IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

T.C.A.Nos.751 to 754 of 2015
and M.P.Nos.1 and 1 of 2015

M/s. Singara Nilgiri Plantation Co.,
Singara Estate,
Coonoor, The Nilgiris ... Appellant in all the T.C.As

vs.

The Deputy Commissioner of Income Tax,
Circle I (1), Ooty ... Respondent in all the T.C.As.

Tax Case Appeals filed under Section 260A of The Income Tax Act, 1961, as against the orders, dated 01.04.2009 and 04.11.2010, made in I.T.A.Nos.258 and 259/MDS/2008 and M.P.Nos.298 and 299 of 2009, respectively, on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, for the assessment years 2003-04 and 2004-05.

Against the order of the Commissioner of Income Tax Appeals-1 Coimbatore dated 22/11/2007 and made in Appeal Nos.495/2006-2007, 496/2006-2007 respectively. Against the order of the Deputy Commissioner of Income Tax Circle-I(i)Ooty dated 16/1/2007 . Pan GIR No.AAECS 9612c Assessment year 2003-2004, 2004-2005 respectively.

For Appellant in all the T.C.As : Mr.A.Sriraman, for, M/s. S.Sridhar

For Respondent in all the T.C.As : Mr.T.R.Senthil Kumar

COMMON JUDGMENT

Tax Case Appeal Nos.751 and 752 of 2015 have been filed, as against the orders, passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 01.04.2009 and 04.11.2010, for the assessment years 2003-04 and 2004-05, respectively, made in I.T.A.Nos.258 and 259/Mds/2008 and Tax Case Appeal Nos.753 and 754 of 2015 have been filed challenging the dismissal of the petitions, in M.P.Nos.298 and 299 of 2009, seeking restoration of Appeals, in I.T.A.Nos.258 and 259/Mds/2008.

Facts in brief:-

2. The appellant is engaged in the business of manufacture and sale of tea. For the Assessment Year 2003-2004, after reopening the assessment, under Section 147 of The Income Tax Act, 1961, the respondent had determined the taxable income, at Rs.1,94,917/-, as against the reported 'nil income', filed by the Assessee, on the consideration of brought forward losses, to the extent of Rs.4,73,930/-. A sum of Rs.5,36,334/- was brought under the head 'Income from other sources', while allowing set off of the current year loss, to the extent of Rs.3,39,313/- .

2.1. The Assessee had filed Appeals before the Commissioner of Income Tax (Appeals)-I, Coimbatore, which had been dismissed by the orders, dated 22.11.2007, holding that the classification of income under various heads viz., “Business Income” and “Income from Other Sources”, in its return of income, has been made by the Appellant, suo-motu, and as it did not emanate from any fresh action by the Assessing Officer, there can be no cause for grievance and therefore, the Appeals had no merits. The matters were taken by way of Appeals, to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal had also dismissed the appeals, in I.T.A. Nos. 258 and 259/Mds/2008 by the order, dated 01.04.2009. Challenging the same, TCA Nos.751 and 752 of 2015 have been filed.

2.2.These appeals were dismissed on the technical ground that the Appeal Memorandum in those cases has been signed by the Manager of the firm and not by the Managing Director or any of the Partners. Further, it was pointed out that the power of attorney dated 18.03.2007, gives authorisation to the Manager, only to receive ordinary and registered letters, communications, notices, demands etc., on behalf of the Firm and it did not give power for signing the return of income and to sign the Appeal Memo.

2.3. As the appeals were dismissed on technical grounds and not on merits, the Assessee filed two petitions for restoration of the two appeals (one in respect of the assessment year 2003-2004 and the other in respect of assessment year 2004-2005).

2.4. The restoration applications filed in, M.P.Nos.298 and 299/2009 in ITA. Nos.258 and 259/Mds/2008,had been dismissed by the common order, dated 04.11.2010. Challenging the said common order TCA. Nos.753 and 754 of 2015 had been filed.

