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.424 of 2019

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

Vs

M/s.Challani Ranka Jewellery,
Chennai-79. ...Respondent/ Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 02.1.2019 made in MP.No.163/Chny/2018 in ITA.No.3066/ Chny/2017 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 2012-13 against the order passed by the Commissioner of Income Tax (Appeals) -19, Chennai - 34, dated 31.10.2017 made in ITA No.89/15-16 and against the order passed by the Deputy Commissioner of Income Tax, Central Circle -3(4), Chennai -34, dated 27.03.2015 made in PAN/GIR No.AACFC8272A for the Assessment Year 2012-13.

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

For Respondent: Mr.R.Sivaraman

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel as well as Ms.K.G.Usharani, learned Standing Counsel appearing for the Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent – assessee.

2. This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) against the order dated 02.1.2019 made in MP.No.163/Chny/2018 in ITA.No.3066/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai '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 recalling its earlier order passed on merits after the assessee entered appearance during the hearing of the appeal without taking cognizance of the jurisdictional High Court's judgments in the cases of Express Newspapers Ltd. Vs. DCIT [reported in 320 ITR 12] and Vyline Glass Works Ltd. Vs. ACWT [reported in 373 ITR 355] ? and
>
> ii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in not following its own earlier order in the case of Technip India Ltd. Vs. ACIT [reported in 83 Taxmann.com 404] wherein it was held in the context of Section 254 that the Tribunal cannot recall the entire order and give a fresh decision and the power to rectify a mistake under Section 254(2) cannot be used for recalling the entire order?"

4. In our considered view, there is no necessity to decide the substantial questions of law for two reasons. Firstly, the order impugned in this appeal has worked itself out in the sense that on account of a subsequent order passed by the Tribunal, the matter has now been remanded to the Assessing Officer for a fresh consideration/verification. The second reason being that the Revenue has not filed any appeal against the order passed by the Tribunal remanding the matter to the Assessing Officer for a fresh consideration. Thus, we hold that the appeal has become academic.

5. Accordingly, the above tax case appeal is closed leaving it open to the parties to work out their remedies before the Assessing Officer. Consequently, the substantial questions of law are left open. No costs.

Rs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

3. The Commissioner of Income Tax, (Appeals) -19,
Chennai - 34.

4. The Deputy Commissioner of Income Tax,
Central Circle, 3(4), Chennai -34.

+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.66113

TCA.No.424 of 2019

Kak(17/09/2019)