IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:12.12.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and
The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.641 of 2017

The Commissioner of Income Tax
Chennai. ...Appellant

Vs

Ms.Prabha Dixit ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 09.9.2016 made in MP.No.61/Mds/2016 in ITA.No.2207/Mds/ 2015 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2006-07

against the order passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 28/12/2015, made in ITA.No.2207/mds/2015.

against the order passed by the Commissioner of Income Tax (Appeals)-2 , Chennai 34 dated 7.9.2015, made in ITA.no.44/CIT (A)-2/2013-14.

against the order passed by the Asst. Commissioner of Income Tax Business Circle II, Chennai 34 dated 25/3/13 made in AAFPD3966K/143(3) r/w sec.147 of the Income Tax Act, 1961.

For Appellant : Mrs.R.Hemalatha

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is directed against the order passed by the Income Tax Appellate Tribunal dated 09.9.2016 in a miscellaneous petition in MP.No.61/ Mds/2016 in ITA.No.2207/Mds/2015 for the assessment year 2006-07, raising the following substantial questions of law :

> "i. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was eligible to claim deduction under Section 54EC even though the long term specified assets were in the joint names of the assessee and her mother ?

ii. Is not the finding of the Tribunal bad by dismissing the appeal of the Department without going into the merits of the case especially when there had been revenue audit objection which has been accepted by the Department and therefore would fall within the exceptions provided in Para 8(c) of the CBDT Circular No.21 of 2015 ? and

iii. Whether the reasoning and finding of the Tribunal is proper by allowing the claim of the assessee especially when the provisions contained in Sub-Section (2) of Section 54EC would make the said Section otiose since the investment was made in the names of the assessee and her mother ?"

2. Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue.

3. This appeal is directed against the order passed by the Income Tax Appellate Tribunal in a miscellaneous petition filed by the Revenue for recalling the order passed by the Tribunal dated 28.12.2015. The order dated 28.12.2015 is a common order in a batch of appeals filed by the Revenue. The Tribunal, on hearing the Departmental representative, found that the tax effect is less than Rs.10 lakhs and referred to the circular of the Central Board of Direct Taxes dated 10.12.2015. Further, the Tribunal was of the opinion that the Revenue cannot proceed further in those appeals and ultimately dismissed the appeals. Upon dismissal, the Revenue filed a miscellaneous petition before the Tribunal requesting for recalling the order dismissing the appeal stating that the audit objections raised by the Accountant General (Audit) have been accepted by the Department and re-assessment order was issued.

4. The Tribunal took up for consideration the factual issue and found that there was no material produced before the Tribunal to establish that the audit objections were accepted by the Department. If such a factual finding has been rendered by the Tribunal, the same cannot be disturbed in exercise of powers under Section 260A of the Income Tax Act, 1961 vide the decision of the Hon'ble Supreme Court in the case of M.Janardhana Rao Vs. Jt. CIT [reported in (2005) 273 ITR 50.

5. The learned counsel for the appellant would contend that the decision of the Karnataka High Court in the case of DIT (International Taxation) Vs. Mrs.Jennifer Bhide [reported in (2012) 349 ITR 80], referred to by the Tribunal, is not applicable to the facts of this case and the decision of the Punjab and Haryana High Court in the case of Jain Narain Vs. ITO [reported in (2008) 306 ITR 335] would be applicable.

6. However, we find that this Court, in the case of CIT Vs. V.Natarajan [reported in (2006) 287 ITR 271], while considering a similar issue with regard to exemption under Section 54 of the said Act, held in favour of the assessee and the appeal filed by the Revenue was dismissed. On a reading of the impugned order passed by the Tribunal, we find that the Tribunal has not gone into the aspects regarding the applicability of the decision of the Karnataka High Court in the case of Mrs.Jennifer Bhide, but only noted the findings rendered by the Commissioner of Income Tax (Appeals). Thus, we are satisfied that on facts, the Revenue was not able to establish before the Tribunal that the audit objections were accepted by the Department.

7. Hence, we find that no question of law, much less, a substantial question of law arises for consideration in this appeal.

8. Accordingly, the above tax case appeal is dismissed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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

2. The Commissioner of Income Tax (Appeals)-2,
Chennai-34

3. The Assistant Commissioner of Income Tax
Business Circle II, Chennai 34

+1cc to Mr.T.Ravikumar, Advvoate Sr.NO.88961/17

TCA.No.641 of 2017

GP(CO)
sm:9.1.2018