In the High Court of Judicature at Madras

Dated : 28.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice M.SUNDAR

Tax Case Appeal No.528 of 2017

The Principal Commissioner of Income Tax I, No.63, Race Course Road, Coimbatore. ..Appellant/Appellant

Vs

Shri.R.Elangovan ..Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 26.10.2016 in ITA No.878/Mds/2016 and against the order dated 16.11.2015 in ITA No.524/14-15 by the Commissioner of Income - Tax (Appeals) Chennai and against the order dated 13.08.2014 in AADPE 184/@ by the Deputy Commissioner of Income - Tax, Central Circle-1, Coimbatore.

For Appellant : Mr.T.R.Senthil Kumar

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'A' Bench in ITA.No.878/Mds/2016 dated 26.10.2016.

2. The above appeal has been filed raising the following substantial questions of law :

> "i. Whether the Appellate Tribunal is justified in confirming the finding of the Commissioner of Income Tax (Appeals) that there is no on-money paid by the assessee as proved with corroborative evidence, which is contrary to the statement recorded under Section 132(4) of the Income Tax Act and the same is not retracted by the respondent - assessee ? and

ii. Whether the Income Tax Appellate Tribunal erred in confirming the finding of the Commissioner of Income Tax (Appeals), which was rendered in violation of Rule 46A, by admitting additional evidence for the first time ?"

3. Before we examine the questions raised are substantial questions of law, it may be necessary to take note of the following facts :

4. The Revenue was on appeal before the Tribunal against the deletion of addition of Rs.7.02 Crores made by the Assessing Officer under Section 69B of the Income Tax Act, 1961. A search was conducted under Section 132 of the said Act in the assessee's case on 14.12.2012, during which, it was found that the assessee purchased M/s.PSP Steels (P) Ltd. for a consideration of Rs.22 Crores. The assessee was asked to explain the source of payment of Rs.22 Crores. The assessee explained that his company M/s.Sastha Steels (P) Ltd. purchased M/s.PSP Steels (P) Ltd. The purchase included land, building and machinery belonged to M/s.PSP Steels (P) Ltd. and the land adjacent to the industry, belonged to one Mrs.P.Dhanalakshmi. The registered value of the land and building was Rs.2.5 Crores and the value of the land purchased from the said Mrs.P.Dhanalakshmi was Rs.98 lakhs, which, according to the assessee, were accounted for in the books of accounts of M/s.Sastha Steels (P) Ltd., for Rs.14.98 Crores.

5. A statement was recorded from the respondent on 14.12.2014 wherein he had admitted that a sum of Rs.7.02 Crores was unaccounted investment in the purchase of M/s.PSP Steels (P) Ltd. During the assessment proceedings, the assessee explained that out of the consideration of Rs.22 Crores, the amount of Rs.19 Crores was paid by way of cheques and Rs.3 Crores by way of cash. However, the Assessing Officer was of the opinion that this statement is a retraction of the earlier statement made by the assessee without corroborative evidence and given after a considerable lapse of time, confirmed the addition and concluded the assessment by passing the order dated 13.8.2014.

6. The assessee carried the matter on appeal to the Commissioner of Income Tax (Appeals). Before the Commissioner of Income Tax (Appeals), the assessee filed detailed written submissions to demonstrate that out of Rs.22 Crores, a sum of Rs.19 Crores was paid through banking channels. The Assessing Officer appears to have participated in the hearing of the appeal petition as could be seen from the order passed by the Commissioner of Income Tax (Appeals) dated 16.11.2015 wherein the Assessing Officer also submitted written observations, which

have been extracted verbatim in the order passed by the Commissioner of Income Tax (Appeals). After examining the evidence placed before the Commissioner of Income Tax (Appeals), it was concluded that there was no ground for making the addition of Rs.7.02 Crores and that the same has not been substantiated and therefore, it was directed to be deleted.

7. Against the order passed by the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal. Ultimately, the Tribunal found that the assessee purchased M/s.PSP Steels (P) Ltd. for Rs.22 Crores, out of which, a sum of Rs.19 Crores was paid through banking channels, which was not disputed by the Department. Thus, this fact having not been disputed and controverted and the date-wise payment made by the assessee not being controverted, the appeal filed by the Revenue was dismissed by the Tribunal, as against which, the Revenue is on further appeal before this Court.

8. The learned Senior Standing Counsel has referred to Rule 46A of the Income Tax Rules, 1962 and submits that the Commissioner of Income Tax (Appeals) failed to follow the procedure stipulated in the said Rule, when additional evidence was placed before the Commissioner of Income Tax (Appeals), which was not available before the Assessing Officer.

9. We find from the contentions raised before the Tribunal that the Revenue did not plead that there was violation of Rule 46A of the said Rules in the matter of production of additional evidence before the Commissioner of Income Tax (Appeals). We have noticed that the Assessing Officer participated in the appeal proceedings and his observations were also taken note of by the Commissioner of Income Tax (Appeals). Thus, we find that the contention that there has been an infraction of Rule 46A of the said Rules was never pleaded by the Revenue either before the Commissioner of Income Tax (Appeals) or before the Tribunal. Accordingly, we find that no question of law, much less, any substantial question of law arises for consideration in this appeal.

10. In the result, the above tax case appeal is dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal Madras 'A' Bench.

2. The Deputy Commissioner of Income Tax, Central Circle-1, Coimbatore.

3. The Principal Commissioner of Income Tax, Coimbatore.

4. The Commissioner of Income-Tax (Appeals), 46 Mahatma Gandhi Road, Nungambakkam, Chennai.

+ 1 cc to Mr. T.R. Senthilkumar, Advocate Sr.84532

TCA.No.528 of 2017

SJ(CO)
EU(19/12/2017)