In the High Court of Judicature at Madras

Dated : 04.6.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.303 and 304 of 2019
and CMP.Nos.11743 & 11744 of 2019

The Commissioner of Income Tax, Chennai-IX. ...Appellant / Respondent

Vs

Shri.Rameswara Reddy Kummathi ...Respondent / Appellant

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 24.7.2018 in ITA Nos.348 and 349/Chny/2018 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench for the assessment years 2011-12 and 2012-13, against the order dated 29.11.2017 in ITA No.3/CIT(A)-5/2017-18 and ITA No.6/CIT(A)-5/2017-18 on the file of the Commissioner of Income Tax (Appeals)-5, Chennai - 34 for the Assessment year 2011-12 and 2012-2013 against the order dated 28.03.2017 in PAN/GIR No.AASPR9595D and PAN/GIR No.AASPR9595D on the file of the Assistant Commissioner of Income Tax, Non-Corporate, Circle-17(1) Chennai - 6 for the Assessment year 2011-12 and 2012-13.

For Appellant : Mrs.R.Hemalatha, SSC

COMMON JUDGMENT

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

We have heard the learned Senior Standing Counsel for the appellant.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 24.7.2018 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) in ITA Nos.348 and 349/Chny/2018 for the assessment years 2011-12 and 2012-13.

3. The Revenue has filed these appeals by raising the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the penalty levied under Section 271(1)(c) of the Income Tax Act, 1962 ? And

ii. Whether the reasoning and finding of the Tribunal was right in holding that furnishing of income under an incorrect head and its consequent short payment of taxes does not amount to concealment of income or furnishing of inaccurate particulars of income ?"

4. The short question, which falls for consideration, is as to whether the Tribunal was justified in allowing the appeals filed by the assessee and overturning the orders dated 29.11.2017 passed by the Commissioner of Income Tax (Appeals) [for brevity, the CIT(A)], who confirmed the orders of penalty passed by the Assessing Officer by order dated 28.3.2017 under Section 271(1)(c) of the Act for the assessment years 2011-12 and 2012-13.

5. It is stated that the quantum appeals have not attained finality. The Assessing Officer issued the show cause notices dated 06.3.2017 stating that during the course of assessment proceedings, the Assessing Officer held that the perquisites in the form of Employee Stock Option Plan (ESOP) sold by the assessee were liable to tax in India, that the CIT(A), vide order dated 11.1.2016, came to the conclusion that the action of the Assessing Officer to tax the perquisites under the head 'income from salary' was upheld and that subsequently, the Tribunal, vide orders dated 05.5.2016, confirmed the same. After stating all the above facts, it was further stated that the penalty proceedings under Section 271(1)(c) of the Act got time barred on 31.3.2017 since the orders of the CIT(A) were received before 31.3.2016 and that the assessee was given an opportunity to show cause as to why the penalty under Section 271(1)(c) of the Act should not be levied. The assessee was also granted further time till 13.3.2017 to submit their reply.

6. The assessee filed two separate replies dated 10.3.2017 raising a preliminary objection and pointing out the defect in the said show cause notices dated 06.3.2017 stating that the notices did not contain the particulars of income alleged to have been concealed by the assessee. Apart from that, various other explanation was given with regard to the factual aspects pointing out as to how the penalty proceedings could not have been invoked merely because additions have been made in the quantum assessment and that the Assessing Officer had to prove that there was a concealment of income or the returns of income

furnished by the assessee or the documents submitted by the assessee during scrutiny proceedings were based on incorrect fact, falsity and untruth. In support of their contention, the assessee relied upon the decision of the Hon'ble Supreme Court in the case of Dilip N.Shrof Vs. JCIT [reported in (2007) 291 ITR 519] and various other decisions including the decision of the Division Bench of this Court in TCA.No.273 of 2012 dated 12.9.2012.

7. The explanation offered by the assessee did not find favour with the Assessing Officer, who rejected the same and confirmed the proposals in the said show cause notices and levied penalty to the tune of Rs.76,21,472/- and Rs.57,72,681/- under Section 271(1)(c) of the Act. Aggrieved by that, the assessee preferred appeals before the CIT(A), who, by orders dated 29.11.2017, confirmed the orders passed by the Assessing Officer. These orders were challenged by the assessee before the Tribunal and by the impugned common order, the Tribunal allowed the appeals filed by the assessee. Hence, the Revenue is before us.

8. Before we move on to consider as to the correctness of the common order passed by the Tribunal and decide the substantial questions of law raised before us, we wish to point out the manner, in which, the CIT(A) drafted his orders. Initially, we were under the impression that the orders passed by the CIT(A) were detailed and speaking orders. But, after carefully going through the orders, we find that the CIT(A) verbatim extracted the objections raised by the assessee to the show cause notices and the grounds of appeal raised by the assessee before the CIT(A) and the discussion in the 61 page order starts only from page 57 and the discussion in the 64 page order starts only from page 60. It is cardinal principle of judgment writing that reasons should be assigned in support of the conclusion that a Court or a Quasi Judicial Authority may arrive at. To say the least, the orders passed by the CIT(A) are devoid of reasons.

