IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.410 of 2011

Commissioner of Income Tax
Chennai. ... Appellant

-vs-

M/s.Sri Meenakshisundaram & Co.,
105, Harris Road,
Chennai 600 002. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Chennai, Bench 'A', dated 26.05.2006, passed in I.T.A.No.1465/Mds/2003 for the assessment year 1995-96 and appeal against the order of the Commissioner of Income Tax (Appeals)-IX, 121, M.G.Road, Chennai - 34 dated 12/05/2003 in IT/Appeal No.146/2001-2002 and appeal against the Income Tax Officer, Business Range VI(4), Chennai 34 dated 18/01/2002 in PAN/GIR No.640761-M.

For Appellant : Mr.D.Prabhu Mukunth Arunkumar,
Standing Counsel

For Respondent : Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar
Padmanabhan & Ramamani

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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 passed by the Income-tax Appellate Tribunal, Chennai, Bench 'A' (for brevity “the Tribunal”), in I.T.A.No.1465/Mds/2003, dated 26.05.2006, for the assessment year 1995-96.

2.This tax case appeal has been filed raising the following substantial question of Law:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that penalty u/s 271(1)(c) can not be levied in a case where the assessee filed its return under VDIS but failed to pay the tax?"

3.We have heard Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel for the appellant/Revenue; and Mr.R.Venkatanarayanan, learned counsel appearing for the respondent/assessee.

4.The short issue, which falls for consideration is whether the Tribunal was right in holding that penalty under Section 271 (1)(c) of the Act could not have been levied by the Assessing Officer, by order dated 01.02.2002.

5.Penalty was imposed merely on the ground that the assessee had mentioned the income admitted in the invalid declaration filed under the Voluntary Disclosure Scheme, 1997 (hereinafter referred to as "the VDIS, 1997") in the return of income filed, cannot absolve the assessee from penal consequences. Further, it was held that after admitting the income in the return, the very same income was reduced from the total income claiming that the same was already declared under the VDIS, 1997. It was further held that the assessee knowing fully well that the declaration under the VDIS, 1997 was not accepted by the Commissioner of Income Tax, the assessee had falsely claimed that the income was already offered under the VDIS,1997 and suffered tax and reduced the same from the total income. Regarding this finding, maximum penalty was imposed on the assessee.

6.The assessee filed appeal before the Commissioner of Income Tax (Appeals)-IX (for brevity "the CIT(A)"). The assessee offered an explanation as to why they had not initially disclosed the amount mentioned in the VDIS application. The Commissioner examined the explanation given by the assessee for its correctness and found the same to be acceptable and accordingly, allowed the appeal and deleted the penalty.

7.The correctness of the order passed by the CIT(A) was challenged by the Revenue before the Tribunal. The Tribunal once again analysed the factual position, that is, the explanation offered by the assessee, the conduct of the assessee and dismissed the appeal filed by the Revenue. At this juncture, it would be useful to refer to paragraph nos.15 and 16 of the order passed by the Tribunal to appreciate the factual position in the instant case and how the Tribunal was satisfied about the bonafides of the assessee:-

"15.Analyzing the above with the facts available and presented before us, the assessee has offered for taxation in the revised return made by the assessees on his own volition before concealment was deducted by the authorities in the course of assessment process. The bona fide act of the assessees right from the inception till filing of the revised return shows the conduct of the assessees. The assessees have also cooperated with the Department in bringing such income to tax.

16.By way of dissection, two segments were came out. The first one is that whether the assessees have concealed any particulars of income. On this, it is an admitted fact that initial declaration was made by the assessees under VDIS. The proof for payment of advance tax within the allowable time is not dispute. Till that stage, the Department was absolutely unaware of the fact that the assessees having earned any such income. Had the VDIS complied with the payment of tax, etc. the question of levy of penalty would not have been agitated. Admittedly the tax has not been paid by the assessees on the income declared under VDIS. This itself will not lead to the conclusion that the assessee has concealed its particular of income as the concealment, as we discussed, means something more with the malafide intention coupled with mens rea..........."

8.We have gone through the order passed by the Tribunal and also the reasons given by the Tribunal as to how the Tribunal found that the explanation offered by the assessee was acceptable and how the conduct was not contumacious or malicious. Thus, we cannot re-examine the factual finding recorded by the CIT(A) and the Tribunal.

9.Accordingly, we find no substantial question of law arises for consideration. Hence, the appeal filed by the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssb/abr

To

1) The Income-tax Appellate Tribunal,
Chennai, Bench 'A'.

2) The Commissioner of Income Tax (Appeals)-IX,
121, M.G.Road,
Chennai - 34

3) The Income Tax Officer,
Business Range VI(4),
Chennai 34.

+1 cc to M/s.Subbaraya Aiyar Padmanabhan, S.R.No.7968

T.C.(A) No.410 of 2011

KJI(CO)
SSM(06/03/2019)