IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM :

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

Tax Case Appeal Nos. 953 & 954 of 2009

Commissioner of Income Tax,
Central III, Chennai.
.. Appellant/Respondent in both TCA's

Vs.

M/s. Archana,
70 Usman Road,
T.Nagar, Chennai – 600 017
.. Respondent/Appellant in both TCA's

Prayer : Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'A' Bench, Chennai, dated 19.12.2008 in I.T.(SS)A.No.9/Mds/2006 and I.T(SS).A.Nos.13/Mds/2006 for the block assessment periods 01.04.1989 to 09.11.1999.

against the Order of the Commissioner of Income Tax (Appeals) – i, Chennai -34 dated 24/11/2005 made in ITA No. 54/02-03 for the block assessment year 01.04.89 to 09.11.99 against the Order of The Deputy Commissioner of Income Tax Department Central Circle IV (i), Chennai dated 30.04.2002 made in P.A.No./G.I.No.AAAIA7310F/301-A for the block period 01.04.89 to 09.11.99.

For Appellant : Ms. R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

These appeal filed by the revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) are directed against the order dated 19.12.2008 passed by the

Income Tax Appellate Tribunal Chennai 'A' Bench in I.T.(SS) A.Nos.13/Mds/2006 for the Block Assessment period from 01.04.1989 to 09.11.1999.

2. The appeals were admitted on 13.10.2009 on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in cancelling the assessment as barred by limitation purely on the basis of date of issue of notice u/s. 158BC instead of reckoning the period of limitation on the basis of the date of issue of notice u/s. 158BD?
>
> (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that no proper satisfaction note was recorded by the Assessing Officer for the issue of notice u/s. 158BD of the Income Tax Act?and
>
> (iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in not goint into the merits of the grounds of appeal raised by the Revenue in respect of the deletion of the additions made in the assessment order by the Commissioner of Income Tax (Appeals)?"

3. The revenue fairly states that substantial question of law No.1 does not arise for consideration in this case. Accordingly, the same stands rejected. Thus, we need to decide the substantial questions of law No.2 and 3 alone.

4. We have heard Ms.R.Hemalatha, learned counsel Senior Standing Counsel for the appellant/revenue and Mr.A.S.Sriraman, learned counsel appearing for respondent/assessee.

5. The short issue involved in this case is whether a satisfaction note was recorded by the Assessing Officer before issuance of notice under Section 158BD of the Act. It cannot be disputed by the Revenue that the condition precedent for invoking a Block Assessment is that a search has been conducted under Section 132 of the Act, or the documents or assets has been requisitioned under Section 132A. The said provision would apply in the case of any person, in respect of whom search has been carried out under Section 132A of the Act or documents or

assets has been requisitioned under Section 132A.

6. Section 158BD, provides for taking recourse to a Block Assessment in terms of Section 158BC in respect of any other person, the three conditions to be satisfied as pointed by the Hon'ble Supreme Court in Manish Maheshwari Vs. Assistant Commissioner of Income Tax reported in [2007] 289 ITR 341 (SC). The three conditions being:

> "(i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132;
>
> (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and
>
> (iii) The Assessing Officer has proceeded under Section 158BC against such other person"

7. It was pointed out in Manish Maheshwari case (supra) that conditions precedent for invoking the provisions of Section 158BD are required to be satisfied before the the provisions of the Chapter XIV-B are applied in relation to any person other than the person whose premises has been searched under Section 132 or whose documents and other assets has been requisitioned under Section 132A. It is further pointed out that a taxing statute, as is well-known must be construed strictly and in the absence of any satisfaction being recorded on part of the Assessing Officer, notice was held to be not sustainable.

8. In the instant case the assessee preferred an appeal against the Block Assessment Order dated 30.04.2002 before the Commissioner of Income-tax(Appeals)-I,Chennai (hereinafter referred to as 'CIT(A)') and it is non-recording of the satisfaction note by the Assessing Officer which was specifically raised before the CIT(A). The CIT(A) called for remand report from the Assessing Officer and found that there was no satisfaction note recorded either by the Assessing Officer, who assessed Mr.C.S.Raju, whose premises was searched, or by the Assessing Officer of the respondent/assessee before issuance of notice under Section 158BD. This finding of the CIT(A) was assailed before the Tribunal by the revenue. The revenue contended that recording of satisfaction note, as mandated for issuance of notice under Section 158BD of the Act, need not be in the order sheet and the letter, which he referred to would be considered as sufficient compliance. The said letter has been referred to in paragraph 19.2 of the order passed by the CIT(A). As rightly pointed out by the Tribunal, the letter does not

indicate any recording of satisfaction note and this is only the issuance of notice under Section 158BD of the Act.

9. Thus, in the absence of mandatory procedure having not been followed, the Tribunal was right in dismissing the appeal filed by the revenue.

10. In the result, the appeal filed by the revenue is dismissed, substantial question of law No.1 is rejected as it does not arise for consideration and substantial question of law Nos.2 and 3 are answered against the revenue. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mp/ska
TO

1.The Commissioner of Income Tax,
Central III, Chennai.

2.Income Tax Appellate Tribunal,
Chennai A Bench,
Chennai.

3.The commissioner of Income Tax,
(Appeals)-I, Chennai-34.

4.The Deputy Commissioner of Central Circle IV (I),
Chennai.

+1cc to Mr.S.Sridhar, Advocate, S.R.No. 55362

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VBA(CO)
GN(08/08/2019)