOR SC INCOME TAX) [OPUC]
5. Two CD Copies

JCK/SA

HIGH COURT

DATED:17/12/2025

JUDGMENT:

ITTA.No.278 of 2010



Dismissing the I.T.T.A. without costs.

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