

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

ITTA.NO.460 OF 2018

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred by the assessee aggrieved by the order passed by the Income Tax Appellate Tribunal (Tribunal) in ITA.No.2201/HYD/2017 dated 25.04.2018.

The appellant herein filed the appeal before the Tribunal aggrieved by the levy of penalty of Rs.1.00 crore under Section 271D of the Act. Before the Tribunal, written submissions were filed raising several contentions, including violation of principles of natural justice; the penalty being time-barred; the demand notice not having been served; and that the nature of advance given was a trade deposit.

In the order under appeal, the Tribunal held that these issues were neither examined by the Assessing Officer nor by the learned Commissioner of Income Tax; and it was necessary that the entries in the Books of Accounts be examined. The order of the Additional Commissioner of Income Tax and the Commissioner of Income Tax were set aside, and the entire issue regarding levy of penalty under Section 271D was restored to the file of the Additional Commissioner for fresh consideration, after giving the

assessee due opportunity. The Tribunal made it clear that the assessee was free to raise all legal contentions which were raised before the Tribunal, if required, in the proceedings before the Additional Commissioner of Income Tax. They were directed to furnish relevant entries in the books of accounts justifying their claim, and the Additional Commissioner was directed to examine the facts and decide whether the provisions of Section 269SS were violated, and whether or not the provisions of Section 273B were attracted.

Sri M.V.Ramachandra Prasad, learned counsel for the appellant, would contend, not without justification, that, since the Tribunal is the final Court of fact, it could have examined all the contentions raised - both on facts and law; and it was wholly unnecessary for it to have remitted the matter back to the assessing authority for fresh consideration.

While it is no doubt true that the Tribunal is entitled to examine all questions of fact and law urged before it, it has instead, chosen to set aside both the orders of the assessing authority and the appellate authority (CIT, Appeals), and has directed the Assessing Officer to examine the matter afresh and in accordance with law. No prejudice has been caused to the petitioner by the order passed by the Tribunal, nor can it be said that the action of the Tribunal, in remanding the matter instead of adjudicating it itself, has given rise to a substantial question of law warranting interference in

proceedings under Section 260A of the Act. We see no reason, therefore, to entertain this appeal. Suffice it to make it clear that, in terms of the order of the Tribunal, the assessing authority shall examine the matter afresh and in accordance with law.

The appeal is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

26th September 2018
RRB

