IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Tax Case(Appeal).Nos.952 to 954 of 2013
and M.P.Nos. 1 to 1 of 2013

Commissioner of Income-Tax,
Chennai ... Appellant in all Appeals

-vs-

1. Shri.P.Venkatesan ... Respondent in TCA.No.952/13
2. Smt.S.Anuradha ... Respondent in TCA.No.953/13
3. Shri.S.Srinivasan ... Respondent in TCA.No.954/13

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 03.05.2013 passed in M.P.Nos.30 to 32/Mds/2013 in ITA Nos.1378 to 1380/Mds/20012 respectively.

For Appellant in all appeals : Mr.J.Narayanasamy Senior Standing Counsel for Income Tax Dept.

For Respondent in all appeals : Mr.M.Vaidyanathan for Mr.S.Lokaiah

COMMON JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Correctness of the common order made in M.P.Nos.30 to 32/Mds/2013 in ITA Nos.1378 to 1380/Mds/2012 respectively, of Income Tax Appellate Tribunal, 'C' Bench, Madras, dated 03.05.2013 is challenged in the instant appeals on the following substantial questions of law.

"1. Whether on facts and circumstances of the case, the Tribunal was right in recalling its original order which was passed by it after considering the issue on merits?

2. Whether on facts and circumstances of the case, is order of the Income Tax Appellate Tribunal, recalling its earlier order not amount to review of its original order?"

2. Material on record discloses that being aggrieved by the common order of the Commissioner of Tax Appeal No. XI, Chennai for the assessment year 2007-08, four appeals have been filed in ITA Nos.1377 to 1380/Mds/2012 by the department in respect of four assessees. Before ITAT 'C' Bench, Chennai, the Assistant Commissioner of Income Tax, Circle XI, Chennai, appellant therein was represented by the departmental representative. There was no appearance on behalf of the assessees, either in person or through representative. Going through the material on record, ITAT 'C' Bench, Chennai, vide the common order dated 27.11.2012, allowed the appeals, in favour of the department. Thereafter, the assessees have filed MP.Nos.29 to 32/Mds/2013 to recall the order dated 27.11.2012 of Income Tax Appellate Tribunal in ITA Nos.1377 to 1380/Mds/2012. After considering the rival submissions, vide the common order dated 03.05.2013, Income Tax Appellate Tribunal, 'C' Bench, Chennai, has recalled the orders dated 27.11.2012, against which, the instant appeals have been filed by the Commissioner of Income Tax, Chennai.

3. Though, Mr.J.Narayanasamy learned standing counsel for the Income Tax Department vehemently argued that the tribunal ought not to have recalled the common order, made by it in ITA Nos.1377 to 1380/Mds/2012 dated 27.11.2012, decided on merits, we are not inclined to accept the said contentions for two reasons.

4. Firstly, in exercise of the powers conferred by sub-section (5) of Section 255 of the Income Tax Act, 1961, (43 of 1961), the Appellate Tribunal, has framed Income-Tax (Appellate Tribunal) Rules, 1963 to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal. The Rules are called as Income-Tax (Appellate Tribunal) Rules, 1963. Admittedly in the case on hand, the assessees were the respondents in the appeals preferred by the department before the Income-Tax Appellate Tribunal, 'C' Bench, Chennai. As stated supra, department was represented. But, none appeared on behalf of the assessees In the given situation, Rule 25 of the Income-Tax (Appellate Tribunal) Rules, 1963 reads thus.

> "Where, on the date fixed for hearing or any other day to which the hearing may be adjourned, the appellant appears and the respondent does not appear in person or through an authorised representative when the appeal is called on for hearing, the tribunal may dispose of the appeal on merits after the hearing the appellant."

5. Reading of the above, makes it clear that when the respondent does not appear in person or through an authorised representative, the tribunal is empowered to dispose of the appeal on merits, after hearing the appellant. By notification No.F-71, Ad(AT)/2002 dated 01.06.2004, proviso has been added to Rule 25 of the Income-Tax (Appellate Tribunal) Rules, 1963, which is extracted hereunder:

> "provided that where an appeal has been disposed of as provided above and the respondent appears afterwards and satisfies the tribunal that there was sufficient cause for his non appearance when the appeal was called on for hearing, the tribunal shall make an order setting aside the exparte order and restore the appeal."

6. By virtue of the proviso to Rule 25 of the Income-Tax (Appellate Tribunal) Rules, 1963, added by notification No.F-71, Ad(AT)/2002 dated 01.06.2004, a right is conferred on the respondent to seek for recalling of the order passed exparte, even though the same is on merits.

7. The expression, "as provided above", in the opening sentence of the proviso, means and includes that even if the appeal is disposed of on merits, after hearing the appellant, the same can be recalled by the tribunal, if the respondent appears afterwards and satisfies the tribunal that there was sufficient cause for his non appearance. Thus, if sufficient cause is shown the tribunal is obligated to consider the same and make an order setting aside the exparte order, no matter, whether it is an order simplicitor or on merits. Thus, Income-Tax (Appellate Tribunal) Rules, 1963, empower the tribunal to recall an order passed on merits, subject to satisfaction of the cause shown for non appearance.

8. In the instant appeal, Commissioner of Income Tax, Chennai has raised a substantial question of law as to whether on facts and circumstances of the case, the order of the Income Tax Tribunal, recalling its earlier order, not amount to review of its original order.

9. Perusal of the common order made in MP.Nos.29 to 32/Mds/2013 to recall the order dated 27.11.2012 shows that before ITAT, Madras, the appellant has not questioned the power of the tribunal, in recalling the impugned orders. The only contention raised before the tribunal appears to be that when the assessees had not entered appearance at the time of hearing of the appeals, due to their negligence, there were no reason for the tribunal to recall the orders. Mere recalling an earlier order, in exercise of the powers conferred on the tribunal under the proviso to Rule 25 of Income-Tax (Appellate

Tribunal) Rules, 1963, would not amount to review of its original order.

10. In the light of the statutory provision and discussion, we are of the considered view that both the substantial questions of law raised by the appellant are to be answered against the Revenue and accordingly, done. The Tax Case Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income-Tax, (Appeals No.XI)
Chennai.

2. The Registrar, Income Tax Appellate Tribunal,
C Bench, Chennai.

+ 2 ccs to Mr.S. Lokaiah, Advocate Sr.34808

Tax Case(Appeal).Nos.952 to 954 of 2013

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