In the High Court of Judicature at Madras

Dated : 28.08.2019

Coram :

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

Tax Case Appeal No.116 of 2018

Commissioner of Income Tax,
Chennai. ... Appellant

Vs

Sabibna Muyeenuddin
PAN: AOMPS663K ... Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.10.2016 made in ITA.No.1040/MDS/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2010-2011

against the order of the Commissioner of Income Tax Appeal 15 dated 20.01.2016 in ITA No.166/CIT (A)-15/14-15 in the Assessment year 2010-11,

against the order of the Joint Commissioner of Income Tax Business Range V I/C Chennai dated 29/05/2014 BR-V/271D/AOMPS 6663K/10-11.

For Appellant : Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani

For Respondent: Mr.R.Sivaraman

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J.)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned counsel appearing for the appellant/revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent/assessee.

2.This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated

28.10.2016 made in ITA.No.1040/MDS/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2010-2011.

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

> "1.Whether on the facts and in the circumstances of the case and in law, Tribunal was right and justified in cancelling the penalty levied u/s.271D when both assessee and lender maintained bank accounts and urgency for making such transactions by cash was not adduced at all?
>
> 2.Whether on the facts and circumstances of the case and in law, Tribunal was correct and justified in holding that penalty u/s.271D is not exigible after holding that assessee has not been able to show the urgency of the transactions in cash and whether the order of the Tribunal is perverse on this count?
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> 3.Whether on the facts and circumstances of the case and in law, Tribunal erred in not following the ratio laid down in the binding decisions in Builtec Engineers & Builders vs. DCIT (Mad) 76 DTR 410, Kasi Consultant Corporation vs. DCIT (Mad) 311 ITR 419, P.Baskar vs. CIT (MAd) 340 ITR 560 and Thenamal Chhajjer vs. JCIT (ITAT, Chennai) 96 ITD 210 in which it was held that while considering contravention of the provisions of Sec.269SS, genuineness of loan/deposit is not a criteria and assessee has to prove the urgency for taking loan in cash?
>
> 4.Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in cancelling the penalty levied u/s.271D relying on the decision of Hon'ble Madras High Court in the case of M/s.Yesodha in which urgency of making cash transaction was properly explained by assessee and thus facts distinguishable?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5.In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Registrar,
The Income Tax Appellate Tribunal,
Besant Nagar Chqo
Chennai B Bench.

2.The Commissioner of Income Tax,
Appeal 15, Chennai.

3.The Joint Commissioner of Income Tax,
Business Range V I/C,
Chennai.

+1cc to Mr.Senthil Kumar, Advocate Sr.74178

TCA.No.116 of 2018

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srg 08/11/2019