IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.378 to 380 of 2018
and
C.M.P.Nos.8107 & 8108 of 2018

Commissioner of Income Tax-I,
63, Race Course Road,
Coimbatore-641 018. ... Appellant in all appeals

-vs-

Shri.A.R.Viswanathan,
No.318, Raja Street,
Coimbatore-641 001.
PAN : ABG PV 5965 Q ... Respondent in all appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 28.02.2014 in ITA Nos.796 to 798/Mds/2013 for the assessment years 1993-94 to 1995-96.

Filed against the common order of the commissioner of Income Tax (Appeals-I) coimbatore dated 24.01.2013 challenging levy of penalty under section 271(1)(C) of the Act for the assessment year 1993-94 to 1995-96 filed against the orders passed under Section 271(1)(c) read with Section 274 of Income Tax Act 1961 of the Income Tax Act on 31.03.2010 for the assessment years 1993-94, 1994-95 & 1995-96 by the Assistant Commissioner of Income Tax, Circle - III, Coimbatore.

For Appellant : Mr.T.R.Senthil Kumar, Senior Standing Counsel
: assisted by Ms.K.G.Usha Rani, Junior Standing Counsel

******

COMMON JUDGMENT

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

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by M/s.K.G.Usha Rani, learned Junior Standing Counsel for the appellant/Revenue.

2.These tax case appeals have been filed by the Revenue challenging the common order passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 28.02.2014, in ITA Nos.796 to 798/Mds/2013 for the assessment years 1993-94 to 1995-96.

3.The appeals have been filed raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalty levied u/s 271[1][c]?"

4.We have perused the facts of the case as well as the order passed by the Tribunal.

5.The Tribunal, allowed the assessee's appeal and deleted the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 by following a decision of the co-ordinate Bench of the Tribunal in the case of A.Rajendran and Others vs. ACIT [ITA Nos.60 to 63 and 83 to 86/Mad/2009; Dated 12.03.2010].

6.The Revenue, in the memorandum of grounds of appeal, have not specifically pointed out as to how the case is distinguishable from the facts of the present case. It is not in dispute that the case of A.Rajendran (supra) was a case pertaining to the assessee's group. The Tribunal on analysing the facts of the case, found that it was not a fit case for levy of penalty. At this juncture, it would be useful to refer to the operative portion of the order of Tribunal in the case of A.Rajendran (supra).

> "The rules of preponderance of probability that are to be applied to assessment proceedings cannot be so applied qua penalty proceedings. The rules of probability when applied in a penalty proceeding would have to be applied with more rigour of preponderance, so as to tilt the balance to the side of the Revenue in an accentuated manner. Otherwise, keeping the penalty proceedings separate from the assessment proceeding would become redundant. Assessees' explanations regarding gifts were all rejected on the application of rules of preponderance of probability. But as aforesaid, the same rules

cannot be applied just as it is in a penalty proceeding since here what is to be verified is the bona fide nature of the explanations and whether there was any concealment. The tone of reciprocity found in the statement given by Shri Sampath Kumar would not be sufficient enough to come to a conclusion that the explanations given by the assessee could not be substantiated by it. Of course, the substantiation done may fall short of the requirements for providing the credits in an assessment proceeding, but this would not be equivalent to what could be an inability to substantiate the credits. Taking the entire gamut of the case into account, we are of the opinion that there was no case for the Revenue that the explanations offered by the assessees were not bona fide or there was a concealment. Thus these were not cases which were fit for a levy of penalty under s. 271 (1)(c) of the Act. In taking this view, we are fortified by the decision of the Delhi Bench of this Tribunal in the case of Addl. CIT vs. Prem Chand Garg (supra) and that of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Balbir Singh (both cited supra). We therefore have no hesitation to delete such levy of penalty."

7.Though there is a submission on behalf of the Revenue that the Department has filed an appeal against the order in the case, there is nothing on record to show that the appeal is pending.

8.In the light of the above, the Tribunal has arrived at a factual finding and deleted the penalty in the assessee's group case, which has been followed by the Tribunal in the impugned order.

9.Thus, we find that the entire issue revolves around the factual matrix and no question of law much less substantial question of law arises for consideration.

10.Accordingly, the appeals are dismissed and the order passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

abr

To

1.Commissioner of Income Tax-I,
63, Race Course Road, Coimbatore-641 018.

2.The Income Tax Appellate Tribunal 'D' Bench, Chennai.

3.The Commissioner of Income Tax (Appeals)-1,
Coimbatore.

4.The Assistant Commissioner of Income Tax,
Circle - III, Coimbatore.

+1cc to Mr.TR.SENTHILKUMAR, Advocate, S.R.No. 53521

T.C.ANos.378 to 380 of 2018

SS(CO)
TR(20/08/2018)