IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2019

Coram :

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

Tax Case Appeal Nos.954 of 2018 and 82 of 2019

R.Revathy ...Appellant

Vs

The Deputy Commissioner of
Income Tax, Chennai Central-I,
Chennai-34. ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 to set aside (i) the order dated 07.9.2018 made respectively in MP.No.390/Chny/2017 in ITA.No.1450/ Mds/2016, against the order of the Income-Tax Appellate Tribunal'A'Bench, Chennai dated 23.11.2016 and made in ITA.No.1450/Mds/2016 and C.O.No.150/Mds/2016 for the Assessment year 2012-13, against the order of the Income Tax Appellate Tribunal'B'Bench, Chennai dated 15.07.2016 and made in ITA.No.357/Mds/2016 for the Assessment year 2012-13, against the order of the Commissioner of Income Tax (Appeals)-18, Chennai -34, dated 22.02.2016 and made in ITA.No.268/14-15 for the Assessment year 2012-13, against the order of the Assistant Commissioner of Income-Tax, Central Circle-IV(2)(i/c), Chennai -34, dated 23.09.2014 and made in GIR.No./PAN.AAAPR5272R for the Assessment year 2012-13, against the order of the Assistant Commissioner of Income Tax, Central Circle IV(2), Chennai, dated 25.03.2014 and made in PAN.AARPR5272R for the Assessment year 2012-13.

(ii) the order dated 23.11.2016 made in ITA. No.1450/Mds/2016 and C.O.No.150/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2012-13, against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai dated 15.07.2016 and made in ITA.No.357/Mds/2016 for the Assessment year; 2012-13, against the order of Commissioner of Income Tax, Appeals-18, Chennai -34 dated 22.02.2016 and made in ITA.No.268/14-15 for the Assessment year 2012-13, against the order of the Assistant Commissioner of Income Tax, Central Circle-IV(z)(i/c), Chennai -34, dated 23.09.2014 and made in GIR No./PAN.AAAPR5272R for the Assessment year 2012-13, against the order of the Assistant Commissioner of

Income Tax, Central Circle IV(2), Chennai dated 25/03/2014 and made in PAN.AAAPR5272R for the Assessment year 2012-13.

For Appellant : Mr.Amrith Bhargav
For Respondent : Mr.T.R.Senthilkumar, SSC and
Mrs.K.G.Usharani

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

These appeals, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the order dated 07.9.2018 made in MP.No.390/Chny/2017 in ITA.No.1450/ Mds/2016 and the order dated 23.11.2016 made in ITA.No.1450/Mds/2016 and C.O.No.150/ Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2012-13.

2. The assessee has filed these appeals by raising the following substantial questions of law :

"*TCA.No.954 of 2018 :*

i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in dismissing the miscellaneous petition filed by the appellant without addressing its merits only on the sole ground of limitation prescribed under Section 254(2) of the Income Tax Act, 1961 ?

ii. Whether the Tribunal was right in dismissing the miscellaneous petition even while it was factually clear that the appeal was instituted prior to the commencement of the amendment to Section 254(2) on 01.6.2016 ?

iii. Whether the Tribunal was right in holding that since judgments of the Karnataka High Court in the case of Sri Muninaga Reddy Vs. ACIT [WP. No.25553 of 2018 dated 12.7.2018] and the Madhya Pradesh High Court in the case of District Central Cooperative Bank Ltd., Raisen Vs. Union of India [reported in (2017) 398 ITR 0161] were delivered under Article 226 of The Constitution, the Tribunal was not bound or need not follow the same ? And

iv. Whether, on the facts and in the

circumstances of the case, the Tribunal should have interpreted 'sufficient cause' in Section 254(2) in favour of the assessee in the light of the judgments of the Tribunal in the case of Anupam Kumar Vs. DCIT [MP.No.119 of 2013 in ITA.No. 2138 (Mds)/2006 and in the case of Bhilai Engineering Corporation Vs. DCIT [reported in (2002) 81 ITD 282 (Nag.)]?

TCA.No.82 of 2019 :

i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Commissioner of Income Tax (Appeals) and confirming the penalty levied by the Assessing Officer ?

ii. Whether the Tribunal was right in holding that disclosure of assets under the Voluntary Disclosure of Income Scheme (VDIS), 1997 cannot qualify as disclosure for the purposes of Section 271(1)(c) ?

iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not considering the explanation offered by the assessee as to the source of investment in gold and jewelry in proper perspective ? And

iv. Whether the order of the Tribunal is perverse in not following its decision in the case of DCIT Vs. Shanmugapriya [ITA.No.357 of 2016 dated 15.7.2016] where a similar and like question was squarely decided in favour of the assessee, hailing from the same family ?"

3. TCA.No.82 of 2019 is the substantive appeal, which is against the order passed by the Tribunal dated 23.11.2016 reversing the order passed by the Commissioner of Income Tax (Appeals-18), Chennai [for short, the CIT(A)], who deleted the penalty imposed under Section 271(1)(c) of the Act. The assessee filed a miscellaneous petition in MP.No.390/Chny/2017 requesting the Tribunal to consider certain facts and more particularly the decision in the case of ***DCIT Vs. Shanmugapriya [ITA.No.357 of 2016 dated 15.7.2016]***, which, according to the assessee, was on identical facts. However, the said miscellaneous petition was dismissed by the Tribunal by order dated 07.9.2018 on the ground that it was barred by limitation. As against the order of the

Tribunal dated 07.9.2018 in the said miscellaneous petition, the assessee filed TCA.No.954 of 2018. Since both the appeals are listed before us, we are of the view that the substantive appeal, being the appeal filed against the order dated 23.11.2016 reversing the order passed by the CIT(A), can be taken up at the first instance.

