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.862 of 2005

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.V.E.Kannamma
6.A.L.Solai ... Respondents

Respondents 2 to 6 brought on
record as LRs of deceased sole
respondent vide order of Court
dated 12.03.2012, made in
M.P.No.2 of 2011 in TC(A)
No.862 of 2005

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax appellate Tribunal Chennai □B□ Bench, dated 16.09.2003 in ITA No.601/Mds/2003, for the assessment year 1993-94.

For Appellant : Mrs.R.Hemalatha

For Respondents : No appearance

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JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

This Tax Case Appal by the Revenue, filed under Section 260-A of the Income Tax Act, 1961 (the

'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Chennai-B Bench (the 'Tribunal' for brevity) in ITA No.601/Mds/2003, for the assessment year 1993-94.

2.This Appeal has been admitted on 25.10.2005, 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 re-opening of the assessment under Section 147 of the Income Tax Act, 1961, and the completion of assessment without issue of notice under section 143(2) of the Income Tax Act, 1961, within 12 months, is valid?
3.The respondent/assessee is no more and the Department had filed an application to bring on record the legal heirs, to whom notices have been ordered and inspite of notices having been served and their names printed in the cause list, none appears for the legal heirs of the deceased/assessee. Therefore, the Court has proceeded to hear the matter on merits.

4.Heard Mrs.R.Hemalatha, Learned Standing Counsel for the Revenue.

5.The legal issue involved in this case is with regard to the validity of the re-assessment/re-opening proceedings under Section 147 of the Act, without issuing notice under Section 143(2) of the Act, within 12 months and whether such re-assessment is valid.

6.Identical issue was considered by the Hon'ble Division Bench of this Court in the case of Commissioner of Income Tax vs. C.Palaniappan [reported in (2011)241 CTR 207]. The assessee in the said case is the co-owner along with the assessee in the instant appeal in respect of the subject building. The relevant portion of the judgement would run thus:

16. The explanation to the said Section was also added under Finance Act 2006, with effect from 01.10.2005, that by way of removal of any doubts, the first proviso or the second proviso will not have any application to a return furnished on or after 1st of October 2005 in response to a notice served under the Section. The effect of the amendment inserting the proviso, is stated to be as follows:
" The first proviso to section 148(1) provides that where a return has been furnished during the period from October 1, 1991 to September 30, 2005 in response to a notice served under section 148 and, subsequently a notice has been served under section 143(2) after the expiry of twelve months specified in the proviso to section 143(2) as it stood immediately before the amendment of the said sub-section by the Finance Act, 2002, but before the expiry of the time-limit for making the assessment, reassessment or re-computation as specified in section 153(2), such notice shall be deemed to be valid notice.
The second proviso to section 148(1) provides that where a return has been furnished during the period from October 1, 1991 to September 20, 2005 in response to a notice served under section 148 and, subsequently a notice has been served under section 143(2)(ii), but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in section 153(2), such notice shall be deemed to be valid notice. "

17. Admittedly, in all these cases, pursuant to the notice under Section 148 of the Act, the returns were filed prior to 2005. Hence, the proviso is of relevance in respect of the assessment relating to the assessment years 1989-90 to 1996-97. Thus a reading of Section 148 of the Act, along with the proviso, shows that while resorting to an assessment as an escaped assessment or a reassessment or a recomputation under Section 147 of the Act, when a notice is issued under Section 148 of the Act, requiring the assessee to file the revised return of his income or income of any other person in respect of which he is assessable under the Act during the previous year corresponding to the relevant assessment year in the prescribed form and verified in the prescribed manner and setting

forth particulars as may be prescribed, then the return filed shall be treated as if such a return is one required to be filed under Section 139 of the Act, to follow the other provisions of the Act. Chapter XIV of the Act deals with the procedure for assessment.

