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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM :

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

Tax Case Nos.88 to 91 of 2018

Principal Commissioner of Income Tax
Central 2, No.108,
Mahatma Gandhi Road,
Chennai ...Appellant/Appellant in All TC.Appeals

-vs-

Shri. K.C.P.Shivaraman
No.506, Arase Lodge,
Jawajar Bazaar, Karur 639 001
PAN:AAX PS 4844 F ...Respondent/Respondent in All TC.Appeals

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, are directed against the common order passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai in I.T.A Nos.1155/Mds/2015 & 1156/Mds/2015 and C.O.Nos.69/Mds/2015 & 70/Mds/2015 in I.T.A Nos.1155/Mds/2015 and 1156/Mds/2015 respectively dated 20.04.2017 for the assessment year 2008-09 and 2009-10. arising against the order passed by the Commissioner of Income Tax (Appeals) Trichy, in ITA.No.78 & 79/13-14/CIT (A)/TRY for the assessment year 2008-09 & 2009-10, dated 08.01.2015, ITA.No.04/14-15/CIT(A) for the Assessment Year 2008-09, dated 06.02.2015, ITA.No.05/14-15/CIT(A) for the Assessment Year 2009-10, dated 19.02.2015, respectively, arising agaist the Assessment Order by the Joint Commissioner of Income Tax, Range-II, Trichy, dated 26.03.2013, 26.03.2013, (Assessment Year 2008-09, 2009-10) and 28.11.2014 & 28.11.2014 (Assessment Year 2008-09 & 2009-10) respectively, PAN.No.AAXPS4844F.

For appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman

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JUDGEMENT

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

These Tax Case Appeals by the assessee, 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, Chennai (Camp: Madurai) in I.T.A Nos.1155 & 1156/Mds/2015 and Cross Objection Nos.69 & 70/Mds/2015 for the assessment years 2008-09 and 2009-10.

2.The Revenue has raised the following substantial questions of law for consideration:-

> "(i) on the facts and the circumstances of the case, whether the Appellate Tribunal is correct in law in dismissing the grounds raised by the Revenue, on the ground that the assessing officer should have started computation of income from the returned income instead of assessed income as determined in the original assessment order, when the additions made in the original assessment are not the subject matter of review order u/s.263 of the Income Tax Act?
>
> (ii) Whether the Appellate Tribunal is correct in law in deleting the addition made under Section 40(3) of the IT Act, even though the assessee has not brought out any specific evidence that his case falls within any of the exceptions provided in Rule 6DD, and to give relief from the rigours of Section 40A(3) and to cover extraordinary circumstances?
>
> (iii) Whether the ITAT is correct in law in deleting the addition made by the assessing officer without any documentary evidence and without giving any opportunity to the Assessing officer to examine fresh evidence produced before the Tribunal ?
>
> (iv) Whether the ITAT is correct in law in allowing Cross Objection filed by the assessee on the ground that the additions made in the original assessment order cannot be considered again in the re-assessment order in pursuant tot he order u/s 264 of the I.T.Act, 1961?”

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing counsel for the appellant/Revenue and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

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4. Four appeals have been filed by the Revenue as there are two appeals relating to the substantive assessments and two challenging the orders passed in the cross objections.

5. The assessee is an individual and engaged in the business of real estate and is running a lodging house. As the assessee did not file his return of income for the assessment years under consideration, notice under Section 148 of the Act was issued, after which, the asseessee filed return of income for both the years, which were considered and assessments were completed by the Assessing Officer.

6. Aggrieved by such re-assessment, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-1, Tiruchirapalli in ITA.Nos.78 and 79/13-14/CIT(A)/TRY. In the meanwhile, the Commissioner of Income Tax, Tiruchirapalli issued notice under Section 263 of the Act stating that for the assessment year 2008-09, the assessee filed a reconciliation stating that a sum of Rs.18,74,70,100/- was credited in the company's name and this was not found in the assessee's book of account and the assessee did not give any explanation with details of such payment nor confirmation was obtained from that company. Therefore, the Commissioner opined that this amount should be brought to tax under Section 68 of the Act for the assessement year 2009-10. The Commissioner stated that no explanation was given by the assessee for the cash deposit of Rs.17,50,85,940/- instead only Rs.3.44 crores.

