In the High Court of Judicature at Madras

Dated : 15.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal Nos.695, 700, 701, 715, 728 & 837 of 2017
& all connected and pending CMPs

M/s.The Villupuram District Central Cooperative Bank Ltd., Villupuram-2. ...Appellant in TCA. Nos.695, 700, 701, 715 & 728/2017 & Respondent in TCA No.837 of 2017

The Principal Commissioner of Income Tax, D.P.Thottam, Muthialpet, Puducherry. ...Appellant in TCA. No.837/2017

Vs

The Deputy Commissioner of Income Tax, Villupuram Circle, Villupuram. ...Respondent in TCA.Nos.695, 700, 701, 715 & 728/ 2017

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 19.6.2017 made in ITA.Nos.768 to 772/Mds/2017 (TCA. Nos.695, 700, 701, 715 and 728 of 2017) for the assessment years 2008-09 to 2012-13 and ITA.No.767/Mds/2017 (TCA. No.837 of 2017) for the assessment year 2008-09 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai.

For Assessee : Mr.K.Ravi & Mr.M.Senthilkumar
For Department : Mr.T.R.Senthilkumar

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

Heard both.

2. In this batch of appeals, TCA.Nos.695, 700, 701, 715 and 728 of 2017 have been filed by the assessee against the common order passed by the Tribunal dated 19.6.2017 made in ITA.Nos.768 to 772 of 2017 for the assessment years 2008-09 to 2012-13. TCA.No.837 of 2017 has been filed by the Department as against that portion of the order dated 19.6.2017 made in ITA.No.767 of 2017 relevant to the assessment year 2008-09.

3. The appeals have been filed by the assessee raising the following substantial questions of law :

> "*Common Questions in TCA.No.695, 700, 701, of 2017 :*
>
> *i. Where the Assessing Officer has adopted literal interpretation of Section 36(1)(viia) and Rule 6ABA in the original assessment, can the Commissioner of Income Tax (Appeals) exercise the power to enhance the assessment by giving different dimensions to the interpretation of Section 36(1)(viia) and Rule 6ABA based on non jurisdictional High Court decisions and contra judgments of the jurisdictional Tribunal ? and*
>
> *ii. In the facts and circumstances of the case, whether the Tribunal was right in restoring the matter to the file of the Commissioner of Income Tax (Appeals) without deciding the issue*

on merits and laws ?

<u>Additional Questions in TCA.No.700 of 2017:</u>

i. Where deduction under Section 36(1)(viia) was the main matter of addition in the original assessment proceedings and in the absence of any fresh material, can the Assessing Officer reopen the assessment merely based on a change of opinion ? and

ii. In the facts and circumstances of the case, where the appellant had filed a letter on 17.4.2014 requesting to adopt the return of income filed on 28.9.2009 as the return in pursuance of notice under Section 148, is the Assessing Officer's notices under Section 143(2) dated 14.8.2014 and 15.9.2014 wherein it was mentioned that it was issued in respect of return of income filed on 28.9.2009, are barred by limitation?

<u>Additional Question in TCA.No.701 of 2017 :</u>

(i) In the facts and circumstances of the case, whether the Tribunal erred in not considering the ground on addition of Rs.41,61,359? and

<u>Additional Questions in TCA.Nos.715 & 728 of 2017:</u>

(i) Where there is a reasonable presumption that deduction under Section 36(1)(viia) was considered in the original assessment proceedings and in the absence of any fresh material, can the Assessing Officer reopen the assessment merely based on a change of opinion ? and

(ii) In the facts and circumstances of the

case, where the appellant had requested to adopt the return of income filed respectively on 29.9.2010 and 29.9.2011 as the return in pursuance of notices under Section 148, is the Assessing Officer's notices under Section 143(2) dated 12.2.2015 wherein it was mentioned that it was issued in respect of return of income filed respectively on 29.9.2010 and 29.9.2011, is barred by limitation ?

4. The appeal has been filed by the Revenue raising the following substantial questions of law :

> *"(i) Whether the Appellate Tribunal was right in cancelling the re-assessment on the ground of change of opinion, when no opinion was formed during the course of original assessment proceedings and hence, there is no question of change of opinion for re-assessment ? and*
>
> *(ii) Whether the Income Tax Appellate Tribunal is correct in law in quashing the reassessment order without considering Explanation 1 and Explanation 2(c) to Section 147 of the Income Tax Act when there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment ? "*

5. After elaborately hearing the learned counsel on either side and carefully perusing the materials placed on record and the impugned common order passed by the Tribunal, we find that the common order passed by the Tribunal is a consent order whereby both parties agreed that the matters may be remanded to the Commissioner of Income Tax (Appeals). The

Tribunal, while considering several issues raised for all the assessment years and while rendering a finding in respect of each of the issues, recorded that both parties were agreeable for the matters being remanded to the Commissioner of Income Tax (Appeals) for de novo re-adjudication after granting the assessee adequate opportunity of being heard.

6. The learned counsel for the assessee has expressed their apprehension that the assessee may not be in a position to canvass all the points raised by them even during assessment proceedings, as they were not taken note of by the Assessing Officer.

7. To our mind, the assessee need not have any such apprehension in view of the candid observations made by the Tribunal while remanding the matters for a fresh consideration. It appears that the only issue raised by the assessee pertains to deduction admissible under Section 36(1)(viia) of the Income Tax Act, 1961. So far as the Revenue is concerned, they challenged the order setting aside of the reopening of the assessment under Section 148 of the said Act. In any event, the Tribunal remanded the matter for de novo re-adjudication and it would mean that the assessee would be entitled to canvass all the points, which they raised earlier before the Commissioner of Income Tax (Appeals) as well as in the grounds raised in these appeals including the substantial questions of law, which have been raised by the assessee. Therefore, we find that at this stage, the above referred to questions as framed by the assessee or that of the Revenue do not arise for consideration, as the common order passed by the Tribunal is an order consenting for remand of the matters before the Commissioner of Income

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Tax (Appeals) for re-adjudication de novo after granting the assessee an opportunity of being heard. It is needless to state that all issues are left open to be re-agitated before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) shall decide the matters afresh without being influenced by his earlier order.

8. With the above observations, the above tax case appeals are disposed of. No costs. Consequently, all connected and pending CMPs are closed.

(T.S.S.J.) (K.R.C.B.J.)
15.12.2017

Speaking (or) Non Speaking Order
Index : Yes (or) No
Internet : Yes (or) No

To
1.The Income Tax Appellate Tribunal, 'B' Bench, Chennai.
2.The Deputy Commissioner of Income Tax, Villupuram Circle, Villupuram.

TCA.Nos.695, 700, 701,
715, 728 & 837 of 2017
& all connected and
pending CMPs