In the High Court of Judicature at Madras

Dated : 04.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SESHASAYEE

Tax Case (Appeal) No.834 of 2008

The Commissioner of
Income Tax, Salem ...Appellant

Vs

P.Nithilan ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.10.2006 made in ITA.No.651/Mds/2001 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 1991-1992.

For Appellant : Ms.K.G.Usha Rani
For Respondent : Mr.N.Quadir

JUDGMENT WAS DELIVERED BY T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal in ITA.No.651/Mds/2001 dated 13.10.2006, confirming the order passed by the Commissioner of Income Tax (Appeals) setting aside the reopening of the assessment for the year 1991-1992. The above tax case appeal has been admitted on the following substantial questions of law :

> *"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the reopening of the assessment for the assessment year 1990-91 is not proper ? and*
>
> *2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in not considering Explanation 1 to Section 147 of the Income Tax Act, which clearly states that mere production of account books or other evidence will not necessarily amount to full disclosure by the assessee and the judgment rendered in the case of Precot Mills in W.P.No.4938 of 2000 dated 07.4.2000 clearly permits the Department to reopen the assessment ?"*

3. The assessment for the said year was originally completed under Section 143(3) of the Income Tax Act, 1961 on 29.3.1993 and was reopened by issuing notice under Section 147 of the said Act in the year 1997. The reason for reopening the assessment was based upon a report submitted by

the Departmental valuer.

4. The assessee resisted the reopening proceedings by contending that the assessment was completed under Section 143(3) of the said Act based on the value of an expert approved valuer and that the valuation of the Department, which was relied upon for reopening, is only an estimate and any difference in valuation on estimate cannot form the basis of any escapement of income. It was further contended that the reopening was based on change of opinion and that there was no material to show that there was escapement of income.

5. The Assessing Officer rejected the objection and completed the assessment on the ground that the difference in the cost of construction of the building admitted by the assessee and determined by the Departmental valuer is treated as an unexplained investment.

6. The assessee preferred an appeal to the Commissioner of Income Tax (Appeals), who, by order dated 27.11.2000, allowed the appeal and set aside the reopening. The Commissioner of Income Tax (Appeals) referred to the decision of this Court in the case of ***Fenner India Limited Vs. Deputy CIT [reported in 241 ITR 672]*** wherein it has been held that the notice under Section 148 of the said Act must record reasons for reopening and as to how the assessee failed to disclose material facts.

7. The Revenue preferred an appeal to the Tribunal as against the order passed by the Commissioner of Income Tax (Appeals) and it was dismissed by order dated 13.10.2006, against which, the above appeal has been filed.

8. We find that the reasons assigned by the Commissioner of Income Tax (Appeals), as confirmed by the Tribunal, are perfectly in order, since there is no allegation that the assessee has failed to truly and fully disclose all material facts. The duty of the assessee is only to furnish all material facts and it is for the Assessing Officer to take a decision based on the facts so disclosed. It is not the duty of the assessee to tell the Assessing Officer as to how the income has to be assessed.

9. In the instant case, the assessment was completed under Section 143(3) of the said Act based upon the valuation report of an approved valuer. After about seven years, an inspection appeared to have been conducted by the Departmental valuer and this is sought to be put against the assessee to state that there is a difference in value and this amounts to unexplained investment. We do not agree with the reasoning given by the Assessing Officer while completing the assessment under Section 147 of the said Act.

10. Admittedly, the report given by the Departmental valuer is only an estimate and based on such estimation, there cannot be any reopening and if the same is permitted, it would amount to a clear case of change of opinion. Furthermore, the report of the Departmental valuer is inconclusive and can, at best, be treated as an opinion. Thus, we find no merits in this appeal.

11. Accordingly, the questions of law are answered in favour of the assessee and against the Revenue and the above tax case (appeal) is dismissed. No costs.

04.4.2018

Internet : Yes

To

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

RS

T.S.SIVAGNANAM,J

AND

N.SESHASAYEE,J

RS

TC(A)No.834 of 2008

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