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.717 of 2018

The Commissioner of Income Tax,
Chennai ...Appellant

Vs

M/s Original Kerala Jewellers
T.Nagar, Chennai. ...Respondent

APPEAL under Section 260-A of the Income Tax Act, 1961 against the order dated 05.03.2018 passed by the Income Tax Appellate Tribunal, Madras "C" Bench in I.T.A.No.2987/MDS/2017 for the assessment years 2008-09, against the order dated 29/09/2017 made in ITA No.204, 205 & 206/CIT(A)-2/2016-17, passed by the Commissioner of Income Tax (Appeals-2) Chennai and against the order dated 09/01/2017 passed by the Deputy Commissioner of Income Tax Non-Corporate Circle (2), Chennai for the Assessment Year 2008-2009.

For Appellant :Ms. R.Hemalatha, SSC

For Respondent :Mr.Vikram Vijayaraghavan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 against the order dated 05.03.2018 passed by the Income Tax Appellate Tribunal, Madras "C" Bench in I.T.A.No.2987/MDS/2017 for the assessment years 2008-09, raising the following substantial questions of law:

> "i. Whether the Tribunal was right in setting aside the order of penalty issued under Section 271(1)(c) especially when the assessee has not offered any explanation to the satisfactorily to AO?

ii. Whether Explanation 1 would come into play once no explanation is offered by the asessee and penalty become leviable?”

2. Heard Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant and Mr.Vikram Vijayaraghavan, learned counsel appearing for the assessee.

3. The Tribunal by the impugned order set aside the penalty imposed on the assessee on the ground that the notice issued to the assessee at the very commencement of the penalty proceedings is vitiated and not sustainable in the eye of law.

4. The Tribunal referred to and relied upon the decision of the Division Bench of the High Court of Karnataka in C.I.T. Vs. Manjunatha Cotton and Ginning Factory [reported in (2013)359 ITR 565]. The Division Bench after analysing the subject in an elaborate manner and relating to several decisions of the Hon'ble Supreme Court held that merely because the assessee agreed for addition and accordingly, assessment order was passed on the basis of addition and when the assessee paid the tax and the interest thereof in the absence of any material on record to show the concealment of income, it cannot be inferred that the said addition is on account of concealment, so as to levy penalty under Section 271(1)(c) of the Act.

5. We find no error in the order passed by the Tribunal especially when it is admitted that the decision in C.I.T. Vs. Manjunatha Cotton and Ginning Factory has attained finality. Thus, for the above reasons, the appeal filed by the Revenue is dismissed and the substantial substantial questions of law are answered against the Revenue and in favour of the assessee.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To,

1.The Commissioner of Income Tax (Appeals-2),
Chennai.

2.The Deputy Commissioner of Income Tax,
Non-Corporate Circle(2), Chennai.

3.The Income Tax Appellate Tribunal,
Madras 'C' Bench, Chennai.

+1cc to Mr.T.Ravikumar, Advocate Sr.88632
+1cc to M/S.Subbaraya Aiyar, Advocate Sr.88237

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sai[co]
srg 24/01/2019