IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos.325 to 330 of 2018
and
C.M.P.No.6401 to 6405 of 2018 in

Commissioner of Income Tax
Central I,
No.108, Mahatma Gandhi Road,
Chennai. ... Appellant in all Tax Case Appeals

-vs-

Sri S.Duraipandi &
Sri S.Thalavaipandian [AoP]
C/o CNGSN Associates
PAN: AAAAD4723G ... Respondent in all Tax Case Appeals

COMMON PRAYER: Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal Bench 'D', Chennai, dated 31.07.2015 in ITA.Nos.736 to 741/MDS/2015 against the order dated 30.12.2014 and made in ITA Nos.79 to 85/12-13/A-II on the file of the Commissioner of Income Tax (A) 19, Investigation Wing, Chennai 34 in TC(A) 325 to 330/2018 and against the order dated 20.09.2010 and made in PAN AAAAD4723G on the file of the Assistant Commissioner of Income Tax, Central Circle III(4) Chennai 34 (in TC(A) 325 to 330/2018)

For Appellant in all appeals : Mr.T.R.Senthil Kumar

For Respondent in all appeals : Mr.R.Sivaraman

JUDGMENT
(Judgment was delivered by T.S.Sivagnanam, J.)

These appeals by the revenue have been filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), challenging the orders passed by the Income Tax Appellate Tribunal Bench 'D', Chennai, dated 31.07.2015 in

ITA.Nos.736 to 741/MDS/2015 for the assessment years 2002-03 to 2007-08.

2.The revenue has filed these appeals raising the following substantial questions of law:-

> "1.Whether the Appellate Tribunal is right in law in holding that return filed by the assessee in response to notice u/s. 153A is equivalent to the return filed under Section 139 (1) of the Act and all the consequent benefits thereto accrues to such return?
>
> 2.Whether the Tribunal is right in law in holding that return filed by the assessee in response to notice u/s 153A is required to be processed u/s.143(1)(a) without noting the binding judgment of Hon'ble Apex Court reported in 260 ITR 84 wherein it was mentioned that when regular assessment is contemplated, there is no need for summary proceeding u/s. 143(1)(a) of the IT Act?
>
> 3.Whether the Appellate Tribunal is right in law in holding that interest under Section 234A is chargeable as per sub-section 3 of Section 234A whereas sub-section 1 of Section 234A is attracted to the facts of the case?

3.Heard Mr.T.R.Senthil Kumar, learned counsel appearing for the appellant/revenue and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

4.In our considered view, there may not be any necessity for the Court to examine the legal aspects to answer the substantial questions of law since this Court is of the view that the Tribunal should have awaited the decision of this Court in the case of ACIT vs. V.N.Devadoss in T.C.A.Nos.821 to 824 of 2014. In fact this was brought to the notice of the Tribunal by the revenue and a copy of the interim order of stay dated 26.11.2014 granted by the Hon'ble Division Bench of this Court in those appeals were produced before the Tribunal and in paragraph 8 of the impugned order, the Tribunal has extracted the interim order granted by the Hon'ble Division Bench. Nevertheless, in paragraph 9, the Tribunal would state that the issue regarding the period for which interest has to be charged under Section 234A and 234B of the Act is not the subject matter of appeal before the High Court and therefore regardless of the said order being granted by the Hon'ble Division Bench, the Tribunal holds that the direction given by the Commissioner of Income Tax (Appeals) to the Assessing Officer to re-compute the correct chargeable interest under the provisions of the Section 234A and 234B of the Act as per the decision in the case of ACIT vs. V.N.Devadoss, in our considered view is improper. What is required to be seen is the substantial questions of law raised in T.C.A.Nos.821 to 824 of 2014 which touches upon the larger issue and in fact they are identical to the substantial questions of law raised in these appeals as well. If the first two substantial questions of law are answered, consequently the Court will have to answer the substantial question of law No.3.

5.Nextly, we would like to observe that when an order of stay is granted by the High Court in a tax case appeal, it cannot obviously stay the statutory provision. Nevertheless, it has got power to stay the finding recorded by the Tribunal against which the appeal emanates. Thus, by granting an order of stay, it pre-supposes that the Court has come to the prima facie conclusion that the appellant has made out a case for admission and therefore, the appeal has been admitted. As rightly contended by the learned counsel for the revenue that very rarely the revenue file a stay petition in a tax case appeal. Therefore, when an appeal is entertained and stay has been granted, the Tribunal which is inferior to the jurisdictional High Court shall keep the matter in abeyance and should avoid interpretation of the question raised in the appeal which is pending before the jurisdictional High Court unless it is clearly established that the cases are factually different. Such a contingency does not arise in these appeals because the Tribunal has affirmed the order passed by the Commissioner of Income Tax (Appeals) who issued a direction by following the directions issued in the case of ACIT vs. V.N.Devadoss. In the light of the above, we are of the considered view that the appeals should be kept pending before the Tribunal and await the decision in T.C.A.Nos.821 to 824 of 2014.

6.For the above reasons, these tax case appeals filed by the revenue are allowed, the common order passed by the Tribunal is set aside and the matter is remanded back to the Tribunal with a direction to the Tribunal to await the decision in the case of ACIT vs. V.N.Devadoss in T.C.A.Nos.821 to 824 of 2014. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

cse
To

1.The Income Tax Appellate Tribunal Bench 'C',
Chennai.

2. The Commissioner of Income Tax Center I
   No.108, Mahatma Gandhi Road, Chennai.

3. The Commissioner of Income Tax(A)19
   Investigation Wing, Chennai 34.

4. The Assistant Commissioner of Income Tax
   Central Circle III(4), Chennai 34.

+1 CC to Mr.T.R.Senthil Kumar, Advocate sr 88240.

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VD(CO)
SP(24/01/2019)