18. Leaving aside the other provisions on the filing of the return and self-assessment which are not relevant for the purpose of our case, the next relevant provision herein is Section 143 of the Act, dealing with assessment. Where a return has been furnished under Section 139 of the Act or in response to a notice under Section 142(1) of the Act, in order to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, under Section 143(2) of the Act, the Assessing Authority has to serve a notice on the assessee, requiring him either to attend his office or to produce or caused to be produced therein, on a date to be specified therein, such evidence that the assessee relies upon in support of the return. Proviso to sub section (2) of Section 143 of the Act states that a notice under the Section has to be served within a period of 12 months from the end of the month in which the return is furnished and any notice that has been served beyond the period of 12 months would make the entire proceedings herein, invalid and illegal. Sub Section (2) of Section 143 of the Act, as stated above, was subsequently amended under the Finance Act, 2002, with effect from 1.6.2002, wherein, it is stated that where the Assessing Officer has reason to believe that any loss, exemption, deduction, allowance or relief made in the return is inadmissible, he shall serve a notice on the assessee, specifying the particulars of such claim of loss, exemption, deduction, allowance or relief and require the assessee to produce or cause to be produced, any evidence or particulars specified thereon, on which the assessee may rely, in support of such claim. Going by the provisions of Section 143(2) of the Act as applicable to the proceedings under Section 148 of the Act, prior to the insertion of the proviso to Section 148(1) of the Act, the Officer concerned is duty bound to issue the notice within the period of limitation of 12 months from the end of the month in which the return was furnished. In other words, where on a return filed pursuant to the notice under Section 148 of the Act, a notice is served under Section 143(2) of the Act after the expiry of the 12 months' period, under normal circumstances, the period of limitation would certainly hit the proceedings under Section 148 of the Act. However, under the Finance Act, 2006, the amendment inserting the proviso to Section 148 saved the limitation on the notice issued under Section 143(3) beyond the period of 12 months. Thus as per the proviso to Section 148(1) of the Act, where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under Section 148 of the Act and subsequently a notice has been served under Sub-Section (2) of Section 143 of the Act, but after the expiry of twelve months specified in the proviso to Sub Section (2) of Section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002), but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in Sub-Section (2) of Section 153 of the Act, every such notice issued is deemed to be a valid notice. The explanation appended therein pointed out to the limited scope of the newly inserted provisos that the same would not be available to a return filed on or after 1st day of October, 2005, in response to a notice served under Section 148 of the Act. Thus the substantive provision on limitation in a case of filing a return on a notice issued under Section 148 of the Act would be the one provided under the proviso to Section 148 and limitation available for making an assessment or reassessment or recomputation, as specified under Section 153(2) of the Act and nothing beyond. Hence, in respect of the returns filed between the period 1.10.1991 and 30.9.2005 pursuant to the proceedings under Section 148 would not be hit by limitation on the issuance of notice under Section 143(2) of the Act. The only limitation that has to be seen to confer validity to the proceedings under Section 148, would be the time limit given under Section 153(2) for making the assessment, reassessment, recomputation and nothing beyond. Thus even though under normal circumstances, for a regular assessment falling under Section 143 proceedings, a notice issued after the expiry of 12 months would make the proceedings illegal; yet, as regards the notice issued under Section 148 of the Act leading to the

filing of return, the returns filed during the period commencing from 1.10.1991 to 30.9.2005 fall under the proviso to Section 148(1) of the Act. The only requirement for compliance of the procedure, as given under Section 148(1), being a notice under Section 143(2), without reference on limitation, Section 148(1) proviso has relevance for returns filed from 1.10.1991 to 30.9.2005. On and after the 1st day of October, 2005, the procedure to be adopted thereon is given under Section 149 of the Act.

7.The above legal position was laid down by the Hon'ble Division Bench, after taking note of the insertion of the proviso to Section 148 of the Act by Finance Act, 2006, with retrospective effect from 01.10.1991. Thus, on the date when the impugned order was passed by the Tribunal, i.e on 16.9.2003, the legal position was clearly in favour of the assessee, as the legal position as indicated in the decision in the case of C.Palaniappan is by considering the insertion of the proviso with retrospective effect from 01.10.1991. Therefore, we need to point out that by taking note of the insertion of the new proviso with retrospective effect and noticing the law laid down in the case of C.Pananappan, the Substantial Question of Law has to be answered in favour of the Revenue and against the assessee.

8.In the case of C.Palaniappan, the Hon'ble Division Bench, while answering the question in favour of the Revenue, decided the case in favour of the assessee, on the merits of the matter, inasmuch as reasons for re-opening were not furnished. The facts are no different in the instant case, as inspite of request made by the deceased assessee, the reasons were not furnished. Therefore, at this distant point of time, we feel it will be inappropriate and inequitable to remand the matter to the Assessing Officer with a direction to furnish the reasons and to proceed in accordance with law.

9.In the light of the above, the appeal filed by the Revenue is partly allowed and the Substantial Question of Law is answered in favour of the Revenue, in the light of the decision in the case of Commissioner of Income Tax vs. Palaniappan ([reported in (2011)241 CTR 207]. However, we quash the re-assessment proceedings on the ground of non-furnishing of reasons for re-opening of assessment and also taking note of the monetary limit involved in this appeal, which is less than Rs.2 lakhs. No costs.

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

26.09.2018

msk

To

1.The Commissioner of Income-tax (Appeals), Chennai.

2.The Income-tax appellate Tribunal Chennai □B□ Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

msk

T.C. (Appeal) No.862 of 2005

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