IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.487 to 489 of 2019

Mr.M.R.Jayapal ...Appellant in TCA.487/2019

Mr.M.J.Sivakumaran ...Appellant in TCA.488/2019

Mrs.J.Lalitha ...Appellant in TCA.489/2019

Vs

The Deputy Commissioner of Income Tax, Central Circle No.3, Gandhi Road, Salem-7. ...Respondent in all the TCAs

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 30.5.2014 made respectively in ITA.Nos.347, 349 and 348/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2011-12.

Against the orders of commissioner of Income Tax (appeals) Salem, dated 29.11.2013 for the assessment year 2012-2013 in ITA.Nos.21,21/12 2011-2012,20/2012-2013 against the order dated 21.12.2012 Under Section 143(3) of the Income Tax Act,1961 passed by the Assistant Commissioner of Income Tax, Central Circle Salem against PAN no.ADPPJ8658 P,AUVPS124OD AAQPC8743H respectively.

For Appellants : Mr.V.S.Jayakumar
For Respondent: Mr.M.Swaminathan, SSC & Mrs.V.Pushpa, JSC & Mrs.S.Premalatha, JSC

COMMON JUGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.V.S.Jayakumar, learned counsel for the appellants and Mr.M.Swaminathan, learned Senior Standing Counsel, Mrs.V.Pushpa, learned Junior Standing Counsel and Mrs.S.Premalatha, Junior Standing Counsel accepting notice for the respondent.

2. These appeals, filed by the assessees under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 30.5.2014 made respectively in ITA.Nos.347, 349 and 348/Mds/ 2014 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2011-12.

3. The assessees have filed these appeals by raising the following substantial question of law :

> "Whether the Tribunal was right in holding that the cash seized during survey should be adjusted against the self assessment tax and not against the advance tax liability ?"

4. We need not labour much to decide the substantial question of law raised in these appeals on account of the earlier common order passed by the Tribunal in ITA.Nos.373 to 375/Mds/2014 dated 23.5.2014 in the assessee's own group cases. The cases were connected because the issue arose on account of a search conducted in the business premises of the appellants herein and one more person by name S.Usha and all the four assessees were found to run the business. In respect of three of the assessees i.e. the appellants herein, they preferred appeals before the Tribunal, which accepted their stand and allowed their appeals by the said common order dated 23.5.2014. However, when the other appeals came up for hearing before the Tribunal namely the appeals filed by the Revenue and the cross objections filed by three of the assessees, the Tribunal passed the impugned common order dated 30.5.2014 and did not follow its earlier decision.

5. It appears that the earlier decision of the Tribunal dated 23.5.2014 was not brought to the notice of the Tribunal before passing the impugned common order. Furthermore, we are informed that the Revenue has not preferred any appeal as against the said common order dated 23.5.2014 in ITA.Nos.373 to 375/Mds/2014, that the same attained finality and that the Assessing Officer passed a giving effect to order.

6. Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the Revenue points out that the Assessing Officer gave effect to both the impugned common order dated 30.5.2014 as well as the common order dated 23.5.2014, as a result of which, there are conflicting orders passed by the Assessing Officer. He further points out that the matters may be remanded to the Commissioner of Income Tax (Appeals) [for short, the CIT(A)], who shall take a fresh decision.

7. We do not agree with the said submission for more than one reason. Firstly, the assessees succeeded before the Tribunal vide common order dated 23.5.2014 in ITA.Nos.373 to 375/ Mds/2014 and the Revenue has not preferred any appeal as against the said common order. Therefore, it binds the Revenue. Consequently, the question of remanding the matters to the CIT(A) does not arise so as to enable him to give a fresh adjudication to the matters, because the said common order dated 23.5.2014 passed by the Tribunal in the assessees' case had attained finality. Therefore, the impugned common order has to be necessarily interfered with, the appeals filed by the assessees have to be allowed, the decision of the Tribunal in ITA.Nos.373 to 375/Mds/2014 dated 23.5.2014 has to be applied and similar directions have to be issued in these cases as well.

8. The relevant portion in the said common order dated 23.5.2014 in ITA.Nos.373 to 375/Mds/2014 reads thus :

> "As far as the contention of the assessee regarding date of intimation to treat the seized amount as advance tax is concerned, the assessee has placed on record copies of the communication dated 16.11.2010 and 30.11.2010 along with photocopies of Department inward register. A perusal of the same shows that both the intimations were received in the office of the Revenue. We remit the file back to the Assessing Officer for limited purpose of verifying the veracity of intimation and its acknowledgment before granting the aforesaid relief. In case it is found to be correct, the Assessing Officer, while computing interest under Sections 234A and 234B, shall first give credit of the amount seized as advance payment of tax for AY 2011-12. The interest under Sections 234A and 234B will be charged thereafter."

9. In the result, the above tax case appeals are allowed, the impugned common order dated 30.5.2014 is set aside and the matters are remanded to the Assessing Officer to abide by the directions issued by the Tribunal in the said common order dated 23.5.2014. Consequently, the substantial question of law need not be answered and it is left open. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS

To
1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.

2.The Deputy Commissioner of Income Tax, Central Circle No.3, Gandhi Road, Salem-7.

3.The Assistant Commissioner of Income Tax, Central Circle Salem

+3ccs to Mr.V.S.Jayakumar , Advocate SR.No. 61262,62160,62159

+1cc to Mr.M.J.Sivakumaran , Advocate SR.No. 62674

TCA.Nos.487 to 489 of 2019

rgn (CO)
A.SK(16/09/2019)