Kerala Roadways (P) Ltd., vs The Dy. Commissioner Of Income — Tax Case (Appeal) Nos. 373 and 1026/2009 and 274/2014

Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 IN THE HIGH COURT OF JUDICATURE AT MADRAS Reserved on :23.03.2026 Pronounced on :07.04.2026 CORAM THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN AND THE HONOURABLE MR.JUSTICE R.SAKTHIVEL Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 T.C(A)No.373 of 2009 M/s Kerala Roadways (P) Ltd., 39, Walltax Road, Chennai 600 079. .. Appellant/Petitioner /versus/ The Deputy Commissioner of Income Tax, Central Circle II (3), Chennai 600 034. .. Respondent/Respondent Tax Case Appeal has been filed under of Income Tax Act, 1961, against the order dated 30.01.2009 passed by the Income Tax Appellate 1 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 Tribunal, Chennai in I.T.(SS)A.No.87/MDS/2007 for the Block Assessment Period from 01.04.1996 to 31.03.2002 and 01.04.2002 to 22.01.2003. For Appellant :M/s N.V.Balaji For Respondent :Mr.D.Prabhu Mukund Arunkumar T.C(A)No.1026 of 2009 The Commissioner of Income Tax, Central II Chennai. .. Appellant/Appellant /versus/ M/s Kerala Roadways Limited, 39, Wall Tax Road, Chennai-79. PAN No.AAACK1388P .. Respondent/Respondent Tax Case Appeal has been filed under of Income Tax Act, Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 T.C(A)No.274 of 2014 The Commissioner of Income Tax, Central Circle-II, Chennai. .. Appellant/Appellant /versus/ M/s Kerala Roadways Private Limited, 39, Wall Tax Road, Chennai 600 079. PAN:AAACK 1383P .. Respondent/Respondent Tax Case Appeal has been filed under of Income Tax Act, 1961, against the order of the Income-Tax Appellate Tribunal, “C” Bench, Chennai dated 13.08.2013 in IT (SS)A.No.25/MDS/2011. For Appellant :Mr.D.Prabhu Mukund Arunkumar For Respondent :M/s N.V.Balaji ---------- COMMON JUDGMENT (Judgment was delivered by Dr.G.Jayachandran,J.) M/s Kerala Roadways (P) Ltd is the assessee in this case. It is having its Head Office in Chennai and about 450 branches throughout the Country. The matter relates to the Block Assessment made under BC of the Income 3 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 r/w of the Income Tax Act, 1961 (in short “ ”) for the period between 01/04/1996 to 31/03/2002 and from 01/04/2002 to 22/01/2003 pursuant to the search operation held between 22/01/2003 and 13/02/2003. > 3(i)Rs.3,99,88,299/- considered by the Assessing Officer as suppression of freight income deleted after being satisfied with the explanation and examination of the P & L Account. The Appellate Authority held that the said addition by the Assessing Officer is due to misunderstanding of the accounts, hence, erroneous. 8 > https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 3(ii)Rs.2 crores of lorry hire charges considered as inflated expenditure by the Assessing Officer deleted after being satisfied that the said amount is not a contingent liability but a liability de-praesenti which is permissible in mercantile system of accounting. The hire charge liability accrued in the previous year discharged in the subsequent year. It is found that the return of income for asst.year 2002-03 declaring a total income of Rs.1,68,90,172/-was filed on 12.03.2004. The DCIT, Central Circle-II(3), Chennai, has passed the assessment order for the A.Y.2002-2003 on 25/02/2005. In this order the total income is assessed at Rs.1,68,90,170/- and the credit for TDS at Rs.17,89,147/-, advance tax at Rs.16,15,000/- and Self asst. tax at Rs.29,62,507/- totaling to Rs.63,66,654/- was given. This shows that the return of income for A.Y.2002-03 filed on 12/03/2004 was a valid return filed of the IT Act and the income shown in this return has been assessed to tax. This shows that the income returned in the return filed on 12.03.2004 falls within A() and does not fall under .

10. The specific facts in brief and the Substantial Questions of Law for consideration in each of the appeal are: > TC (Appeal) No: 373/2009:

11. This appeal is directed against the order passed in IT (SS) A. No: > 87/Mds/2007 dated 30/01/2009 on the file of ITAT. 12.In this appeal, the assessee is the appellant. Search action on the appellant started on 22/01/2003 and completed on 13/02/2003. For the block assessment for the period 01/04/1996 to 31/03/2002 & 01/04/2002 to 22/01/2003, the assessing officer computed a total income of Rs 14,03,98,300/-. In consequence to the search, on receipt of the notice BC calling upon the assessee to file return of undisclosed income, the assessee filed return declaring loss of Rs 41,82,600/- for the AY 2002-2003. 19 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014

17. Revenue is the appellant. Appeal is directed against the order of the ITAT which has confirmed the order of the CIT(A), dated 14/07/2011. Both the appeal by the Revenue as well as the Cross Objection by the assessee were dismissed by the ITAT in the common order dated 13/08/2013.

18. The revenue question the legality of CIT (A) order deleting the addition of Rs.1,68,90,172/- made by the Assessing Officer. According to the revenue, the decision of this court in ACIT-vs- A.R.Enterprises reported in [350 ITR 489] is no more a good law, since it was reversed by the Hon’ble Supreme Court of India subsequently. The Appellate Authority erred in accepting the revised return along with corrected Form-2 B filed before it to justify the deletion.