7. The Commissioner afforded an opportunity of personal hearing to explain as to why the assessment should not be reopened as the same is prejudicial to the interest of revenue. The personal hearing was fixed on 07.08.2014 and on the said date the assessee sent a representation requesting for adjournment. The Commissioner did not adjourn the case but opined that no useful purpose would be served in adjourning the matter as the assessee was required to give a reconciliation with regard to the discrepancies pointed out. Accordingly, order dated 08.08.2014 was passed under Section 263 of the Act.

8. The appeal, which was filed by the assessee as against the re-assessment proceedings in ITA.No.78 and 79/13-14, was dismissed on 08.01.2015 on the ground that the Commissioner while passing the orders under Section 263 of the Act dated 08.08.2014 has set aside the entire assessement namely, the re-assessment order and therefore, nothing would survive in the assessee's appeal.

9. The Assessing Officer passed a giving effect to order dated 28.11.2014 by completing the assessments and making

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certain additions. Aggrieved by the same, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-1, Tiruchirappalli. The appeals were allowed and the assessee was granted full relief under certain heads and partial relief under the other heads.

10. The Revenue filed appeals before the Tribunal in which cross objections had been filed by the assessee. The Tribunal, in our considered view, rightly took note of the fact that the Assessing Officer started from the income of Rs.1,81,40,652/- originally assessed and made two further additions in the fresh assessment pursuant to order under Section 263 of the Act. The Assessing Officer could not have done so because the original assessment order was no more in force when the fresh assessment proceedings pursuant to the order under Section 263 was taken up by the Assessing Officer. Thus, the Tribunal was right in holding that the Assessing Officer could not have started from the income of Rs.1,81,40,652/-, originally assessed on 26.03.2013, but should have started from the returned income of Rs.87,05,011/-.

11. Taking note of the findings given by the CIT(A), the Tribunal commented that the CIT(A) having given a clear finding on the above lines ought not to have adjudicated on the additions assailed by the assessee which additions emanated from the original assessment. We endorse the findings rendered by the Tribunal in this regard. The Tribunal was right in holding that the CIT(A) should have confined himself to the additions made by the Assessing Officer in his order dated 28.11.2014 which was Rs.36,500/- under Section 40A(3) and Rs.10,77,188/- for the deposits made in Karur Vysa Bank. Therefore, the Tribunal held that the grounds raised by the revenue in the appeal before it, on the issues other than two additions, do not arise from the assessment order and accordingly rejected the same and dismissed the appeal. The finding of the Tribunal does not call for any interference.

12. The Tribunal next proceeded to consider as to whether the additions of Rs.36,500/- under Section 40A(3) was warranted and after taking note of the factual matrix held that the assessee could demonstrate business expediency which justified the payment made in cash. We find no reasons to dislodge the factual findings recorded by the Tribunal.

13. With regard to cash deposit of Rs.10,77,188/- made in Karur Vysa Bank, the Tribunal after considering the factual position affirmed the order passed by the CIT(A) that it was proceeds of the deposits made by the assessee in the assessment year 2005-06 and the assessee had accounted accrued interest of Rs.77,188/- and the assessee did not raise any ground citing

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violation of Rule 6DD. The revenue has not made out any grounds to interfere with the said findings of the Tribunal.

14. Similar is the matter concerning the assessment year 2009-10. In the said order, the Assessing Officer made a fresh addition of a sum of Rs. 76,32,000/- under Section 40A(3) on the cash payment for land purchase. The Tribunal noted that the Assessing Officer committed similar mistake as was done in the assessment year 2008-09 in computing the income of the assessee and consequently held that the CIT(A) having set aside the original assessment, there was no question of adjudicating upon any of the grounds raised by the assessee relating to the original assessment. After rendering such finding, the Tribunal endorsed the view of the CIT(A) that the disallowance of Rs.76,32,000/- under Section 40(3) of the Act could not have been done since they were genuine payments done due to business expediency. Accordingly, the appeal filed by the Revenue challenging the order passed by the CIT(A) for the assessment year 2009-10 was also dismissed.

15. For the reasons assigned by the Tribunal while dismissing the appeals filed by the Revenue for the assessment year 2008-09, the cross objections were allowed for the assessment year 2008-09 and allowed for the assessment year 2009-10.

16. In the light of the findings recorded by the Tribunal, we hold that the revenue has not made out any ground to interfere with the orders passed by the Tribunal. For the above reasons, the appeals filed by the revenue are dismissed and the substantial questions of law are answered against the revenue. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

ska/mp

To

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

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2. The Commissioner of Income Tax (Appeals),
Trichy-620001

3. The Joint Commissioner of Income Tax,
Trichy.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.54325
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.54856

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