In the High Court of Judicature at Madras

Dated : 10.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.718 to 720 and 805 to 809 of 2018
& CMP.Nos.15383 to 15385, 19838, 19849, 19852 & 19856 of 2018

S.Arputharaj ...Appellant in TCA.Nos.718 to 720 of 2018 & Respondent in TCA Nos.805 to 809 of 2018

vs

The Deputy Commissioner of Income Tax, Central Circle-1, Coimbatore. ...Respondent in TCA.Nos.718 to 720 of 2018

The Principal Commissioner of Income Tax, Central-2, Chennai-34 ...Appellant in TCA. Nos.805 to 809 of 2018

Common Prayer in T.C.A.NOs. 718 to 720 and TCA.Nos.805 to 809/2018:

These APPEALS filed under Section 260A of the Income Tax Act, 1961 against the common order dated 13.6.2018 made respectively in ITA Nos.1495, 1493, 1494, 1497, 1495, 1499, 1496 and 1498/Chny/2018 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench respectively for the assessment years 2011-12, 2009-10, 2010-11, 2013-14, 2011-12, 2015-16, 2012-13 and 2014-15, ITA.NOs.1495, 1493, 1494, 1497, 1495, 1499, 1496 and 1495/chny/2018 respectively against the Commissioner of Income Tax(Appeals) Chennai-34 in ITA Nos.425 to 429/16-17, and ITA.Nos.430 & 431/2016-17 dated 19/02/2018 in G.I.No./PAN.NO.ADJPA9492L for the Assessment years 2011-12, 2009-10, 2010-2011, 2013-14, 2011-12, 2015-16, 2015-16, 2012-2013 and 2014-15 respectively against the Deputy Commissioner of Income-Tax, Central Circle-I, Coimbatore(in PAN/GIR.NO.ADJPA9492L) ward/circle, Central Circle-1, Coimbatore for the Assessment years 2011-12, 2009-10, 2010-2011, 2013-14, 2011-12, 2015-16, 2015-16, 2012-2013 and 2014-2015 respectively.

For Revenue : Mr.T.R.Senthilkumar, SSC for Mrs.K.G.Usharani

For Assessee: Mr.T.P.Prabhakaran for Mr.N.Sankarasabari

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

This is a bunch of appeals filed by both the Revenue as well as the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) against the common order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai (for short, the Tribunal), respectively in ITA.Nos. 1495, 1493, 1494, 1497, 1495, 1499, 1496 and 1498/Chny/2018 for the assessment years 2011-12, 2009-10, 2010-11, 2013-14, 2011-12, 2015-16, 2012-13 and 2014-15.

2. The assessee filed three appeals namely TCA.Nos.718 to 720 of 2018 raising the following substantial questions of law :

> “i. Whether the Income Tax Appellate Tribunal is correct in law to ignore the facts and documents submitted in defence by the appellant before the Commissioner of Income Tax (Appeals) as well as before the Assessing Officer for assessing the income respectively for the assessment years 2011-12, 2009-10 and 2010-11 without proper application of mind to confirm the assessment of income for certain issues ? And
>
> ii. Whether the Income Tax Appellate Tribunal is correct in law to confirm the order of the Commissioner of Income Tax (Appeals) in certain issues respectively for the assessment years 2011-12, 2009-10 and 2010-11 for statistical purposes without appreciating the materials and evidence made available before the Appellate Tribunal in proper perspective ?”

3. TCA.Nos.718 to 720 of 2018 relate to the assessment years 2009-10 to 2011-12. The substantial questions of law are identical and the only difference being the assessment year.

4. The Revenue has filed five appeals namely TCA.Nos.805 to 809 of 2018 raising the following three substantial questions of law, which are common in all the appeals except for the appeal against the order passed by the Tribunal in ITA.No.1498/Chny/2018 relating to the assessment year 2014-15 (TCA.No.809 of 2018) :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that embezzlement made by an employee of M/s.Miracle Cars India P. Ltd., in which, the assessee is a director to the tune of Rs.8.30 Crores, cannot be assessed in the hands of the assessee even protectively? And
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not drawing an inference that the source for the assessee's various investments are from the embezzled sum of Rs.8.30 Crores by using the employee Ms.Dhanalakshmi as a conduit in the light of its own finding that the assessee has not been able to establish the source for its various investments ?"

5. The three additional questions raised in TCA.No.809 of 2018 are as follows :

> "i. Whether, on the facts and circumstances of the case, the Tribunal was correct in law in deciding that addition, if any, can be made in the hands of M/s.Arputharaj Associates and not in the hands of the assessee without appreciating the fact that M/s.Arputharaj Associates is only a proprietary concern of the assessee and the income of such concern is assessable only in the hands of the assessee ?
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in accepting the assessee's contention that the sales abstract was prepared only for obtaining bank loan at face

value, without any supporting documentary evidence ? And

iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that no addition could be made only on the basis of sales abstract found in the course of search without appreciating the decision of this Court in the case of CIT Vs. Rangroopchand Chordia [reported in 241 Taxman 221]?"

