IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.6.2019

CORAM :

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

Tax Case Appeal No.382 of 2019

The Commissioner of Income Tax, Chennai. ...Appellant

-Vs-

M/s.Arvind Healthcare Pvt. Ltd., Chennai-17. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.12.2018 in ITA No.2032/Chny/2018 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2003-04 against the order of the Commissioner of Income Tax, (Appeals) 4, Chennai 34, dated 20.02.18 ITA No.5/2011-12 Y 2003-04/CIT (A)-4 against the order dated 30.12.2010 PA No.AADCA 9269 M passed by Income Tax Officer, Company Ward (1) Chennai for the Assessment Year 2003-04.

For Appellant : Mrs.R.Hemalatha

For Respondent: Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

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 20.12.2018 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench (for brevity, the Tribunal) in ITA No.2032/Chny/2018 for the assessment year 2003-04.

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

> "i. Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the reopening of assessment made under Section 147 of the Income Tax Act, 1961 was invalid ?

ii. Whether the Tribunal ought to have applied the decision of the Apex Court in the case of Zuari Estate Development and Investment Company Ltd. [reported in 373 ITR 681] and that of Rajesh Jhaveri Stock Brokers P. Ltd. [reported in 291 ITR 500], which clearly held that intimation passed under Section 143(1) was not an assessment order and therefore, applying First Proviso to Section 147 of the Income Tax Act does not apply ? And

iii. Whether the reasoning and finding of the Tribunal is proper in holding that since interest income had been taxed, the interest paid must be allowed as an expenditure without taking cognizant of the fact that the assessee has not established any nexus between the expenditure and the income earned to allow such deduction under Section 37 of the Income Tax Act ?"

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant and Mr.A.S.Sriraman, learned counsel accepting notice for the respondent. With consent, the main appeal itself is taken up for final disposal.

4. The point canvassed before us by the Revenue is that the Tribunal erred in reversing the order passed by the Commissioner of Income Tax (Appeals) [for short, the CIT(A)] to sustain the reopening made by the Assessing Officer on the ground that there had been no assessment in the case of the assessee, as, only an intimation was issued under Section 143(1) of the Act and that the question of re-assessment does not arise. In support of her contention, the learned Senior Standing Counsel has placed reliance on the decisions of the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd. [reported in (2007) 291 ITR 500] and in the case of DCIT Vs. Zuari Estate Development and Investment Company Ltd. [reported in (2015) 373 ITR 681].

5. Mr.A.S.Sriraman, learned counsel appearing for the respondent would submit that there are several decisions in favour of the assessee and that it can be clearly brought out that reopening of assessment was a clear case of change of opinion.

6. In order to test the correctness of the submissions made on either side, we have carefully perused the assessment order dated 30.12.2010 and the order passed by the CIT(A) dated 20.2.2018 and we find from the assessment order that the notice

sent was not responded by the assessee and consequently, the Assessing Officer completed the assessment. Further, there was a gross delay in filing the appeal before the CIT(A) and a faint plea was raised by the assessee before the CIT(A) objecting to the issuance of notice for reopening. However, there was no finding rendered by the CIT(A) as to the validity of the reopening except by observing that such a contention was not raised before the Assessing Officer and that the contention could not be entertained at the appellate stage.

7. In our considered view, the CIT(A), being the First Appellate Authority, is entitled to examine the entire facts and the validity of reopening of assessment being a mixed question of law and fact, the same can very well be entertained by the CIT(A). Even before the Tribunal, we find that the respondent/assessee did not specifically contest the reopening proceedings by placing decisions nor there was any contest with regard to the stand taken by the Revenue that only intimation under Section 143(1) of the Act was issued and that no assessment order was passed under Section 143(3) of the Act. Considering the facts of the case, we are of the view that the assessee should be granted an opportunity to contest the reopening of the assessment, for which purpose, we deem it appropriate to remand the matter to the CIT(A) for a fresh consideration.

8. In the light of the above, the appeal filed by the Revenue is allowed, the orders passed by both the Tribunal as well as the CIT(A) are set aside and the matter is remanded to the CIT(A) for a fresh consideration. It is open to the assessee as well as the Revenue to canvass all the points, which shall be decided on merits and in accordance with law. No costs.
Rs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax, (Appeals)-4,
Room No.229,2nd Floor, Main Building,
Income Tax Office,
121, Mahatma Gandhi Road,
Chennai - 34.

3. The Income Tax Officer,
Company Ward I (1),
Income Tax Office,
121, Mahatma Gandhi Road,
Chennai - 34.

+1cc to Mr.T.Ravi Kumar, Advocate, SR.No.50657/19
+1cc to Mr.S.Sridhar, Advocate, SR.No.50666

Kak(25/07/2019)