IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7.12.2016

C O R A M

THE HON'BLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.510 to 515 of 2016
and
C.M.P.No.10150 of 2016

P.Ethiraj Appellant in TCA No.510/2016/Respondent

P.C.Jeyaraman Appellant in TCA No.511/2016/Respondent

Je.Janardhanan Appellant in TCA No.512/2016/Respondent

P.J.Sekar Appellant in TCA No.513/2016/Respondent

P.J.Sekar Appellant in TCA No.514/2016/Respondent

P.J.Ravi Appellant in TCA No.515/2016/Respondent

Vs

The Assistant Commissioner of Income Tax,
Business Circle II,
121, M.G.Road, Chennai-34.

...Respondent in all the six cases/ Appellant

Prayer:- Appeals filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai 'B' dated 5.6.2009 in I.T.A.Nos.2203/Mds/2008, 2204/Mds/2008, 2205/Mds/2008, 2209/Mds/2008, 2210/Mds/2008 and 2211/Mds/2008 against the order of the Commissioner of Income-Tax(Appeals)-VI,121 Mahatma Gandhi Road, Chennai-600034 in ITA Nos.143/06-07, 128/06-07,143/06-07,129/06-07,130/06-07&142/06-07 respectively 23/7/2008,21/7/2008,24/7/2008 and against the order of the commissioner of Income-Tax, Central Circle-I(5) No.108 Mahatma Gandhi Road, Chennai-34 in P.A.Nos.AACPE1130P,AADPJ43380,AADPJ4514H,AAAHP1437J,AALPS4350G & AACPR29845 dated 31.3.2004 & 16.3.2005 respectively for the Assessment years 2001-2002 & 2002-03.

For Appellants in all the Appeals: Mr. N.Devanathan

For Respondent in all the Appeals: Mr. T.Ravikumar

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COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

This batch of six appeals are filed at the instance of the assessee challenging a common order of the Income Tax Appellate Tribunal (Tribunal) dated 5.6.2009 relating to assessment years 2001-2002 to 2002-2003. The appeals, though relating to various assesses, are taken up for disposal, and dealt with by way of a common order with the consent of the counsel and in view of the commonality of issues involved.

2. Though various questions of law have been raised, the main issue pursued is the lack of opportunity afforded by the Tribunal. We have heard the detailed submissions of Sri.N.Devanathan, learned counsel appearing for the appellant and Sri.T.Ravikumar, learned counsel appearing for the Income Tax Department.

3. It appears that certain gifts were received by the appellants from unrelated persons and duly brought to tax as unexplained cash credit in terms of section 68 of the Income Tax Act (the 'Act'). The Commissioner of Income Tax (Appeals), however, accepted the explanation offered by the assesses to the effect that the amounts represented gifts on the occasion of Grahapravesam, 65th Birthday and India Millennium Deposit Certificates issued by the State Bank of India and allowed the appeals vide order dated 23.7.2008. Questioning the correctness of the order, appeals were filed by the Department before the Tribunal. Cross Objections, in support of the order of the CIT(A), were filed by the assessee. The appeals filed by the Department were allowed and the Cross Objections filed by assesses dismissed by the Tribunal vide order dated 5.6.2006 wherein the assessee is unrepresented.

4. The learned counsel appearing for the assesses would submit that a letter seeking adjournment of the hearing of the appeals was filed before the Registry of the Tribunal as he was out of station on account of a marriage reception on the date of hearing. The Tribunal, in deciding the matter, ex parte, did not advert to the request for adjournment sought. The learned Standing Counsel would draw our attention to paragraph 2 of the order, wherein the Tribunal observes that though there is acknowledgment of service of notice by the assessee, none appeared nor entered appearance by filing a power of attorney. He would also point out that the letter of adjournment produced by the assessee did not contain an acknowledgment of receipt of filing before the Registry.

5. Per contra, the learned counsel appearing for the assessee would reiterate his inability to appear on account of his personal pre-occupation and in order to meet the serious resistance of the learned counsel for the Revenue, produced a

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copy of the marriage invitation and photograph said to have been taken on the occasion.

6. Taking into account the overall facts and circumstances of the case, we are of the view that the assessees should not be made to suffer on account of the pre-occupation of the counsel. The Tax Case (Appeals) are, thus, allowed, by way of remand to the file of the Tribunal which shall consider the appeals de novo and after affording an opportunity of hearing to the parties. The appeals may be disposed of by the Tribunal, within a period of three months from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ssk.

To

1.The Assistant Commissioner of
Income Tax,
Business Circle II,
121, M.G.Road, Chennai-34.

2.The Commissioner of Income Tax(Appeals)-VI
121,Mahatma Gandhi Road, Chennai-600034.

3.The Assistant Commissioner of Income Tax Central Circle(5)
No.108, Mahatma Gandhi Road,
Chennai-34

4.The Assistant Registrar, Income Tax Appellate Tribunal,
'D'Bench III Floor, Rajaji Bhavan, Besant Nagar, Chennai-90.

+2cc to Mr.N.Devanathan, Advocate sr.72602

+2cc to Mr.T.Ravikumar, Advocate sr.71950

T.C.A.Nos.510 to 515 of 2016

ug(co)
ss(27/02/2017)

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