4. We have heard Mr.Amrith Bhargav, learned counsel for the appellant and Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the respondent - Revenue.

5. The assessee is an individual and is wife of one of the partners of Saravana Group. Search and seizure action was conducted on 18.8.2011 and there were other proceedings, which were initiated by the Department, which are not germane to the cases on hand. So far as the assessee is concerned, the assessment under Section 143(3) of the Act was completed by the Assessing Officer on 25.3.2014 assessing the appellant to tax. The assessee did not prefer any appeal against the said order dated 25.3.2014 and remitted the tax so quantified.

6. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act by issuing notice dated 19.3.2014 alleging that the assessee furnished inaccurate particulars of income. The assessee was heard in the matter and the explanation offered by the assessee was not found to be acceptable. Consequently, the proposal in the notice was confirmed and penalty was imposed vide order dated 23.9.2014.

7. As against the said order dated 23.9.2014, the assessee preferred an appeal before the CIT(A), who, by order dated 22.2.2016, allowed the appeal filed by the assessee. As against the order of the CIT(A), The Revenue carried the matter to the Tribunal, which, by the impugned order, allowed the appeal filed by the Department by order dated 23.11.2016.

8. As mentioned by us earlier, the assessee filed a miscellaneous petition before the Tribunal primarily raising two grounds namely (i) that the decision in the case of ***Shanmugapriya*** would squarely apply to the case of the assessee and (ii) that the assessee did not offer the jewelry found during search operations since they were already offered to tax in the Voluntary Disclosure of Income Scheme, 1997. However, the said miscellaneous petition was not dealt with by the Tribunal on merits, but it was dismissed on the technical ground of being barred by limitation.

9. On a perusal of the orders passed by the Tribunal, we find that what weighed in the mind of the Tribunal is primarily because the quantum assessment had attained finality and that the assessee had not challenged the said assessment. This, in our considered view, is an incorrect interpretation because both the quantum assessment as well as the penalty proceedings are independent of each other. Furthermore, the assessee's specific case is that the jewelry, which were recovered during search operations, were the jewelry, which were declared during the VDIS, 1997 and the assessee would explain that the balance amounts were inherited by her, some of which sridhana, etc. The Tribunal considered a similar issue in the case of ***Shanmugapriya*** and reconciliation was permitted and ultimately, the assessee succeeded before the Tribunal.

10. In our considered view, there is no reason as to why such an indulgence should not be granted to the assessee considering the plea raised by her and more particularly in the affidavit filed in support of the said miscellaneous petition. The explanation offered by the assessee should be tested for its correctness and only if it is found to be palpably false or not acceptable, then the question of imposing the penalty would arise. Hence, the Tribunal could not have applied the decision of the Hon'ble Supreme Court in the case of ***Mak Data (P) Limited Vs. CIT [reported in (2013) 38 Taxmann.com 448]***.

11. It appears that the decision in the case of ***Shanmugapriya*** was not placed before the Tribunal when the impugned order was passed. Nevertheless, this Court does not propose to foreclose the rights of the assessee on the said ground since it is pleaded that the facts are identical and the assessee - Shanmugapriya is also a member of the very same family, which was the subject matter of the same search operations. Therefore, we are of the considered view that one more opportunity should be granted to the assessee to go before the Assessing Officer to do the reconciliation by offering an explanation, which has been stated in these appeals as well as in the said miscellaneous petition before the Tribunal.

12. For the above reasons, TCA.No.82 of 2019 is allowed, the order passed by the Tribunal is set aside and the matter is remanded to the Assessing Officer to afford an opportunity to the assessee to reconcile the quantum of jewelry. The Assessing Officer shall also take note of the decision in the case of ***Shanmugapriya*** and pass fresh orders on merits and in accordance with law uninfluenced by any of his observations made in the

earlier order dated 23.9.2014. Consequently, the substantial questions of law are left open. No costs.

13. So far as TCA.No.954 of 2018 is concerned, this appeal is directed against the order dated 07.9.2018 in the miscellaneous petition rejecting the same as being barred by limitation. Now that we allowed TCA.No.82 of 2019 and remanded the matter to the Assessing Officer for a fresh decision, no adjudication is required in TCA.No.954 of 2018. Accordingly, TCA.No.954 of 2018 is closed and the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai 'A' Bench
2.The Deputy Commissioner of Income Tax,
Chennai Central-I, Chennai-34.
3.The Income Tax Appellate Tribunal,
'B'Bench, Chennai.
4.The Commissioner of Income Tax, Appeals-18,
Chennai -34.
5.The Assistant Commissioner of Income Tax,
Central Circle -IV(2)(i/c),
Chennai -34.
6.The Assistant Commissioner of Income Tax,
Central Circle IV(2), Chennai.

+1 cc to M/s.T.R.Senthil Kumar, Advocate Sr.No. 55855

AKM/16.10.19/6P- 8C /

TCA.Nos.954 of 2018
and 82 of 2019