IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

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

Tax Case Appeal No.444 of 2019

Principal Commissioner of Income Tax
Central I,
No.108, Mahatma Gandhi Road,
Chennai-600 034. .. Appellant/Respondent

-vs-

M/s.Kishanlal & Sons (HUF),
No.41/23, Kutchery Road,
Mylapore, Chennai-600 004.
PAN: AAKPK 7263K .. Respondent/Appellant

Appeal under Section 260A of the Income-tax Act, 1961 against the order dated 14.09.2018 in S.P.No.276/Chny/2018 in I.T.A.No.2932/Chny/2017 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai, for the assessment year 2006-07, against the S.P.No.187/Chny/2018 dated 11.05.2018 SP No.333 & 334 dated 22.12.17 agains the order of the Commissioner of Income Tax(Appeals) -19, Chennai-34 dated 11.10.17 in ITA No.88-14-15 against the order of the Deputy Commissioner of Income, Tax, Central Circle III (3), Chennai-34 dated 27.03.2014.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal by the Revenue, filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 14.09.2018, in a stay petition filed by the respondent/assessee in S.P.No.276/Chny/2018 in

I.T.A.No.2932/Chny/2017 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai (for brevity, "the Tribunal"), for the assessment year 2006-07.

2.The Revenue has raised the following substantial questions of law:-

> "i. Whether on the facts and in the circumstances of the case, the ITAT was right in law in granting stay of recovery, till the debt due to the assessee from his creditor is fully recovered by the department in satisfaction of its arrear demand, which would have the effect of the ITAT granting stay exceeding 180 days at a stretch, is in violation of the first proviso to Sec.254(2A) of the I.T.Act?
>
> ii. Whether the Appellate Tribunal was right in directing the department to recover its dues from Shri. Dharmendra Bafna, when the said dues is under litigation in a civil suit filed by him against the assessee is pending before the Hon'ble Madras High Court?
>
> iii. Whether the ITAT was legally justified in dismissing the earlier two stay petitions filed by the assessee, but by this impugned order granting stay would amount reviewing its own order, when the ITAT is not vested with the authority to review its own decision?
>
> iv. Whether the ITAT was correct in law in directing the Revenue to lift the bank attachment, when as per the provisions of Sec.254(2A), the ITAT has been endowed with the power only to grant stay?"

3.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Sivaraman, learned counsel accepting notice on behalf of the respondent/assessee.

4.It is submitted by Mr.T.R.Senthil Kumar, that the main appeal, which was filed before the Tribunal in I.T.A.No.2932/Chny/2017 along with other connected appeals were allowed in favour of the respondent/assessee and by order dated 20.12.2018, all the matters were remanded to the Assessing Officer for fresh consideration/verification. As against the said order, the Revenue has filed T.C.A.No.365 of 2019, which was admitted by this Court on 17.06.2019.

5.It is further submitted that in respect of the other appeals which pertain to one Shri C.Kishanlal, which were also allowed by the Tribunal, viz., I.T.A.Nos.2928, 2929, 2930 and

2931/Chny/2017, for the assessment years 2006-07, 2006-07, 2006-07 and 2012-13 respectively, the Revenue has filed an appeal before this Court against the order in I.T.A.No.2928/Chny/2017 and the same is in the process of being numbered. Insofar as the other appeals are concerned, those pertain to the orders passed in the stay petitions.

6.In the light of the above submission, nothing further survives to be adjudicated in this appeal rather the appeal itself has become infructuous. Under normal circumstances, we would have closed the appeal, but the manner in which the Tribunal has passed the impugned order does not convince us to do so.

7.To be noted that the order impugned, before us in this appeal, is an order passed by the Tribunal in the third stay petition filed by the assessee. The first stay petition was dismissed by order dated 22.12.2017. The second stay petition was dismissed on 11.05.2018 and thereafter, the assessee filed the third stay petition in S.P.No.276/Chny/2018. In the said stay petition, the Tribunal by the impugned order granted stay of recovery of the disputed tax from the assessee granting liberty to the Revenue to proceed with recovery of the disputed tax in respect of the assessee from the hands of the assessee's debtor Mr.Darmendra Bafna of M/s.Surana Corporation Ltd.

8.Mr.T.R.Senthil Kumar, pointed out that the Tribunal failed to note that the address of the debtor, viz., Mr.Darmendra Bafna of M/s.Surana Corporation Ltd., furnished by the assessee is an incorrect address, as the notice sent under Section 226(3) of the Act returned with the postal endorsement "no such name in this address" and the notice sent to the alternate address of M/s.Surana Corporation Ltd., was returned with the postal endorsement "left". Therefore, it is submitted that the assessee has misled the Tribunal in passing the impugned order.

9.We are rather surprised the manner in which the Tribunal has issued directions in the stay petition, when the Tribunal on two earlier occasions, rejected the assessee's stay petitions on the ground that the assessee has not shown any financial difficulty to discharge the disputed tax liability, nor the assessee has shown a prima facie case in their favour.

10.The cardinal principle that should have been borne in mind by the Tribunal while granting an interim order is that the assessee should have made out a prima facie case; the balance of convenience should have been in his favour; and if stay is not granted in favour of the assessee, he will be put to irreparable hardship. Unfortunately, the Tribunal did not address any of these grounds, which are mandatorily required to be addressed, while granting an interim order. That apart, the Tribunal did not take note of its earlier orders wherein, the Tribunal has specifically recorded that the assessee has not shown any financial difficulty, nor the assessee has made out a prima facie case. That apart, the Tribunal could not have directed recovery of tax from Mr.Darmendra Bafna, who was not a party to the proceedings before the Tribunal. If for any reason, the Tribunal was of the view that the debt has to be recovered from a third party, it should have issued a notice to the third party, heard the third party and then taken a decision. Thus, the procedure adopted by the Tribunal is wholly unknown to law and is clearly illegal.

11.To say the least, the order is utterly perverse. Earlier, we have tested the correctness of conditional orders of stay passed by the Tribunal at the instance of the assessees and more often the Tribunal imposes conditions, at times very onerous conditions, this Court had interfered in several cases. Surprisingly, the Tribunal in the impugned order took a different stand and directed recovery of the disputed tax from a third party who was not heard in the matter. Though the present appeal has become infructuous, as the main appeal itself has been disposed of by the Tribunal, we thought fit to make the above observation so that the Tribunal in future, does not resort to passing such arbitrary and illegal orders.

12.Further, we note that the Tribunal while passing the impugned order directed that the recoveries be effected from the third party, till such time, the debt due to the assessee from Mr.Darmendra Bafna has not been fully recovered as against the disputed demand against the assessee directing that there can be no enforcement or encashment of the assets of the assessee by the Department.

13.As rightly contended by Mr.T.R.Senthil Kumar, this direction issued by the Tribunal goes beyond the time limit prescribed under the first proviso in Section 254(2A). This will also make the impugned order as illegal. As we have observed that the appeal has become infructuous, but nevertheless, the impugned order can never be treated as a precedent, nor such procedure can be resorted to by the Tribunal in any other matter.

14.With the above observations, this appeal stands closed and the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

abr

To

1.The Deputy Commissioner of Income-tax,
Central Circle III(3), Chennai.

2.The Commissioner of Income-tax (Appeals)-19,
108, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

3.The Income Tax Appellate Tribunal 'C' Bench, Chennai.

+1cc to Mr.R.Sivaraman, Advocate SR.No.59876

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.No.59037

T.C.A.No.444 of 2019

PPA(CO)
GMY(13/08/2019)