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 No.604 of 2018

P.Senthil Kumar ...Appellant

Vs

Principal Commissioner of Income Tax-5, Chennai ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.2.2017 in ITA No.3398/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2012-13 against the order dated.20.10.2016 by the Commissioner of Income Tax(Appeals) -4 in ITA.No.124/2015-16/CIT(A)-4/AY 2012-13 against the penalty order dated 29.09.2015 for the Assessment Year 2012-2013 Passed by the Income Tax Officer,Non Corporate Ward -3(3), Chennai. In PAN ABBPS 1019H and Assessment order dated 29.03.2015 for the Assessment Year 2012-2013 Passed by the Income Tax Officer,Iron Corporate ward-3(3), Chennai.

For Appellant : Mr.T.Vasudevan
For Respondent : Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) is directed against the order passed by the Income Tax Appellate Tribunal (for short, the Tribunal), Madras 'D' Bench dated 28.2.2017 made in ITA.No.3398/Mds/2016 for the assessment year 2012-13.

2. The above appeal has been filed raising the following substantial questions of law :

> "i. Whether the interpretation and application of Section 271B read with Section 273B was correctly made by the

Income Tax Appellate Tribunal ?

ii. Whether the Tribunal had rightly considered and applied the provisions of Section 273B providing for no penalty to be levied if reasonable cause is explained by the assessee ? And

iii. Whether the Tribunal was correct in law in confirming the penalty levied when the audit report was filed along with the return and hence constitutes only a venial breach?”

3. We have heard Mr.T.Vasudevan, learned counsel for the appellant and Mrs.R. Hemalatha, learned Senior Standing Counsel appearing for the respondent - Revenue.

4. The short issue, which falls for consideration, is as to whether the appellant had shown sufficient cause for not filing the audit report before the last date for filing the same namely 30.9.2012.

5. The assessee filed the audit report along with the return of income on 31.3.2013. The assessment was completed by the Assessing Officer under Section 143(3) of the Act vide order dated 29.3.2015. Since the audit report was not filed before the last date namely 30.9.2012, penalty has been levied on the assessee under Section 271B of the Act vide order dated 29.9.2015 to the tune of Rs.1.5 lakhs. Aggrieved by that, the assessee carried the matter by way of appeal to the Commissioner of Income Tax (Appeals)-4, Chennai [hereinafter called the CIT(A)], who dismissed the appeal by order dated 20.10.2016. The assessee moved the Tribunal by way of further appeal and it was also dismissed by the impugned order.

6. Admittedly, under Section 273B of the Act, there is power to condone the delay in filing the audit report provided the assessee shows reasonable cause for the failure to file the audit report.

7. The assessee is an individual carrying on business of dealing in granites. His case was that the accountant suddenly resigned and left without notice in the month of August 2012, that the assessee had to engage a new accountant and compile all the accounting data and that many files were in disarray, which led to the delay in filing the audit report.

8. The Department opposed the appeal before the Tribunal by contending that the appellant was habitual in filing the tax audit reports belatedly and referred to the proceedings for the assessment year 2011-12.

9. The learned counsel for the appellant would submit that during the said assessment year namely 2011-12, the assessee's father and mother passed away, as a result of which, the audit report could not be filed and ultimately, the explanation given by the assessee was accepted and the Tribunal deleted the penalty by order dated 23.11.2016 in ITA.No.1222/Mds/ 2016.

10. Admittedly, the reasons assigned by the assessee have not been found to be false nor with any mala fide intention, the reasons were assigned. Therefore, this Court is of the view that the explanation offered by the assessee can be taken as a reasonable cause for his failure to file the audit report within time. We are also aware that the assessment was completed under Section 143(3) of the Act only on 29.3.2015 and on that date, the audit report was very much available with the Assessing Officer.

11. The Hon'ble Apex Court, in the case of Hindustan Steel Limited Vs. State of Orissa [reported in (1972) 83 ITR 26], considered the validity of levy of penalty under the provisions of the Orissa Sales Tax Act, 1947. One of the questions, which was framed for consideration was as to whether imposition of penalty for failure to register as a dealer was justified. The Hon'ble Apex Court pointed out that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer, that an order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding and that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It was further held that whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances and that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

12. Though the above decision arises under the Orissa Sales Tax Act, 1947, the ratio decidendi of the said

decision could very well be applied to the assessee's case. We find that the non filing of the tax audit report before 30.9.2012 is a technical breach and admittedly, the assessee filed the audit report along with the return of income on 31.3.2013 and that the assessment was framed by the Assessing Officer only on 29.3.2015, on which date, the audit report was very much on the file of the Assessing Officer. Thus, we are of the view that the explanation offered by the assessee can be accepted as a reasonable cause for his failure to file the audit report within time and the case on hand is not a fit case for imposing penalty on the appellant.

13. For the above reasons, the above tax case appeal filed by the assessee is allowed and the substantial questions of law raised are answered in favour of the assessee. The penalty imposed on the assessee vide order dated 29.9.2015 shall stand deleted. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal, Madras 'D' Bench.

2.The Principal Commissioner of Income Tax-5, Chennai.

3.The Commissioner of Income Tax(Appeals)-4,
121, Mahathma Gandhi Road, Chennai. 34.

4.The Income Tax officer,
Non corporate Ward 3(3), Chennai. 34.

+1cc to Mr.T.Ravi Kumar , Advocate SR.No. 88633

TCA.No.604 of 2018

A.SK(05/03/2019)