IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM

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

Tax Case (Appeal) No.176 of 2010

P.K.Ganeshwar
No.21, Pollachi Road
Palladam - 641 664. ... Appellant

Vs.

Commissioner of Income Tax
Central Circle-II, Coimbatore. ... Respondent

Tax Case filed under Section 260A of the Income Tax Act against the order dated 30.06.2009 passed in ITA No.1845/Mds/2002 by the Income Tax Appellate Tribunal 'D' Bench, Chennai against the order of the commissioner of Income Tax (Appeals)-II,Coimbatore dated 25.10.2002 and made in IT Appeal No.86 c /2002-03 and against the order of the Deputy Commissioner of Income Tax,Central Circle II,Dated 21.03.2002 for the Assessment Year 1997-98.

For Appellant : Mr.R.Kumar
for M/s.T.N.Seetharaman

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

J U D G M E N T

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

The learned counsel for the Assessee submitted that in view of the judgment of the Honourable Supreme Court in a batch of cases including that of the present appellant Assessee Mr.P.K.Ganeshwar (C.A.No.10164 of 2010) decided by the Honourable Supreme Court on 02.05.2018 since reported in (2018) 404 ITR 526 SC [CIT -Vs- S.Ajit Kumar, P.K.Ganeshwar and Braj Binani) , upholding the addition of Rs.2.56 Crores made in the hands of the Assessee in the Block Assessment, another addition of the same amount in the Regular Assessment proceedings under Section 143(3) of the Income Tax Act, 1961, cannot be sustained.

2. Learned counsel for the appellant further submitted that after the aforesaid decision of the Honourable Supreme Court, the Assessing Authority viz., the Deputy Commissioner of Income Tax, Circle-2,Tirupur had already passed an Appeal Giving Effect Order on 05.11.2018, in which the addition of Rs.2.56 Crores has been made in the Block Assessment in the case of the Assessee and net demand payable has been computed at Rs.38,16,510/- .

3. The Honourable Supreme Court in the aforesaid case [CIT -Vs- S.Ajit Kumar, P.K.Ganeshwar (present appellant vide C.A.No.10165 of 2010) and Braj Binani) reported in (2018) 404 ITR 526 SC, has held as under.

> "Held, allowing the appeal, that it is a cardinal principle of law that in order to add any income in the block assessment, evidence of such must be found in the course of the search under Section 132 of the Act or in any proceedings simultaneously conducted in the premises of the assessee or persons connected with the assessee and having transaction or dealings with such assessee. In the present case, in response to the notice under Section 158BC of the Act, the assessee filed a return admitting the cost of investment and disclosing the details of transaction between the assessee and the builder in the assessment year 2001-02. However, he had not disclosed the payment of Rs.95,16,000 in cash made to the builder. The method of calculating the undisclosed income of the block period is provided under Section 158BB of the Act. It can be calculated only on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. No departure from this provision is allowed, otherwise it may cause prejudice to the assessee. However,

Section 158BH of the Act, makes all other provisions of the Act applicable to assessments made under Chapter XIV-B except otherwise provided under this Chapter. The power of survey has been provided under Section 133A of the Act. Therefore, any material or evidence found in a survey which has been simultaneously made at the premises of a connected person can be utilised while making the block assessment in respect of an assessee under Section 158BB read with Section 158BH of the Act. This would fall under the words "and such other materials or information as are available with the Assessing Officer and relatable to such evidence" occurring in Section 158BB of the Act. The Assessing Officer was justified in taking the adverse material collected or found during the survey or any other method while making the block assessment."

4. The relevant portion of the order of the learned Tribunal dated 30.06.2009 for Assessment Year 1997-98, which deals with assessment under Section 143(3) of the Act, confirming repetitive addition of the same amount, is also quoted below for ready reference.

" 33. In view of the facts and circumstances of the case, and the position in law as discussed in the above paragraphs, we are of the considered opinion that the order of the CIT (A), confirming the addition of Rs.2.56 Crores, does not call for any interference. His order is, accordingly confirmed. Therefore, the 'third issue' raised through ground No.3 is decided against the assessee."

5. Obviously, the same addition on account of alleged undisclosed income cannot be made in the hands of the Assessee twice over, once in the Block Assessment under Section 153BC of the Act and second time in the Regular Assessment under Section 143(3) of the Act, from which proceedings the present order of the learned Tribunal has arisen.

6. Therefore, in these circumstances, we set aside the earlier order passed under Section 143(3) of the Act by the Assessing Officer, Commissioner of Income Tax (Appeals) and

the learned Tribunal. We remand the case back to the Assessing Officer to pass fresh orders in accordance with the order passed by the Hon'ble Supreme Court, within a period of three months from today. The appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1. Commissioner of Income Tax
   Central Circle-II, Coimbatore.

2. Income Tax Appellate Tribunal
   'D' Bench, Chennai

3. The Deputy Commissioner of Income Tax,Central Circle II,Coimbatore.

+1cc to Mr.T.R.Senthil Kumar , Advocate SR.No. 14000

T.C.A.No.176 of 2010

A.SK(26/05/2020)