6. Before the Tribunal, other issues were raised and they have been remanded to the Assessing Officer for a fresh consideration. The Revenue is not on appeal against those findings.

7. We have heard Mr.T.P.Prabhakaran, learned counsel appearing on behalf of Mr.N.Sankarasabari, learned counsel on record for the assessee and Mr.T.R.Senthilkumar, learned Senior Standing Counsel accepting notice for the Revenue.

8. In our considered view, there may not be any necessity for this Court to examine the factual matrix of the case for the purpose of answering the substantial questions of law, as we are convinced that the matters should be remanded to the Tribunal for a fresh consideration. We support such a conclusion with the following reasons :

9. As against the orders passed by the Commissioner of Income Tax (Appeals)-18, Chennai [hereinafter called the CIT(A)], the assessee filed appeals before the Tribunal. The Tribunal, by the common impugned order, recorded that the assessee raised as many as 22 grounds challenging the additions made by the Assessing Officer and the findings of the CIT(A). However, it is seen that the learned counsel, who was appearing for the assessee, withdrew his appearance on the date, when the Tribunal heard the appeals i.e. 13.6.2018. This is recorded by the Tribunal in paragraph 4.2 of the common impugned order. The Tribunal was well justified in proceeding with the matters because the Tribunal cannot dismiss the appeals for non prosecution or for default on the part of the assessee and it is necessarily required to examine the matters on merits. Therefore, the procedure adopted by the Tribunal cannot be faulted.

10. In our considered view, the assessee invited the problem firstly because he has not given proper instructions to the learned counsel, who had filed vakalat on his behalf nor given any instructions to the learned counsel, who was instructed to appear in the matters. Secondly, the assessee filed W.P.No.12569 of 2018 challenging the demand notice dated 07.5.2018 issued by the

Tax Recovery Officer. The assessee represented before the learned Single Judge that they had filed appeals before the Tribunal along with stay petitions and since the matters were pending before the Tribunal, they contended that the Tax Recovery Officer should not take any coercive action for recovery of tax and penalty. Taking note of the submissions made by the assessee that the appeals were pending before the Tribunal along with stay petitions, the learned Single Judge of this Court, while disposing of the said writ petition by order dated 16.5.2018, directed the Tribunal to consider the appeals filed by the assessee along with stay petitions and pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of a copy of that order. A time frame was fixed by the learned Single Judge directing the Tribunal to dispose of the appeals and stay petitions within a period of two weeks from date of receipt of a copy of that order.

11. When the Tribunal took up the matter for hearing, the learned counsel appearing for the assessee at that time reported no instructions and withdrew his vakalat. Therefore, the Tribunal was well justified in proceeding with the matters as done in this case, which culminated in the common impugned order. After the common impugned order was passed, since the demand notices were issued pursuant to the assessment orders passed in 2016, the assessee moved the second set of writ petitions before this Court namely W.P.Nos.20447 to 20449 of 2018. The second set of writ petitions were disposed of by another learned Single Judge of this Court vide common order dated 09.8.2018 wherein it was noted that though the Tribunal passed the order on 13.6.2018, for over a period of two months, the assessee did not prefer any appeal before the Division Bench of this Court. Further, the learned Single Judge did not fault the Department for issuing the notices demanding payment of arrears of tax assessed on the appellant - assessee. The learned Single Judge observed that in all fairness, the assessee should have filed appeals before the Division Bench of this Court and sought for interim relief as sought for in the second set of writ petitions and that granting one more opportunity to the assessee did not arise.

12. However, the learned counsel, who appeared before the learned Single Judge pleaded and also gave an undertaking that the assessee would file regular statutory appeals before the Division Bench of this Court within a period of two weeks. Recording such an undertaking, the second set of writ petitions stood disposed of by directing the Assessing Officer to keep the demand notices dated 09.7.2018 in abeyance for a period of two weeks from the date of receipt of the copy of that order. The learned Single Judge further made it clear that he had not expressed any view on the merits of the contentions raised

by the assessee. It is stated that as undertaken before the learned Single Judge, the assessee filed appeals before this Court within the time permitted.

13. As rightly pointed out by the learned Senior Standing Counsel for the Revenue, the assessee had been frequently approaching this Court by filing writ petitions with a view to stall the recovery proceedings. Be that as it may, we are of the considered view that the assessee should have an effective opportunity to put forth his case before the Tribunal. In the instant case, the assessee was not represented before the Tribunal on account of the fact that the learned counsel, who was appearing for the assessee at that time, withdrew his vakalat.

