IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1522 of 2008

The Commissioner of Income Tax-X,
Chennai. ... Appellant
-vs-

Shri R.Veeramani
58,Cathedra Road,
Chennai-600 086 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 29.03.2005 in ITA No.294/Mds/1998, for the Assessment year 1993-94.

For Appellant : Mr.M.Swaminathan and
Mrs.V.Pushpa

For Respondent : Mr.M.P.Senthilkumar

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]
This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, dated dated 29.03.2005 in ITA No.294/Mds/1998, for the Assessment year 1993-94.

2.Heard Mr.M.Swaminathan, learned Counsel for the Revenue and Mr.M.P.Senthilkumar, learned Counsel for the Respondent.

3.This Appeal has been admitted on 08.12.2008, on the following Substantial Question of Law:
"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax (Appeals) on the ground that he ought to have gone into the merits of the additions in an order passed by the assessing officer u/s.143(3) in pursuance of an order u/s.263 passed by the Commissioner of Income Tax, when the order u/s.263 had become final on account of the assessee having not filed any appeal before the Income Tax Appellate Tribunal u/s.253 of the Income Tax Act?"

4.We have perused the order of Assessment as well as the Order passed by the Commissioner of Income Tax, under Section 263 of the Income Tax Act, 1961 and we find that the tax effect in this appeal is lesser than the threshold limit mentioned in Circular No.3 of 2008, dated 11.07.2018, issued by the Central Board of Direct Taxes, which fixes the monetary limit as Rs.50,00,000/- for the Department to pursue the matter. Furthermore, the Revenue has not been able to point out any distinguishing features, by which the Circular No.3 of 2018, dated 11.07.2018, cannot be applied.

5.Thus, for the above reasons, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Question of Law, framed for consideration, is left open. No costs.

6.It is seen that the appeal filed by the assessee before the Commissioner of Income Tax(Appeals) against the assessment order was rejected. The assessee filed appeal before the Tribunal and the Tribunal, by the impugned order allowed the assessee's appeal, set aside the order of the Commissioner of Income Tax and remanded the matter for fresh decision on merits. The operative portion of the order reads as follows:

"A plain reading of the above section would show that an appeal lies against assessment framed u/s.143(3). In a case where assessment u/s.143(3) is made in pursuance of order u/s.263, that remains still an appealable order. Once assessee has a statutory right to file an appeal before the CIT(Appeals), then CIT(Appeals) is duty bound to decide the same u/s.250, which contains the procedure in detail. Section 250(6) reads as under:-
"250(6).The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

This section clearly manifests that CIT (Appeals) shall give reasoning for making his decision. There seems to be no bar for deciding the appeal on merits, if the proposal for addition was originated from the side of the CIT u/s.263. In these circumstances, we think the ld.CIT(Appeals) has misdirected himself by not going into the merits of the case. Therefore, we set aside the order of the ld.CIT(Appeals) and direct him to decide the issues on merit.

9.In the result, the appeal is allowed for statistical purposes."

7.Thus, in terms of the above order, the CITA had to decide the matter on merits. However, the Revenue has preferred the present Tax Case Appeal against the order passed by the Tribunal and the assessee has not filed an appeal against the remand order. Since we have dismissed the appeal filed by the Revenue on account of low tax effect, if the CITA has not implemented the direction of the Tribunal, it may do so by deciding the matter on merits in terms of the directions issued by the Tribunal.

[T.S.S., J.] & [V.B.S., J.]

26.09.2018

msk

Index:Yes/No

Internet:Yes

To

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

T.S.Sivagnanam, J.

and

V.Bhavani Subbaroyan, J.

msk

T.C.A.No.1522 of 2008

26.09.2018