IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.917 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

Dr.R.Jayabalan,
Nirmala Nursing Home,
No.38 East R.K.Puram,
Karur. ... Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 14.12.2007 in ITA No.2177/Mds/2007 for the assessment year 2004-05. against the order dated 24.08.2007 and made in ITA.345/06-07 on the file of Commissioner of Income Tax(A), Tiruchirapalli against the order dated 27.09.2006 and made in PAN.ADIPJ46974/04-05 on the fie of Deputy Commissioner of Income Tax Central Circle II, Tiruchirapalli and against the order dated 28.03.2006 and made in PAN/GIR.No.ADIPJ46974/703-J on the file of Assistant Commissioner of Income Tax Central Circle II, Tiruchirapalli.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: assisted by Mr.S.Rajesh,
Senior Standing Counsel &
: M/s.K.G.Usha Rani,
Junior Standing Counsel

For Respondent : Mr.G.Baskar

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JUDGMENT

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Senior Standing Counsel and

M/s.K.G.Usha Rani, learned Junior Standing Counsel for the appellant; and Mr.G.Baskar, learned counsel for the respondent.

2.This tax case appeal has been filed challenging the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 14.12.2007, in ITA No.2177/Mds/2007 for the assessment year 2004-05.

3.The above appeal has been admitted on the following substantial questions of law:-

> "1.Whether on the facts and circumstances of the case, the Tribunal was right in deleting the penalty u/s 271(1)(c) on the ground that the undisclosed income related to on money paid for purchase of immovable property and explanation 5 to Sec.271(1)(c) is not applicable to immovable property?
>
> 2.Whether on the facts and circumstances of the case, the Tribunal was right in deleting the penalty u/s 271(1)(c) on the ground that because the Department had not asked relevant questions, it is to be presumed that the assessee had given best information regarding the source?

4.Before we proceed to consider as to whether the substantial questions of law as framed arise for consideration, we need to take note of the factual position.

5.The learned Senior Standing Counsel appearing for the Revenue vehemently contended that the assessee, in his own statement, had candidly admitted the payment of money towards the purchase of the property, which was not disclosed and this is sufficient to hold that the assessee is liable for payment of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

6.We have gone through the order passed by the Tribunal. The Tribunal, in paragraph 14, took note of the statement of the assessee, which is to the following effect:-

> ""Do you want to say anything?", the honest assessee stated that he had admitted Rs.1 Crore approximately in the purchase of immovable property and this was not accounted and he admitted to pay the tax with a further request that in view of the above surrender, he may be relieved of the penalty and prosecution."

7.After taking note of the above statement, the Tribunal proceeded to discuss the effect of the statement and the conduct of the assessee on the following lines:-

> "Going through the statement recorded on 4.2.2004, by replying to the question No.6, which has already been reproduced above in this order, we find that the assessee surrendered the same as in his individual unaccounted investment for the current year and he will file the return and his letter dated 29.12.2003 written to the assessing authority also supports this contention. The search took place on 24.12.2003. but, the letter is dated 29.12.2003, i.e., after five days, which clearly explains the approach of the assessee to disclose this as his income in the return during this current year itself. This factum is also again repeated in his sworn statement dated 4.2.2004. From all these, the act of the assessee clearly establishes that he is entitled for immunity available under Explanation 5 to Section 271(1)(c) on two counts - firstly the immovable property is not an article or thing so as to apply Explanation 5 and secondly, even if Explanation 5 is applicable, the assessee has given at best information regarding the source and particularly no question was asked by the Department. For the failure of the Department, the assessee cannot be vitiated with such penalty. Under the circumstances, we set aside the orders of the authorities below and direct the Assessing Officer to delete the penalty"

8.On a perusal of the above decision of the Tribunal, it is evidently clear that the Tribunal reiterated the factual position before it came to the conclusion about the conduct of the assessee and that he is entitled for immunity available under Explanation 5 to Section 271(1)(c) of the Act on two counts - firstly, the immovable property is not an article or thing so as to apply Explanation 5 and secondly, even if Explanation 5 to Section 271(1)(c) of the Act is applicable, the assessee has given at best information regarding the source and particularly, no question was asked by the Department.

9.Thus, we find that the Tribunal on reappreciation of the factual position, deleted the levy of penalty. Thus, the entire issue revolves around the factual position and we find that no substantial question of law arises for consideration. Apart from that, we note that the quantum of penalty, which was levied by the Department, is lesser than the threshold limit prescribed in the Circulars of the Central Board of Direct Taxes prescribing the limits of the Revenue to pursue the appeals, which are pending before this Court.

10.Thus, for all the above reasons, the tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Income Tax,
Chennai.

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

3.The Commissioner of Income-tax (Appeals),
No.4, Williams Road, Cantonment, Tiruchirappalli-620 001.

4.The Deputy Commissioner of Income Tax Central Circle II,
Tiruchirapalli

5.The Assistant Commissioner of Income Tax Central Circle II,
Tiruchirapalli.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.49242

+1cc to Mr.N.Muthu Kumar, Advocate, S.R.No.49113 (18/09/18)

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VD(Co)
CS/30/08/18