IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case No.1354 of 2005

The Commissioner of Income-tax,
Trichy. ... Appellant

Vs.

1. Sri.S.M.Palaniappa Chettiar (Deceased)

2. P.Chellappan
3. P.L.Muthu
4. P.L.Gandhi
5. Y.E.Kannamma
6. A.L.Solai
(RR2 to 6 substituted as LRs of the deceased sole respondent vide order dated 21.8.2012 in M.P.No.2 of 2012.) ... Respondents

Tax Case filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 16.9.2003 in ITA No.604/Mds/2003, and against the order of the Commissioner of Income Tax (Appeals) Tiruchirappalli, dated 23.01.2003 made in ITA Nos.59 to 64 and 66 & 67/02-03, against the order of the Assistant Commissioner of Income Tax Company Circle-I, Tiruchirappalli dated 22/3/2002, made in PAN/GIR No.101PP3;

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel

For Respondents : Mr.Jayakumar

JUDGMENT

(Judgment of the court was delivered by DR.VINEET KOTHARI,J.)

Learned counsels at Bar would submit that the issue involved in the present Tax Case is squarely covered by the decision of a coordinate Bench of this court in Sapthagiri Finance & Investments v. Income Tax Officer ((2012) 82 CCH 86), wherein it is held as under:-

> "13. As far as the present case is concerned, the provisions of Section 148 also uses the expression "so far as may be apply accordingly as if such return were a return required to be furnished under Section 139". Thus, understanding this provisions in the background of the decision of the Apex Court on the facts available, we are of the view that in completing the assessment under Section 148 of the Act, compliance of the procedure laid down under Sections 142 and 143(2) is mandatory. On the admitted fact that beyond notice under Section 142 (1), there was no notice issued under Section 143 (2), and in the light of the fact that the very basis of the reassessment was the failure on the part of the assessee in not disclosing the capital gains arising on the transfer of property for assessment and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to Section 148 of the Act, we hold that there was total failure on the part of the Revenue from complying with the procedure laid down under Section 143(2) of the Act, which is mandatory one as held by the Apex Court.
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> 14. Although on merits, we do not agree with the contention of the assessee that the capital gains would not be assessable at the hands of the firm, yet for the reasons stated in the preceding paragraph that in the absence of notice under Section 143(2) reassessment could not be held to be validly made. Thus, we have no hesitation in setting aside the order of the Tribunal."

2. The present Tax Case stands admitted 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 holding that the reopening of the assessment under Section 147 and completion of assessment without issue of notice under Section 143(2) within twelve months is not valid?"

3. Having heard the learned counsel for the parties, we are satisfied that the said issue is no longer res integra and the

present Tax Case is covered by the decision of a coordinate Bench of this court in the aforesaid case and therefore, the present Tax Case is liable to be dismissed and accordingly, it is dismissed. The substantial question of law is answered in favour of the assessee. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Assistant Commissioner of Income Tax, Company Circle-I, Tiruchirappalli.

3.The Commissioner of Income Tax (Appeals), Cantonment, Tiruchirappalli.

T.C.No.1354 of 2005

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srg 2/3/2019