24. Aggrieved, as against the Tribunal order which reduced the estimated undisclosed income from Rs.7,96,50,000/- to Rs.47,79,000/- the revenue preferred 23 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 appeal before the Tribunal in IT(SS)A.No:47/Mds/2007 and same came to be partly allowed. The tribunal found error in the order of the CIT (A) in arriving at the undisclosed income and reducing it to Rs.47,79,000/-. The tribunal found no reason for the observation of the CIT (A) that the assessee had to incur unaccounted expenditure against the unaccounted receipts. Also held the general proposition propounded by the CIT (A) that each unaccounted receipt detected during the search there has to be a corresponding unaccounted expenditure. Hence remitted back to the file of the CIT (A) to re examine the matter and pass a fresh order after giving adequate opportunity to the assessee.

30. That apart, as the facts narrated above, pursuant to the order passed by the Commissioner of the IT Act, the block assessment order dated 28/02/2005 got set aside. Fresh Assessment order dated 31/12/2007 came to be 28 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 passed demanding tax of Rs 2,14,30,841/- That order was challenged by the assessee in CIT (A)/CBE/07-08 and partly allowed directing the AO to recompute the undisclosed income.

36. The second limb, which is also relevant and significant, since the judgment of the High Court rendered in case (cited supra) and relied by the assessee, reversed by the Supreme Court and the law laid by the Supreme Court is in favour of the Revenue. The operative portion of the Supreme Court Judgment in ACIT, Chennai –vs- A.R. Enterprises reported in [2013 (29) Taxmann.com 50 (SC)] reads as under:- 33 > https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 “37.We are, therefore, of the view that since the Advance Tax payable by an assessee is an estimate of his “current income” for the relevant financial year, it is not the actual total income, to be disclosed in the return of income.

41. The Revenue challenged the order of the CIT (A) terming it as erroneous and reasoning for deleting the additions made by the Assessing Officer as baseless. The Tribunal confirmed the order of the CIT(A) in respect of deleting the addition of Rs.3,99,88,299/- by terming it as misunderstanding of accounting by the AO and there is no discrepancy in the collection stated in MIS report and the Financial Accounting Package. The deletion of Rs.2 crores by the CIT(A) confirmed holding that the assessee is following mercantile system of accounting, whereas the Revenue adopting the accrual basis, has wrongly construed the provision made for payment of hire charges as unaccounted, despite the fact that the unpaid hire charges amount reversed on the first day of the succeeding AY. > “I therefore, set aside the block assessment completed vide order dated 28.02.2005 in the case of the assessee and direct the Assessing Officer to re-frame the block assessment order after ensuring that: 41 > https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 > (i)Mistakes while filling up columns of Form No.2B are corrected and effect is correctly given while computing the undisclosed income of the assessee; and > (ii)the expenses of personal nature and expenses which are not allowable as per about which the evidence is available in the seized material should be disallowed. > The Assessing Officer should give reasonable opportunity to the assessee before making fresh assessment.” The appellate authority further held that in the revised Form 2 B, filed on 09/03/2007 as per the order of the Commissioner passed and his explanation for the lorry hire charge Rs 2,42,71,600/-.satisfied that it is only accounting aspect and cannot come under the definition of undisclosed income. Hence same to be deleted from the assessment order.

53. The Revenue filed appeal before the Tribunal challenging the deletion of Rs 1,68,90,172/- by treating it as disclosed income for the AY 2002-03 following the judgment of High Court in T.C.(A)No.1409/2009 dated 05/01/2010 which is challenged before the Hon’ble Supreme Court and pending. Further the judgment of High Court rendered in ■22†A.R. The regular assessment based on the returns done on 49 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 25/02/2005 just few days prior to the block assessments. After noticing the error, that as per BB(ca) the return of income Rs 1,68,90,172/- disclosed after the search operation ought to have been taken as ‘NIL’, the assessing officer himself had sent proposal to the Commissioner of Income Tax for revision of the Act.

62. As a result, the impugned order of the tribunal dated 13/08/2013 confirming the order if the CIT (A) dated 14/07/2011 is set aside. The assessment 53 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 order dated 31/12/2010 passed r/w 143(3) of the on 31/10/2010 is confirmed.In fine IT (A) No: 274/2014 is allowed. RESULT:- > (1) T.C. (A).No:373 of 2009: the appeal filed by the assessee is dismissed. No costs. > (2)T.C.(A).No:1026 of 2009: the appeal filed by the Revenue partly allowed. No costs. > (3)T.C (A) No: 274/2014 the appeal by the revenue is allowed. No costs. (Dr.G. JAYACHANDRAN,J.) (R.SAKTHIVEL,J.) 07.04.2026 Index:yes Neutral citation:yes/no ari 54 https://www.mhc.tn.gov.in/judis > Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 To The Deputy Commissioner of Income Tax, Central Circle II (3), Chennai 600 034. 55 https://www.mhc.tn.gov.in/judis Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 Dr.G. JAYACHANDRAN,J. and R.SAKTHIVEL,J. ari delivery Common Judgment made in Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014 07.04.2026 56 https://www.mhc.tn.gov.in/judis