In the High Court of Judicature at Madras

Dated : 31.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.420 of 2019

The Principal Commissioner of
Income Tax, Central 2, Chennai-34. ...Appellant

Vs

Shri.R.P.Dharmalingam ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 15.11.2018 made in ITA.No.1846/Chny/2018 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 2012-13 against the order passed by the Principal Commissioner of Income Tax Central 2 Chennai dated 27.03.2018 made in C.No. 2744/C2/2016-2017/31 and against the Assessment order passed by the Assistant Commissioner of Income Tax Central Circle 2(2) Chennai dated 31.03.2016 made in GI No./PA No. AEAPD7363R.

For Appellant : Mr.T.R.Senthilkumar,
SSC & Ms.K.G.Usharani, SC

For Respondent: Mrs.Pushya Sitaraman, SC for Mr.R.Murali

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel and Ms.K.G.Usharani, learned Standing Counsel appearing for the Revenue and Mrs.Pushya Sitaraman, learned Senior Counsel appearing on behalf of Mr.R.Murali, learned counsel appearing for the respondent – assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 15.11.2018 made in ITA.No.1846/Chny/2018 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

3. The Revenue has filed this appeal by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in quashing the revision order passed under Section 263 of the Income Tax Act by applying the time limit prescribed for penalty proceedings under Section 271(1)(c) and not the time limit prescribed under Section 263 of the Act ? And
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> ii. Whether the Appellate Tribunal was correct in law in not appreciating the ratio of the judgment of the Hon'ble Apex Court in the case of Toyota Motor Corporation Vs. CIT [reported in 306 ITR 52] to the effect that dropping of penalty proceedings without reasoning is amenable to revision under Section 263 of the Income Tax Act ?"

4. The assessee is an individual, who is engaged in the business of property development. For the assessment year under consideration namely 2012-13, the assessee filed his return of income on 18.4.2013 admitting an income of Rs.29,92,146/-. There was a search and seizure action under Section 132 of the Act in the premises of the assessee on 03.9.2013, following which, a notice under Section 153A of the Act was issued on 29.4.2014 to file the return of income for six assessment years. The Assessing Officer completed the assessments under Section 153A read with Section 143(3) of the Act on 31.3.2016, determined the total income as Rs.2,29,92,150/- and demanded tax to the extent of a sum of Rs.33,76,873/-. On the same day i.e. 31.3.2016, the Assessing Officer initiated proceedings under Section 271(1)(c) of the Act alleging that the assessee concealed particulars and furnished inaccurate particulars of income.

5. Subsequently, the Assessing Officer dropped the penalty proceedings on 08.9.2016. This, according to the Revenue, is without recording reasons and therefore, the Principal Commissioner of Income Tax, Central 2, Chennai-34 namely the appellant issued a notice under Section 263 of the Act dated 09.3.2018 calling upon the assessee to show cause as to why the order passed by the Assessing Officer dropping the penalty proceedings should not be revised.

6. The appellant passed an order dated 27.3.2018 directing the Assessing Officer to impose penalty. Aggrieved by that, the assessee filed an appeal before the Tribunal. The Tribunal, after examining the factual position and taking note of the legal submissions made on behalf of the assessee as well as the

Revenue, allowed the appeal. The appeal was allowed by the Tribunal considering the fact situation to examine as to whether the penalty could have been imposed beyond the period of limitation. The findings of the Tribunal are quoted herein below :

> "The time limit for imposing the penalty under Section 271(1)(c) of the Act is prescribed in Section 275(1) of the Act. Section 271C is not a penalty, which is initiated in the course of any proceedings. There is no time limit for initiation of penalty under Section 271C of the Act. The limitation of Section 275(1) of the Act in respect of Section 271C of the Act would start, when the action for the imposition of the penalty is initiated. Here, in the present case, the action for initiation of the penalty under Section 271(1)(c) of the Act had been initiated in the course of assessment proceedings itself under Section 143(3) read with Section 153A of the Act on 31.3.2016. Thus, the time limit for levy of penalty under Section 271(1)(c) of the Act would expire in the present case on 31.9.2016, being six months from the end of the month, in which, the penalty proceedings have been initiated. Now, after the expiry of the said limitation, the learned Principal Commissioner of Income Tax has issued the show cause notice on 09.3.2018 for reviving the penalty proceedings, which had already expired and was barred by limitation. True, the order passed by the learned Assessing Officer dropping the penalty proceedings is an unspeaking order, but still, that would not make it valid reason for extending the limitation provided under Section 275 of the Act for the purpose of levying the penalty or for considering the levy of penalty under Section 271(1)(c) of the Act by invoking the powers of revision under Section 263 of the Act. In the circumstances, the order passed under Section 263 of the Act, being unsustainable in law, stands quashed."

7. Considering the factual position, which was noted by the Tribunal, a decision has been arrived at by the Tribunal quashing the penalty proceedings. Thus, we find that there is no substantial question of law arising for consideration in this case because the case was decided by the Tribunal on facts and

therefore, we find that there is no ground to entertain the appeal filed by the Revenue.

8. Accordingly, the above tax case appeal is dismissed. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'D' Bench
Chennai.

2.The Principal Commissioner of Income Tax
Central 2, No. 121, Mahathma Gandhi Road
Chennai 34.

3.The Assistant Commissioner of Income Tax
Central Circle2(2) Mahathma Gandhi Road
Chennai 34.

+1 CC to Mr.T.R.Senthilkumar, Advocate sr 66112.
+1 CC to Mr.R.Murali, Advocate sr 65635.

TCA.No.420 of 2019

EV(CO)
SP(29/08/2019)