IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.350 of 2009

M/s.KMKR. Muthiah Chettiar Firm,
By Partner V.N.KT.Kalyani Achi,
Tirukattupalli,
Kumaravelur - 623 405. ... Appellant

Vs.

The Commissioner of Income Tax,
Madurai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai dated 29.08.2005 in I.T.A.No.874/Mds/1998 for the Assessment Year 1991-92 against the order of the CIT(A) dated 11.02.1998 for the Assessment Year 1991-92 against the proceedings of the Deputy Commissioner of Income Tax Range-I, Madurai 2 dated 31.03.1995 against the order of Assistant Commissioner of Income Tax, Inv Cir II,dated 30.03.94.

For Appellant : Mr.T.Vasudevan
For Mr.N.Quadir Hoseyn

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
Assisted by
Mrs.Premalatha
Junior Standing Counsel

J U D G M E N T

(Judgment was delivered by DR.VINEET KOTHARI,J.)

This appeal has been filed by the Assessee aggrieved by the order dated 29.08.2005 passed by the learned Income Tax Appellate Tribunal in I.T.A.No.874/Mds/1998 for the Assessment Year 1991-92.

2.The question which has been raised by the learned counsel for the Assessee in the present appeal under Section 260A of the Income Tax Act, 1961 (in short 'Act') is as to whether the impugned penalty order passed by the Assessing Authority on 31.03.1995 under Section 271-D of the Act is barred by limitation as prescribed under Section 275 of the Act or not?

3.The learned Tribunal, in the impugned order, has noted the contentions raised by the Assessee in para 4 of its order, but in para 12 had held that the plea with regard to bar of limitation in passing of the order under Section 271-D of the Act as raised by the Assessee in para 4 is not admitted, as the same required an investigation into the facts also and in the absence of Assessee having filed any Cross- objections in the present appeal filed by the Revenue before the Tribunal, the Tribunal in its discretion did not entertain the said plea of Assessee regarding bar of limitation vide para 12 of the order. The said para 12 of the order is quoted below for ready reference.

> "12.Regarding limitation aspect, we have gone through the case law relied on by the Assessee. It was held in the case of CIT v. Madras Industrial Investment Corporation Ltd. (124 ITR 454) that the legal position is that neither the Assessee nor the department is restricted to the plea put forward at any earlier stages, when the matter travels through the hierarchy of authorities and that it would be open to the Tribunal to consider any fresh plea in the exercise of its discretion. Even where consequences of the acceptance of the Assessee's plea would involve granting a larger amount as deduction than was demanded at the stage of assessment, the Tribunal would have jurisdiction to consider such a plea. The Tribunal has, however, discretion not to admit any fresh plea being put forward when it would involve investigation of facts. Thus, it is a settled fact that the Tribunal can admit the plea of the respondent even if the Assessee has not filed appeal or CO. But when there was a requirement of investigation of facts, it is left to the discretion of the Tribunal. Admittedly, the matter here requires investigation of facts. When there was requirement of investigation of facts, we decline to admit the plea taken by the Assessee."

4.The learned counsel for the Assessee Mr.T.Vasudevan urged before us that for computing the limitation, only the dates of the notice and order were required to be seen, which were very much available on the record of the Tribunal and having noted the contentions of the Assessee in para 4 of the order, the learned Tribunal ought to have entertained the said plea and decide the question as to whether the impugned penalty order under Section 271-D of the Act was barred by limitation or not?.

5.On the other hand, the learned Senior Standing Counsel for the Revenue Mr.M.Swaminathan supported the impugned order and submitted that since the learned Tribunal has not applied its mind to the question of limitation raised by the Assessee before it, as the Assessee had failed to file any Cross-objections in the appeal filed by the Revenue, therefore, the question of limitation has not really been touched upon by the Tribunal in the order impugned before this Court and therefore, the alleged question of law as raised by the learned counsel for the Assessee does not arise from the order of the learned Tribunal.

6.Having heard the learned counsel for the parties, we are of the opinion that even in the absence of the Cross-objections filed by the Assessee, since the question of limitation may go to the root of the matter and whether the penalty order in question can be sustained or not would depend upon it being within the limitation or not as prescribed under Section 275 of the Act, the learned Tribunal could have examined the said contention raised by the Assessee, as noted by it in para 4 of its order and discussing the relevant facts and case laws, it could have pronounced upon the issue as to whether the penalty order under Section 271-D of the Act passed by the Assessing Authority on 31.03.1995 was within limitation or not. But the learned Tribunal has not admitted the said plea of the Assessee vide para 12 quoted above.

7.Therefore, in these circumstances, we remit back the matter to the learned Tribunal and request the learned Tribunal to decide the said question after hearing both parties once again. Therefore, the appeal of the Assessee is disposed of, without answering the substantial questions of law raised before us and we remand the case back to the learned Tribunal on the limited issue of deciding the question of limitation as raised by the Assessee.

8.However, since the question is about the validity of the order being hit by limitation or not, we make it very clear that the said question can be decided, irrespective of the monetary limit prescribed in the recent litigation policy of the Government.

9.With the above observations, this Tax Case Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Sgl
To

THE REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
CHENNAI BENCH - 'C',
CHENNAI.

2.THE COMMISSIONER OF INCOME TAX (A) VII, CHENNAI

3.THE DEPUTY COMMISSIONER OF INCOME TAX RANGE-I, MADURAI 2
4. ASSISTANT COMMISSIONER OF INCOME TAX, INV CIR II,MADURAI

+1cc to Mr.M.Swaminathan , Advocate SR.No. 1777

T.C.A.No.350 of 2009

A.SK(17/02/2020)