In the High Court of Judicature at Madras

Dated : 11.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1370 of 2008

M/s.Lakshmi Vilas Bank,
Salem Road, Karur ...Appellant

Vs

The Joint Commissioner of Income
Tax, Special Range, Tiruchirapalli ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 17.8.2005 in ITA No.805/Mds/1998 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 1993-94.
For Appellant : Mr.Vijayaraghavan

For Respondent : Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.SIVAGNANAM,J
This appeal, by the assessee under Section 260A of the Income Tax Act, 1961 (for brevity, the Act), is directed against the order passed by the Income Tax Appellate Tribunal dated 17.8.2005 in ITA.No.805/Mds/1998 for the assessment year 1993-94.
2. The above appeal has been admitted on 28.8.2008 on the following substantial questions of law :
i. Whether the Appellate Tribunal was right in law in remanding the matter back to the Commissioner after holding that the contents of the notice are not related to final order under Section 263 ? and
ii. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in not canceling the order under Section 263 when the issues found to be erroneous and prejudicial in the order of the Commissioner were completely different from and unrelated to the issues, for which, notice under Section 263 was given?
3. Mr.Vijayaraghavan, learned counsel appearing for the appellant contends that the order passed by the Commissioner of Income Tax dated 30.3.1998 in remanding the matter to the Assessing Officer for a fresh decision is wholly without jurisdiction. It is submitted that the Commissioner of Income Tax issued a notice dated 22.1.1997 under Section 263 of the Income Tax Act, 1961 (for brevity, the Act) proposing to invoke the said power on certain stated grounds. However, when the Commissioner of Income Tax passed the order on 30.3.1998, the order was on a new ground, which

was not mentioned in the said show cause notice dated 22.1.1997. Therefore, the assessee challenged the said order dated 30.3.1998 before the Tribunal by contending that the contents of the order under Section 263 of the Act were not related to the said show cause notice issued in this regard. The Tribunal, though accepted the case as projected by the assessee, while setting aside the order dated 30.3.1998, remanded the matter to the Commissioner of Income Tax for de novo consideration.

4. Before us also, the learned counsel for the appellant would urge that the order passed under Section 263 of the Act was on a totally different ground, which was not contained in the said show cause notice dated 22.1.1997. In support of his contention, the learned counsel has referred to the decision of the High Court of Delhi in the case of CIT Vs. Ashish Rajpal [reported in (2010) 320 ITR 0674].

5. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue would contend that the order of remand passed by the Commissioner of Income Tax was fully justified, as there was no requirement of a show cause notice to be issued prior to passing of an order under Section 263 of the Act. In support of her contention, the learned Senior Standing Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan [reported in (2016) 384 ITR 0200].

6. We have heard the learned counsel on either side.

7. The issue raised before us has been answered by the Hon'ble Supreme Court in the case of Amitabh Bachchan wherein an identical contention as advanced by the learned counsel for the appellant herein was advanced before the Hon'ble Supreme Court contending that no show cause notice was given prior to the order passed under Section 263 of the Act and that the reasons stated in the order passed under Section 263 of the Act were totally different. The Hon'ble Supreme Court, after taking note of Section 263 of the Act, held as hereunder :

Reverting to the specific provisions of Section 263 of the Act, what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic precondition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice, which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different: the first would comprehend a prior notice detailing the specific grounds, on which, revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction, but on the ground of violation of the principles of natural justice.

8. The above decision of the Hon'ble Supreme Court in the case of Amitabh Bachchan would squarely apply to the facts and circumstances of this case, that the Commissioner of Income Tax was not denuded of his powers to decide the matter as detailed in the order dated 30.3.1998 and that there was no requirement of issuance of any show cause notice.

9. Further, on a perusal of the decision in the case of Ashish Rajpal relied upon by the learned counsel for the assessee, we find that the decision is factually distinguishable, as the Court found that there had been violation of the principles of natural justice while passing the order under Section 263 of the Act. Therefore, the said decision does not render any support to the case of the assessee.

10. It is seen that after the order of remand, a fresh order has been passed on 20.12.2005 under Section 263 of the Act and this was challenged before the Tribunal. The Tribunal passed an order on

31.1.2008, which is impugned in TCA.No.1077 of 2008. We do not record any finding in this appeal as regards the validity of the order passed by the Tribunal dated 31.1.2008, which is impugned in TCA.No.1077 of 2008 and we answer the issue raised before us as to whether a show cause notice is required to be issued prior to passing an order under Section 263 of the Act. This question having been answered by the Hon'ble Supreme Court in the case of Amitabh Bachchan, the assessee has to necessarily fail in this appeal.

11. Accordingly, the above tax case appeal is dismissed and the substantial questions of law framed for consideration are answered against the assessee. No costs.

11.10.2018

Internet : Yes

To

1.The Joint Commissioner of Income Tax, Special Range, Tiruchirapalli.
2.The Income Tax Appellate Tribunal, Chennai 'D' Bench.

RS

T.S.SIVAGNANAM,J

AND

V.BHAVANI SUBBAROYAN,J

RS

TCA.No.1370 of 2008

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