IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM:

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

Tax Case Appeal Nos.516 and 517 of 2009

M/s. Rajapalayam Industrial Commercial Syndicate (P) Ltd,
110, Kamaraj Road,
Sivakasi ....Appellant in both appeals

Vs

The Assistant Commissioner of Income Tax,
Circle – I,
Virudhunagar ... Respondent in both appeals

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the common order of Income Tax Appellate Tribunal Chennai 'D' Bench, dated 04.06.2007 in ITA Nos.801 & 811/Mds/2005 for the assessment years 1976-77 and 1977 -78 respectively,against the Order of the Commissioner of Income Tax (Appeals)-II, Madurai, dated 28.12.2004 and made in ITA Nos.720 & 721/1994-95 for the Assessment Years 1976-77 and 1977-78 respectively and against the Assessment Order of the Asst.Commissioner of Income Tax Circle-I,Virudhunagar, dated 22.09.1994 and made in PAN/GIR No.47-016-CN-4057 for the Assessment Year 1977-78.

For Appellants : Mr.P.J. Rishikesh
[in both appeals]

For Respondent : Ms.V.Pushpa
[in both appeals] Junior Standing Counsel

COMMON JUDGMENT
[Judgment was made by T.S.SIVAGNANAM, J]

These appeals filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) are directed against the common order dated 04.06.2007 passed by Income Tax Appellate Tribunal Madras 'D' Bench (hereinafter referred to as 'the Tribunal') in ITA Nos.801 & 811/Mds/2005 for the assessment years 1976-77 and 1977-78 respectively.

2. The Tax Case Appeals were admitted on 10.02.2010 on the following substantial question of law:

> "Whether on the facts an in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that penalty was leviable under Section 271 (1) (c) of the Act? "

3. We have heard Mr.P.J.Rishikesh, learned counsel for the appellant/assessee and Ms.Pushpa, learned Junior Standing Counsel for the respondent/Revenue.

4. The learned counsel for the appellant vehemently contended that the Assessing Officer has failed to independently consider as to whether the penalty could be levied on the assessee under Section 271(1)(c) of the Act and merely went by the order passed by the Chief Commissioner of Income Tax in a settlement proceedings dated 18.03.1994. Further, it is submitted that in respect of the assessee's group company, the CIT(A) had deleted the similar penalty imposed on the said assessee, which ground was raised before the CIT(A), but not considered by the CIT(A). Further, it is contended that the Tribunal without assigning any reasons has confirmed the order passed by the CIT(A).

5. We agreed with the legal proposition advanced by the learned counsel for the assessee that the penalty proceedings are independent of the quantum proceedings. We also agree with the submission of the learned counsel for the appellant/assessee that merely because the assessee has failed in the quantum appeal, it does not automatically mean that penalty is leviable. Though we agree on these legal principles, we are precluded from applying same to the assessee on account of startling facts which has been recorded by the Assessing Officer in its order dated 22.09.1994. The assessee had adopted an indigenous process of reducing the profits by fictitious claim. This has been brought out in the Assessment Order as well as in the order passed by the CIT(A) and the Tribunal that the assessee could not submit satisfactory explanation with regard to the crisscrossing rebates. There were two round of litigations. In the second round of litigation, the Tribunal vide order dated 16.07.1991, directed the Assessing Officer to take a fresh look in the matter.

6. In the interregnum, the assessee had approached the Chief Commissioner of Income Tax with a petition for settlement. The assessee agreed before the Chief Commissioner with regard to the additions and the Chief Commissioner has passed an order dated 18.03.1994 in which there was a deduction to levy penalty under

Section 271(1)(c) of the Act. This was an agreed order passed by the Chief Commissioner of Income Tax with the express consent of the assessee. In the light of the direction issued by the Tribunal in its order dated 16.07.1991, the Assessing Officer had no other option, except to apply the decision of the Chief Commissioner of Income Tax and concluded the matter. The Assessing Officer cannot sit in judgment over the orders passed by the Chief Commissioner of Income Tax, can re-disregard the order of the Tribunal dated 04.06.2007, which order had attained finality, equally the order passed by the Chief Commissioner of Income Tax also attained finality and the assessee has not taken any steps to delete the specific directions to levy the penalty under Section 271(1)(c) of the Act. Therefore, the order passed by the Assessing Officer dated 22.09.1994 cannot be faulted. Equally the order passed by the CIT(A) does not call for interference.

7. With regard to the plea that one of the other group member filed an appeal before the CIT(A) and the penalty was deleted, we find that considering the facts and circumstances of the said case, the penalty was deleted. Further, the facts before us clearly shows that levy of penalty was agreed as part of settlement proceedings before the Chief Commissioner of Income Tax, which the assessee cannot deny.

8. Thus, we are of the view that the Tribunal was right in dismissing the assessee's appeal and confirming the levy of penalty. There was no ground to interfere with the order passed by the Tribunal.

9. Learned counsel appearing for the respondent/Revenue placed reliance on the decision of Hon'ble Supreme Court in the case of Mak Data (p) Ltd. Vs. Commissioner of Income-tax- II [reported in (2013) 358 ITR 593]. The said decision of Hon'ble Supreme Court has pointed out that voluntary disclosure does not release from the mischief of penalty proceedings under Section 271(1)(c) of the Act. In the case of Khandelwal Steel & Tube Traders Vs. ITO [reported in (2018) 256 taxmann 305(Madras)], the Court taking into consideration the decision in the case of Mak Data, dismissed the assessee's appeal and confirming the levy of penalty.

10. As pointed out by us earlier in this case, the assessee went before the Chief Commissioner by way of settlement proceedings and agreed to the order passed by the Chief Commissioner dated 18.03.1994. The said order had attained finality. Therefore, it is not open to the assessee to now contend that penalty cannot be levied and the matter has to be independently decided. Mens rea has been fully established and the assessee accepted the same and agreed to the order dated

18.03.1994. Therefore, we find that the order passed by the Tribunal is perfectly legal and valid.

In the result, the appeals filed by the assessee are dismissed and substantial questions of law is answered against the assessee. No costs.

mp

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Income Tax,
Circle - I,
Virudhunagar

2. The Income Tax Appellate Tribunal,
Chennai 'D'Bench, Chennai.

3. The Commissioner of Income Tax,
(Appeals-II), Madurai.

4. The Assistant Commissioner of Income Tax,
Circle -I, Virudhunagar,

+1cc to Mr.M.Swaminathan, Advocate, SR.No.66930
+2cc to Mr.R.J.Rishikesh, Advocate, SR.No.66795

Tax Case Appeal Nos.516 and 517 of 2009

Kak(15/10/2019)