IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.8.2019

CORAM :

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

TAX CASE APPEAL NO.168 OF 2009

The Assistant Commissioner of Income Tax, Central Circle IV(3), Chennai-34. ...Appellant

Vs

Shri.M.Srinivasalu ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 09.5.2008 made in IT(SS)A.No.180/Mds/2006 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the block assessment period 01.4.1996 to 31.3.2002 and 01.4.2002 to 18.2.2003. against the Appellate order of the Commissioner of Income Tax (Appeals)-I, Chennai-600 034, dated 19.05.2006, and made in I.T.A.NO.231/2004-05 for the Assessment period block 01.04.1996 to 31.03.2002 and 01.04.2002 to 18.02.2003; and

against the Assessment order of the Assistant Commissioner of Income Tax, Central Circle IV(3), Chennai dated 25.02.2005 and made in PAN/G.I.No.AIQPM7204C/711-S for the Assessment Block period 01.04.1996 to 31.03.2002 and 01.04.2002 to 18.02.2003

For Appellant :Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani, JSC

For Respondent:Mr.M.P.Senthilkumar

Judgment was delivered by T.S.Sivagnanam,J

We have elaborately heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant - Revenue and Mr.M.P.Senthilkumar, learned counsel for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 09.5.2008 made in IT(SS) A.No.180/Mds/2006 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the block assessment period 01.4.1996 to 31.3.2002 and 01.4.2002 to 18.2.2003.

3. The appeal was admitted on 31.3.2009 the following substantial questions of law :

> "i. Whether, on facts and circumstances of the case, the Tribunal was right in holding the deletion of Rs.5,61,50,000/- when the assessee had not given the details of cash transaction ? And
>
> ii. Whether, on facts and circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to deletion without even discharging the burden of proof cast on him?"

4. On a perusal of the order passed by the Tribunal, we find that the issue before this Court is entirely factual. For better appreciation, we quote herein below the findings of the Tribunal, which had endorsed the view taken by the Commissioner of Income Tax (Appeals)-I, Chennai-34 [for short, the CIT(A)] :

> "...the CIT(A) made effective enquiries on the subject. He not only called for a remand report from the concerned Assessing Authority but also asked for a detailed reply from the Assessing Authority of M/s.Dhariwal Industries Limited at Pune. In the detailed letter addressed by the Assistant Commissioner of Income Tax, Circle (1) at Pune, the contention of the assessee that he was operating as consignment agent of M/s.Dhariwal Industries Limited was confirmed. The most important aspect is that the entire cash remittances made by the assessee in different banks in Chennai and Coimbatore, which were treated by the Assessing Authority as undisclosed income, have been reflected in the regular books of accounts maintained by M/s.Dhariwal Industries Limited, who had appointed the assessee as its consignment agent for Kerala State. In other words, whatever explanations were offered by the assessee in respect of

the cash remittances were proved by the accounts maintained by M/s.Dhariwal Industries Limited.

......

He has examined the case in a very dispassionate manner and has fairly recorded his findings that the amount of Rs.5,61,50,000/- cannot be treated as undisclosed income of the assessee. The case of the assessee on this point is proved by his statement made before the authorities and different details of bank accounts and the books of accounts of M/s.Dhariwal Industries Limited, which were also confirmed by the local income tax authority at Pune. When all the materials available on record would support the contention of the assessee, it is not necessary for any Appellate Authority to rely on the preponderance of probabilities relied on by the Assessing Authority."

5. Before us, the attempt of the Revenue is to convince us to re-appreciate the factual findings recorded by the CIT(A) as confirmed by the Tribunal. Unfortunately, such an exercise cannot be done by us while exercising jurisdiction under Section 260A of the Act. For the above reason, we find that no substantial question of law arises for consideration in this appeal.

6. Accordingly, the above tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2. The Assistant Commissioner of Income Tax,
Central Circle IV(3), Chennai.

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

+1cc to Mr.N.Muthukumar, Advocate, S.R.No.69097
+1cc to Mr.T.R.Senthilkumar,, Advocate, S.R.No.69027

PA(CO)
CS/10/10/2019