IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.893 and 894 of 2018

and

CMP.No.21765 of 2018

M/s.Sakthi Poultry Farm, Salem ...Appellant /Appellant

Vs

The Income Tax Officer, Ward III(1),
No.3, Gandhi Road, Salem. ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 27.9.2017 made in ITA Nos.1284 & 1285/Mds/2017 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench respectively for the assessment years 2003-04 and 2004-05 and arising against different orders of the Commissioner of Income Tax(Appeals), Salem, both dated 28.03.2017, relevant to Assessment Year 2003-2004 and 2004-05 in ITA Nos.75/2010-11, ITA No.186/2011-12, against the Assessment orders dated 14.09.2010 and 30.09.2011 of the Income Tax Officer, Ward III (1) Salem, for the Assessment Year 2003-04 and 2004-05, against the assessment for the assessment year 2003-04, 2004-05 both order dated 30.05.2005 of the Income Tax Officer, Ward I (3), Salem. PAN ABA F53031L

For Appellant : Mrs.G.Vardini Karthik

For Respondent : Mr.T.R.Senthilkumar, SSC

COMMON JUDGMENT

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

These appeals by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) are directed against the common order passed by the Income Tax Appellate Tribunal (for short, the Tribunal), Chennai in ITA.Nos.1284 and 1285/Mds/2017 dated 27.9.2017 for the assessment years 2003-04 and 2004-05.

2. The assessee has filed these appeals by raising the following substantial questions of law:

> "i. Whether the Appellate Tribunal was right in holding that the reassessment under Section 148 done beyond four years is valid when there is no allegation in the assessment order that there is a failure on the part of the assessee to make a full and true disclosure of all material facts necessary for assessment ?
>
> ii. Whether the Appellate Tribunal was right in law in upholding the reopening of the assessment based on the statements recorded at the time of survey, on the basis of which, the regular assessment was completed and not on any fresh materials obtained subsequently ?
>
> iii. Whether the Appellate Tribunal was right in law in holding that the reassessment is valid when reopening on the same set of materials will amount to change of opinion? and
>
> iv. Whether interest under Section 234B can be charged upto the date of reassessment or only upto the date of regular assessment ?"

3. We have heard Mrs.G.Vardini Karthik, learned counsel for the appellant/assessee and Mr.T.R.Senthilkumar, learned Senior Standing Counsel accepting notice for the Revenue.

4. The short issue, which falls for consideration, is as to whether the reopening of assessment for the years under consideration namely 2003-04 and 2004-05 was valid and as to whether the Assessing Officer was right in rejecting the objections filed by the assessee for reopening, which orders were confirmed by the Commissioner of Income Tax (Appeals) [for brevity, the CIT(A)] and the Tribunal.

5. After conducting a survey, the scrutiny assessment was completed and the assessment orders were passed on 03.5.2005 for both the years under consideration. Long after that, the notices under Section 148 of the Act were issued respectively on 12.3.2010 and 17.9.2010 relying upon a statement recorded from the Managing Director of the assessee during the survey proceedings.

6. The assessee's case is that the reopening is a clear case of change of opinion and that there is no allegation that the assessee failed to fully and truly disclose all the details.

7. In our considered view, the CIT(A) as well as the Tribunal rightly appreciated the factual position and noted that the scrutiny assessment was taken up since the survey under Section 133A of the Act was conducted and that during such scrutiny assessment, the statement recorded from the Managing Director of the assessee was not taken into consideration by the Assessing Officer. Therefore, there was no opinion formed by the Assessing Officer on the said issue under the head of income. Further, the assessee themselves accepted that the income was earned, but not disclosed in the returns. Accordingly, the reopening was confirmed.

8. With regard to the contention of the assessee that there was a full and true disclosure by the assessee, on facts, we find that in the instant case, the reopening has been done based on the statement given by the Managing Director of the assessee during the survey. It is not the record of the assessee that they disclosed it in the returns. Hence, on facts, the Assessing Officer, the CIT(A) and the Tribunal clearly held that the reopening was not a change of opinion, with which, we are in entire agreement.

9. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the assessee. No costs. Consequently, the connected CMP is also dismissed.

rs

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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

2. The Income Tax Officer,
Ward III(1), No.3, Gandhi Road,
Salem.

+1cc to M/s.G.Vardhini Karthik, Advocate, S.R.No.84142
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.84134

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And CMP.No.21765 of 2018

kak(29/01/2019)