IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2018

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THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (A) No. 1547 of 2008

The Commissioner of Income Tax,
Madras.
...Appellant
Vs.
Shri. A.S.Thillai Nayagam,
No. 2, 7th Street, Gopalapuram,
Chennai – 600 086. ...Respondent

Appeal filed under Section 260 - A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal "A" Bench, Chennai dated 28.03.2008 passed in I.T.(SS).A.No. 82/Mds/2007.

For Appellant : Mrs. K.G.Usha Rani
For Respondent : No appearance

JUDGMENT

[Judgment was delivered by T.S.SIVAGNANAM, J.]

This appeal, by the Revenue filed under Section 206-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal "A" Bench, Chennai (Tribunal) in I.T.(SS).A.No. 82/Mds/2007 dated 28.03.2008 for the Block Period 01.04.1989 to 25.11.1999.
2.The appeal has been admitted vide order dated 26.09.2008 on the following substantial question of law:
" Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the penalty to the tune of Rs. 95,52,609/- imposed under Section 158-BFA(2) of the Income-Tax Act is valid?"

3.The question which falls for consideration is whether the Commissioner of Income Tax Appeal vide order dated 05.02.2007 was justified in deleting the penalty levied on the Assessee and whether the Tribunal by the impugned order was right in confirming such order passed by the Commissioner of Income Tax (Appeals) [in short "CIT(A)"].

4.We have noted the factual matrix of the matter and the findings recorded by the CIT(A) which was based on the stand taken by the Assessee in the appeal before the CIT(A). The CIT(A) took note of the letter furnished by Assessee before the Assessing Officer offering the entire deposits from the villagers of Rasipuram as income of the Assessee and that in the offer letter, it was clearly stated that the offer was made only to relieve the genuine depositors from the legal hassles of taxation and this was offered on the condition that the penalty and prosecution should not be initiated. The CIT(A) further noted that the Assessee made such a categorical statement as a package and the offer was made to avoid protracted litigation and as a matter of good gesture to keep up his honour among the people of his own village and the Assessing Officer accepted the offer that there were no deposits which were undisclosed income of the Assessee and this sum was assessed only on the basis of disclosure made by Assessee and not on the basis of any evidence or investigation conducted by the Department.

5.Taking note of the such stand taken by the Assessee, the CIT(A) held that the Assessee has paid tax on the returned income and therefore, the Assessee had the basis of estimate and there is no reason for the Assessee not to return atleast Rs.11,50,000/- as he was having full knowledge of the fact that he was running the business of hiring lorries. Thus, CIT(A) did not agree with the argument of the Assessee that the addition of Rs.11,50,000/- was beyond the control of the Assessee. However, with regard to the other additions made by the Assessing Officer, the CIT(A) agreed with the stand taken by the Assessee that it was due to honest difference of opinion or due to inadvertence and in particular, with regard to the addition of Rs.67,88,200/-, the CIT(A) factually noted that the Department had no evidence to show that this amount belongs to the Assessee and therefore, held that there is no valid reason for imposing penalty. The Revenue, being aggrieved by such order, filed appeal before the Tribunal.

6.Before the Tribunal the records were perused and the Tribunal held that the order passed by the CIT(A) was right, since the additions were offered on condition that penalty and prosecution should not be initiated and the offer was made to avoid protracted litigation as a matter of good gesture to keep up the Assessee among the people of his own village. Further, the Tribunal noted that there was no assessed material found, as a result of search to the fact that the deposits were undisclosed by the Assessee and this was assessed only on the basis of disclosure made by the Assessee. Furthermore, the Tribunal noted that it is not on the basis of any evidence and investigation conducted by the Department and it was not unearthed by the act of the Department. Therefore, the Tribunal held that there was no justification to interfere with the order passed by the CIT(A).

7.On a perusal of the orders passed by the CIT(A) as well as the Tribunal, we find that the entire dispute revolves on the factual matrix, which was considered by the CIT(A) and decided in favour of the Assessee and once again reappreciated by the Tribunal and concluded in favour of the Assessee and in this appeal, we are not expected to reappreciate the factual position for arriving at a different conclusion. Thus, in our considered view, no question of law much less a substantial question of law arises for consideration in this appeal. Accordingly, the Appeal fails and it is dismissed. No costs.

[T.S.S.J.] [V.B.S.J.]
09.10.2018

mrm/Sgl

Index : Yes/No

Speaking/Non Speaking Order

T.S.SIVAGNANAM, J.
and
V.BHAVANI SUBBAROYAN,J.

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