IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos.233 to 237 of 2009

Commissioner of Income Tax,
Salem. ... Appellant in all the appeals

Vs.

R.Nedunchezian ... Respondent in all the appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 27.09.2004 in ITA Nos.753/Mds/2003, 837/Mds/2003, 838/Mds/2003, 839/Mds/2003 and 840/Mds/2003 against the order of the Commissioner of Income Tax (Appeals) in I.T.A. 66/00-01, 65/00-01, 64/00-01, 63/00-01,62/00-01 & 61/00-01 dated 30.01.2003 against the order of the Assistant Commissioner of Income Tax Circle II, Salem 636 007 for the assessment years 1992-1993 dated 14.03.1997 and 1994-1995, 1995-1996, 1996-1997 and 1997-1998 dated 31.03.2000.

For Appellant in all appeals : Mr.M.Swaminathan, Senior Standing Counsel for Ms.Premalatha

For Respondent in all appeals : No appearance

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed these appeals placing the purported substantial questions of law arising from the orders passed by the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 27.09.2004 in ITA Nos.753/Mds/2003, 837/Mds/2003, 838/Mds/2003, 839/Mds/2003 and 840/Mds/2003, by which the learned Tribunal had merely set aside the orders passed by the lower authorities and remanded the cases back to the Assessing Authority for fresh investigation into the matter on the relevant findings of fact.

2.The learned Tribunal found that the assessee Mr.R.Nedunchezian was working as Assistant in the Office of the Sub-Divisional Engineer, Transmission and Installation in the Department of Telecommunication, Salem. It is seen that he collected some deposits from the public along with Mr.M.Elango to start a business concern by name M/s.Valga Valamudan Enterprises, and deposited the same in various banks, as follows:

(i) Karur Vysya Bank on 9.9.91 in SB A/c.No.8692	Rs.1,00,000/-
(ii) Syndicate Bank on 3.7.91 in Current A/c.No.16269	Rs.3,00,000/-
(iii) Salem District Coop.Bank in A/c.No.11284	Rs.4,05,000/-
(iv) Salem Urban Coop.Bank, 1st Agraharam, Salem in A/c. No.12166	Rs.4,08,000/-
Total...	Rs.12,13,000/-

3.Since he could not explain the credit of a huge sum of Rs.12,13,000/- in his bank accounts, the same was treated as unexplained income in his account and brought to tax. The learned Tribunal had merely remanded back the cases with the following observation:

> "These appeals are by the assessee, an individual, against the orders of the CIT(A). The grievance pertains to the treating of the sum of Rs.12,13,000/- as undisclosed income of the assessee in regard to deposits made with various banks. The assessee apparently was desirous of starting a concern by name "M/s.Valga Valamudan Enterprises" along with Shri M.Elango as a co-deposit owner and collected deposits from various people. However, the deposits were made in the personal accounts of some of the persons. Identical issue came up for consideration. The Tribunal, vide its order dated 29.08.2003 in ITA No.751/Mds/98 etc. for the assessment year 1992-93 in the cases of S.Rangan and others had remitted the issue to the file of the Assessing Officer for examination in its entirety. This was so because large number of public were crying that they have been wronged and their money which was taken from them was not returned to them. The facts and circumstances in the instant case being identical, we direct the Assessing Officer to carry out extensive investigation and call for details of the persons and allow the assessee sufficient opportunity of being heard and decide the issue afresh. For this purpose, we set aside the orders of the authorities.
>
> For statistical purposes, the appeals are to be treated as allowed in part."

4.On 13.04.2009, a Co-ordinate Bench of this Court admitted the appeals on the following substantial questions of law:

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessing Officer was not correct in invoking Sections 69/69A of the Income Tax Act, 1961 in the hands of the assessee in whose name the monies stood invested on the ground that some members of the public have claimed monies as belonging to them and that too in the absence of any corroborative evidence and in assessing the interest on the unexplained bank deposits in the hands of the assessee?
>
> 2.Whether on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in impliedly giving directions to verify and link the deposits with the alleged deposits received from the public in the name of a proposed concern called 'Vazhga Valamudan Enterprises' when the taxing of any unexplained investment and income by way of interest etc., in the hands of the alleged firm by initiation of proceedings u/s 147 was already barred by limitation?"

5.There is no appearance on behalf of the respondent assessee. Having heard the learned counsel for the Revenue, we are of the opinion that in view of the open and simple remand made by the learned Tribunal, in fact, no substantial questions of law arises in the present cases and therefore we need not answer the questions of law on which the appeals were admitted by the Co-ordinate Bench on 13.04.2009. We leave it free for the Assessing Officer to complete the assessments upon remand by the learned Tribunal, in accordance with law.

6.The Tax Case Appeals, are accordingly dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

KM

To

1.The Registrar
Income Tax Appellate Tribunal, Chennai 'C' Bench.

2. The Commissioner of Income Tax (Appeals)
   No.3, Gandhi Road
   Salem.

3. The Assistant Commissioner of Income Tax
   Circle II, Salem 636 007.

+1 CC to Mr.M.Swaminathan, Advocate sr 25981.

Tax Case Appeal Nos.233 to 237 of 2009

PPA(CO)
SP(25/04/2019)