2.5. The Appeals, in TCA Nos.753 and 754 of 2015, i.e., challenging the dismissal of the Miscellaneous Petition Nos. 298

and 299 of 2009, includes the dismissal of ITA Nos.258 and 259/Mds/2008, on the preliminary issue of maintainability. The grounds for challenge are as under:-

> 1. The Tribunal had committed a mistake in assuming that the Manager/Power of Attorney had no competance for signing the return of income, as the Tribunal omitted to notice that the return of income, for the assessment year 2004-2005, was signed only by the Manager/Power of Attorney of the Firm; the return of income was acted upon by the revenue in terms of Section 140 of the Act.
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> 2. The Tribunal has given a finding that the Manager/Power of Attorney has no authority to sign the Appeal Memo. This finding is incorrect as clause 1 and clause 7 of the Power of Attorney gives competance, not only to sign the return of income, but also to sign the Appeal papers.
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> 3. The Tribunal had omitted to take note of the rectified Form No.36, duly signed by the partner of the firm, in triplicate in each of the assessment year under consideration.

3. In order to appreciate the contentions raised above, it is necessary to look into the reasons adduced by the Tribunal, while dismissing the Miscellaneous Petition Nos. 298 and 299 of 2009. Relying upon Sub Rule (1) to Rule 47 and Sub Rule (2) of Rule 45 of the Income Tax Rules 1962, it was held that: (a) in the case of a Firm, the Appeal Memo has to be signed by the Managing Director or any other partner and not by the Manager; (b) if the Manager is not given power to sign the return of income, he cannot sign the Appeal Memo; and (c) as the order already passed do not suffer from any mistake apparent on the face of the record, the order cannot be interfered with.

4. Challenging the reasons stated for dismissal of the Miscellaneous Petitions, these appeals have been filed raising the following substantial questions of law:

> "1. Whether the Tribunal is correct in law in dismissing the appeals as 'defective' on the preliminary issue of presentation of statutory Form No 36 signed by the Manager / Power of Attorney Holder without giving further opportunity on the facts and in the circumstances of the case?

2. Whether the Tribunal is correct in law in rejecting the Miscellaneous Petitions filed in terms of Section 245 (2) of the Act for the restoration of the appeals even though such prayer was not for reviewing the earlier order which was passed on the preliminary / technical issue and not on merits?

3. Whether the Tribunal is correct in law in rejecting the appeals as well as the Miscellaneous Petitions filed for restoration of the appeals for the assessment years under consideration, on the consideration of the provisions in Section 140 of the Act, read with Rule 45 and Rule 47 of the Income Tax Rules, 1962?

4. Whether the Tribunal is correct in law in not interfering with the earlier order dated 1.4.2009 in the proceedings intiated by the appellant U/S 254 (2) of the Act, even though the mistakes and errors in the understanding and appreciating the facts of the case were apparent?"

5. Two appeals (TCA Nos.751 and 752 of 2015) are on the issue relating to the dismissal of the Appeal on the preliminary issue of competance of the person who had signed the Appeal Memo. The other two Appeals (TCA Nos.753 and 754 of 2015) are on the dismissal of the restoration applications filed seeking hearing of the matter on merits.

6. Whether the Income Tax Appellate Tribunal should have heard the matter on merits or the Tribunal is right in dismissing the Appeals on the technical ground of defect in the filing of the Appeals is the main issue to be considered in these Appeals.

7. The learned counsel for the appellant would submit that the Tribunal is expected to render substantial justice and the learned Tribunal is not expected to dismiss the appeals on technical grounds, on a procedural aspect and therefore, it is a fit case where the matter has to be remanded, with a direction to the Tribunal to decide the matter on merits.

8. The learned counsel for the Revenue had vehemently contended that, even at the time of filing of the Appeal, the Tribunal had issued a defect Memo, on 25.02.2008, stating that

the Appeal Memo has to be signed by a competent person and a query was also raised by the Tribunal, on the maintainability of Appeal, which is allegedly signed by an incompetent person and the Assesee has been emphasizing that the Manager of the Assessee firm is a competent person to sign the return of income and therefore, the case of the Assessee, for remand of the matter, cannot be accepted.