14. We also come across such situations where the learned counsel appearing for the parties reports no instructions and this Court has been consistently following the practice of issuing notice to the party from the Registry intimating that his counsel has withdrawn the vakalat and that he has to make alternate arrangements on the next hearing date. Had such an approach been adopted by the Tribunal, probably the assessee might have engaged a different counsel. However, the Tribunal could not do so because of the peremptory time limit prescribed in the second set of writ petitions filed by the assessee. Therefore, neither of them can be wholly blamed for such a situation. However, considering the complexity of the matter and the assessee being an individual and also the Tribunal having noted that as many as 22 grounds were raised by the assessee, we deem it appropriate that the assessee should be granted one more opportunity before the Tribunal. However, such an opportunity will also contain stringent conditions on the assessee.

15. With regard to the Revenue’s appeals, two common questions were raised in all the appeals in respect of the protective assessment done in the hands of the assessee to the tune of Rs.8.30 Crores.

16. The assessee’s case is that one of the employees by name Ms.Dhanalakshmi had swindled the amounts, that the assessee had lodged a complaint and that the Central Bureau of Investigation (CBI) had taken up the matter for investigation and laid the first information report. As on date, the CBI filed the final report before the Special Court.

17. The Revenue’s case is that the said Ms.Dhanalakshmi is the conduit of the assessee. They relied upon the bill books seized from the assessee’s premises, which, according to the learned Senior Standing Counsel for the Revenue, are sufficient to safely presume that those were the monies of the assessee.

18. However, taking note of the fact that a criminal case is pending, the Assessing Officer only made a

protective assessment. The Tribunal, in the common impugned order, deleted it and directed the same to be assessed in the hands of the company namely M/s.Millennium Motors. In our considered view, since the CBI filed the final report before the Special Court, any finding, as given by the Assessing Officer though as a protective assessment, may render the criminal case a futile exercise. That apart, we found that the reasons given by the Tribunal are not sufficient to delete the protective assessment in the hands of the assessee with a direction to assess the same in the hands of the company namely M/s.Millennium Motors.

19. The learned counsel for the assessee submits that there are sufficient records to show that the said Ms.Dhanalakshmi swindled substantial amount and the assessee is ready and willing to substantiate the same before the Tribunal, if one opportunity is granted.

20. As pointed out earlier, for the assessment year 2014-15, three additional substantial questions of law are raised by the Revenue. These pertain to the issue as to whether the assessment should be made in the hands of M/s.Arputharaj Associates or in the hands of the assessee herein and as to what would be the effect of the documents, which were recovered during the search operations, for which, the Revenue relies upon the decision of this Court in the case of CIT Vs. Rangroopchand Chordia [reported in 241 Taxman 221].

21. The learned counsel for the assessee would submit that these issues will be substantiated by the assessee before the Tribunal, if this Court is convinced that the matters should be remanded for a fresh consideration.

22. Thus, considering the peculiar facts and circumstances of the case, we deem it appropriate to remand the matters to the Tribunal to consider the above referred to substantial questions of law. We make it clear that in so far as the issues, which have been remanded by the Tribunal to the Assessing Officer, against which, no appeals have been filed by either the Revenue or the assessee, we do not interfere with the same and the Assessing Officer is directed to carry out the directions issued by the Tribunal.

23. In the result, the above tax case appeals are allowed, the common impugned order passed by the Tribunal is set aside to the extent indicated above and the Tribunal shall afford an opportunity to the learned counsel for the assessee to make his submissions and consider the matters in accordance with law. The assessee shall not take any adjournment before the Tribunal and fully cooperate with the Tribunal by arguing the matters and placing all the matters before the Tribunal. In the light of the above, the substantial questions of law are left open for a decision by the Tribunal. No costs. Consequently, the connected CMPs

are closed.

24. The learned Senior Standing Counsel for the Revenue submits that the recovery proceedings have been stalled.

25. We find from the common order passed in W.P.Nos.20447 to 20449 of 2018 dated 09.8.2018 that this Court directed the demand notices dated 09.7.2018 to be kept in abeyance for a period of two weeks. Therefore, it is well open to the assessee to move for appropriate interim protection, if so advised. Since we have remanded the matter for a fresh consideration before the Tribunal on the issues raised before us, we direct the Department to keep the recovery proceedings in abeyance for a period of two weeks from the date of receipt of a copy of this judgment and it is open to the assessee to move for appropriate interim orders before the Tribunal within the said period.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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

2.The Principal Commissioner of Income Tax,
Central-2, Chennai-34.

3.The Commissioner of Income Tax(Appeals),
Chennai-34.

4.The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate sr.no.85607
+1cc to Mr.N.Sankarasabari, Advocate sr.no.84837

TCA.No.718 of 2018
etc. cases

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