9. The orders passed by the CIT(A) further show that at the first instance, the assessee raised a preliminary objection with regard to the defective penalty notices dated 06.3.2017. The assessee contended that the notices did not contain any particulars of income alleged to have been concealed by the assessee. The Assessing Officer, in paragraph 6 of the penalty orders dated 28.3.2017, extracted the relevant portions of the show cause notices dated 06.3.2017, a reading of which shows that they did not contain any particulars of income alleged to have been concealed by the assessee. Though such a contention was raised, the Assessing Officer did not dwell into that aspect as it is expected of him to do. Therefore, the assessee raised

such a plea before the CIT(A). Unfortunately, the CIT(A) took a narrow and pedantic view that the assessee did not file a copies of the respective penalty notices along with the grounds of appeal to substantiate his case. We fail to understand as to why the CIT(A) took such a stand and as the First Appellate Authority, he could have called for the files as well to verify the plea raised by the assessee that the penalty notices were defective. Therefore, to say the least, such an observation in the orders passed by the CIT(A) and more particularly in paragraph 6.2 of the orders is perverse.

10. It is the consistent case of the assessee that there had been no deliberate concealment nor there had been deliberate non disclosure and that the assessee disclosed the amount, which, according to the Department, should have been shown as a perquisite because the employer had treated it as a perquisite and deducted tax at source. Though the assessee offered an explanation, it was not found to be acceptable by the Assessing Officer. The CIT(A), when he proposed to confirm the findings of the Assessing Officer, should record his own independent reasons as to how the conduct of the assessee was deliberate in not disclosing the perquisites shown by the employer in Form 16 and as to how such a deliberate conduct would amount to concealment of income. The CIT(A) did not give independent reasons in support of his conclusions except stating that the assessee's conduct was deliberate. This would be sufficient to set aside the orders passed by the CIT(A). The Tribunal, in our considered view, examined the conduct of the assessee.

11. The assessee, who is a salaried employee, had disclosed the value of the stock appreciation rights and gain thereof and claimed the same as capital gain. However, the Assessing Officer treated the gain as a revenue receipt and levied tax. In such circumstances, whether it could have been stated that there was concealment of income or whether the assessee furnished inaccurate particulars of income. In our considered view, the Tribunal rightly held that it is nobody's case that the assessee concealed the allotment of stock appreciation rights or gain arising out of such appreciation. In fact, there had been a difference of opinion or difference in interpretation of the manner, in which, the assessee interpreted the returns. Therefore, when there were two opinions possible, it cannot be stated that the conduct of the assessee amounted to deliberate concealment of income with certain mala fide intentions.

12. Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant has pressed into service the decision of the Division Bench of the High Court of Delhi in the case of CIT Vs. Zoom Communication (P) Ltd. [reported in (2010) 191 Taxman 179].

13. The legal position pointed out in the said decision would fully support the stand of the assessee. However, the facts in the said case were totally different and the Court, on facts, found that the explanation offered by the assessee was lacking in bona fides. The Court took into consideration the fact that the assessee therein namely Zoom Communication (P) Limited was a company having professional assistance in computation of its income and its accounts were compulsorily subjected to audit and disbelieved the stand taken by the assessee that due to oversight, the amount mentioned was not added back in the computation of income. As pointed out in the said decision, mere submitting a claim, which is incorrect in law, would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide and if the claim, besides being incorrect in law, is malafide, Explanation 1 to Section 271(1) of the Act would come into play and work to the disadvantage of the assessee. We find from the facts in the case before us that there is no mala fide established by the Revenue against the assessee nor can we state that the conduct of the assessee is lacking in bona fide. Furthermore, in the decision in the case of Zoom Communication (P) Limited, the Court found that there was no difference of opinion as regards disallowance of the expenses and the incorrect computation given by the assessee. However, on facts, in the present case before us, we find that there had been two opinions or there had been difference of opinion between the assessee and the Assessing Officer.

14. Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant also relies upon the decision of the Division Bench of the High Court of Bombay in the case of Jivanlal and Sons Vs. ACIT [reported in (2019) 103 Taxman. com 207].

15. We are of the view that the said decision does not render any assistance to the case of the Revenue, because, on facts, the Court found that the Chartered Accountant of the assessee could not feign ignorance of Section 40(ii) of the Act, as he was well trained and well versed in law representing not only the assessee, but also various other clients. It had been contended by the assessee that the error had been admitted by the Chartered Accountant and that the assessee should be exonerated of penalty. This contention was rejected and it was held that the attempt to blame the Chartered Accountant could not result in the assessee's exoneration claimed in absolute terms. It was also held that the penalty was liable to be imposed. Thus, the decision of the Bombay High Court in the case of Jivanlal and Sons, which was confirmed by the Hon'ble Supreme Court in the decision reported in (2019) 103 Taxman.com 208, is distinguishable on facts.

16. Thus, we are of the view that the Revenue has not made out any case to interfere with the common order passed by the Tribunal as the reasons assigned by it having been found to be correct apart from the reasons assigned by us in this judgment.

17. Accordingly, the above tax case appeals are dismissed. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1) The Income Tax Appellate Tribunal, Madras B Bench, Chennai.

2) The Commissioner of Income Tax, Chennai - 9.

3) The Commissioner of Income Tax (Appeals)-5, Chennai - 34.

4) The Assistant Commissioner of Income Tax,
Non-Corporate Circle 17(1), Chennai - 6.

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.44785

TCA.Nos.303 and 304 of 2019 &
CMP.Nos.11743 & 11744 of 2019

VBA(CO)
SSM(17/07/2019).