9. Under normal circumstances, this plea of Revenue could have been accepted. But, so far as these cases are concerned, the initial mistake is only on the part of the Revenue, in accepting the return of income filed by the Manager, who is allegedly incompetent and therefore, it would have led the Assessee to form an impression that, when he is competent to file the return of income, he would also be competent to sign the Memo of Appeal. Therefore, the assessee would have remained firm in his contention before the Tribunal, even though the issue relating to the defect in the Memo had been raised. defect memo was issued. Therefore, just because the Assessee was firm in his contentions, with regard to maintainability, the appeals cannot be thrown out inlimine. But, at the same time, the mistake once committed by one side cannot be the basis for the other side to commit yet another mistake.

10. Admitedly, the orders of the Income Tax Appellate Tribunal are not on merits, but on the preliminary issue of competance of the Manager to sign the Appeal Memos, in respect of the Appeals filed by the Firm.

11. Under Sub Rule (2) to Rule 45 of the Income Tax Rules 1962, the grounds of Appeal relating to an assessee shall be signed and verified by the person, who is authorised to sign the return of income, under Section 140 of the Income Tax Act, 1961.

12. Under Section 140 of the Income Tax Act, 1961, in the case of a Firm, the return of income has to be signed by the Managing Partner or where such Managing Partner is not available or where there is no Managing Partner, by any of the partner (not being a Minor). Under Sub Rule (1) to Rule 47, an appeal under Sub Section (1) or Sub Section (2) of Section 253 to the Appellate Tribunal, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed only by the person as mentioned supra in Sub Rule (2) to Rule 45. A combined reading of these Rules make it clear that the Manager is not the authorized person to sign the Appeal Memos.

13. However, when the Income Tax Department itself, having acted upon the return of income filed by the Manager, whether the Tribunal can dismiss the Appeals on the ground that the Manager, having no authority to file the return of income, has no authority to sign the Appeal Memos and therefore, the appeals had to be dismissed inlimine. This finding on facts, as well as

on conclusions, is incorrect. Admitedly, it is the Manager, who has filed the return of income, and he has also signed in the Memorandum of Appeals. The filing of return involves serious legal consequences under the statute. Therefore, unless authorized by the statute itself, the Manager has no authority to file the return of income. Incorrectly, the Income Tax Department has accepted the return of income filed by the Manager. The assessee has also filed the return of income by an incompetent person. But the mistake has been now rectified, by the Assessee, by presenting a new statutory Form No.36. Consequently, both sides concurring, we feel it appropriate to remand the matters, for fresh disposal, by the Income Tax Appellate Tribunal, on merits, subject to following terms:

1. There shall be an undertaking by the learned counsel for the appellant that the issue relating to the incorrect acceptance of return of income, by the Income Tax Department, though filed by the Manager, not by the Managing Director / Partner, shall not be agitated, having presented fresh Statutory Form No.36.

2. The learned counsel for the Appellant / Assessee undertakes to file fresh Appeal Memos, signed by the Managing Partner / Partner, for which, the learned counsel for the Respondent / Revenue shall not raise any objection, as per the undertaking given.

3. On the presentation of the said Appeal memos, the Tribunal shall take the Appeals on file, without raising the issue of limitation and would decide the matter, on merits and in accordance with law.

14. In the result, TCA Nos.751 and 752 of 2015 stand allowed and the matters are remitted back to the Income Tax Appellate Tribunal, for fresh consideration of the matters, on merits.

14.1. TCA.Nos.751 and 752 of 2015 having been allowed, TCA Nos.753 and 754 of 2015 have become infructuous and therefore, the same stand dismissed as infructuous.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Deputy Commissioner of Income Tax,
   Circle I (1), Ooty

2. The Income Tax Appellate Tribunal,
   Madras 'A' Bench,
   Chennai

3. The Commissioner of Income Tax,
   Coimbatore.

+1cc to S.Sridhar, Advocate sr.63671

T.C.A.Nos.751 to 754 of 2015
and M.P.Nos.1 and 1 of 2015

vs[co]
srg 22/12/2015