IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM :

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

Tax Case Nos.416 & 417 of 2018

Principal Commissioner of Income Tax 2,
No.63, Race Course Road, Coimbatore.

...Appellant in both the Appeals

-vs-

Smt.S.Venkateswari,
Prop:Sri Balamurugan Agencies,
No.18, New Bus Stand Complex,
Kovai Main Road, Perundurai - 638 052.

...Respondent in both the Appeals

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, directed against the common order passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A Nos.2723/Mds/2016, 3144/Mds/2016 dated 27.07.2017 for the assessment years 2013-14, and against the order of the Commissioner of Income Tax(Appeals)-3, Coimbatore dated 31/08/2016 made in ITA.NO.8/16-17 and against the order of the Assistant Commissioner of Income Tax, Circle-2, Erode, dated 28/03/2016, made in PAN.NO. AEBPV2163E.

For appellant : Mr.T.R.Senthil Kumar, SSC
assisted by
Mrs.K.G.Usha Rani
(in both the appeals)

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

These Tax Case Appeals by the Revenue filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) are directed against the common order passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A Nos.2723/Mds/2016, 3144/Mds/2016 dated 27.07.2017 for the assessment years 2013-14.

2. T.C.A.No.416 of 2018 has been filed raising the following substantial questions of law;

> "Whether the ITAT was justified in holding that the mother of the assessee had the capacity to gift Rs.5,05,000/- when there is no evidence on record to prove the source of income of mother of the assessee?"

3. T.C.A.No.417 of 2018 has been filed raising the following substantial questions of law;

> "(i)Whether the ITAT was right in confirming the order of CITA be observing that the PAN were furnished except in respect of payments made to the extent of Rs.44,30,887/-, when, in fact, none of the PAN were furnished by the assessee, thus rendering a perverse order?
>
> (ii) Whether the ITAT was justified in confirming the order of CITA without appreciating that the provisions of Section 194 C(6) require that TDS shall not be made on furnishing of PAN to the prayer and that it did not envisage that TDS shall not be made when the payee has a PAN and that there is a mammoth difference between 'having a PAN and 'not furnishing a PAN'?
>
> (iii) Whether the ITAT was justified in confirming the order of the CITA when the CITA held that details furnished in appellate proceedings can be treated as sufficient compliance without providing an opportunity of being heard to the AO under Rule 46A?"

3. We have heard MrT.R.Senthil Kumar, learned Senior Standing Counsel for the Revenue in both the appeals and carefully perused the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal.

4. With regard to T.C.A.No.416 of 2018, the Tribunal has granted relief to the assessee and we concur with the following finding rendered by the Tribunal and there can be no second opinion on the views expressed by the Tribunal more particularly in paragraph 7 of the order passed by the Tribunal which is quoted herein;

> "7. The assessee's mother appears to be housewife. She has to take care of household expenses. Whenever received money from husband or son for household expenses, Indian ladies use to save part of the money and whenever the husband or son urgently needs some money, the ladies use to give the same out of their savings. This saving habit of housewives in

this Country, more particularly, in Southern part of the Country, cannot be ignored by the Assessing Officer. When the assessee's mother claims that she saved money given for household expenses and filed an affidavit before the Assessing Officer, this Tribunal is of the considered opinion that the claim of the assessee's mother cannot be brushed aside so lightly without examining it. The assessment year under consideration is 2013-14. Even a mason or construction worker is receiving salary of Rs.400/- to 500/- per day. In this economic situation, there is no reason to doubt the capacity of the assessee's mother to give Rs.5,05,000/- to the assessee. Therefore, this Tribunal is of the considered opinion that all the ingredients which are necessary for proving the gift were established by the assessee. Therefore, the CITA is not justified in confirming the addition. Accordingly, the orders of the lower authorities are set aside and the addition of Rs.5,05,000/- made by the Assessing Officer is deleted."

5. The Revenue has not made out any ground to assail the above finding more particularly the question raised before us cannot be recorded as substantial question of law and hence T.C.A.No.416 of 2018 is dismissed as there is no substantial question of law arising for consideration.

6. In T.C.A.No.417 of 2018, though three substantial questions of law have been raised, all pertaining to the restriction of the disallowance as made by the Commissioner of Income Tax (Appeals), the arguments advanced by Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the Revenue reveals around manner in which Commissioner of Income Tax (Appeals) examined issue and it is being faulted on the ground that the Commissioner of Income Tax (Appeals) should have examined the Transporters recorded statements etc. This submission cannot be canvassed in an appeal filed under Section 260-A of the Act, as they cannot be recorded as substantial questions of law.

7. We have perused the order passed by the Commissioner of Income Tax (Appeals) who has granted partial relief to the assessee and he has recorded specific finding that the addition made by the Assessing Officer on the freight charges to the tune of Rs.3,26,15,735/- on the reason that no evidence is not sustainable and assessee maintained books of accounts and there are clear entries of details of freight expenses and accordingly disallowance for non deduction of tax was restricted to Rs.44,30,887/-.

8. In this appeal, we cannot be called upon to re-examine the facts, entries in the books of accounts etc., which have been found to be justifiable by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal. Hence, We are of the view that no substantial questions of law arises for consideration in T.C.A.No.417 of 2018 and accordingly dismissed.

9. In the result, the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Madras "A" Bench, Chennai.

2.The Commissoner of Income Tax,
(Appeal)-3,
Coimbatore.

3.The Assistant Commissoner of Income Tax,
Circle-2, Erode.

4.The Principal Commissioner of Income Tax 2,
63, Race Couse Road, Coimbatore.

Tax Case No.416 & 417 of 2018

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nr 13/08/2019