IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM

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

Tax Case Appeal Nos.984 & 985 of 2010

The Commissioner of Income Tax,
Coimbatore. ..Appellant in both appeals

Vs.

R.Krishnamurthy ..Respondent in both appeals

Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 18.12.2009 in I.T.(SS)A.No.129/Mds/2004 and in C.O.No.71/Mds/2005 in IT.(SS)A. No.129/Mds/2004 respectively, preferred against the order of the Commissioner of Income Tax (Appeals), Coimbatore, in ITA.No.405/01-02, dated 25.06.2004 filed against the Assessment order dated 28.09.2000 for the Block Assessment year 89-90 to 99-2000 on the file of the Deputy Commissioner of Income Tax, Central Circle -I, Coimbatore.

For Appellant : Mr.T.R.Senthilkumar
Senior Standing Counsel
Asst. by Mr.K.G.Usha Rani
Standing Counsel for IT Department

For Respondent : Mr.Venkat Narayanan
For Subharaya Aiyar Padmanaban

COMMON JUDGMENT

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

The learned counsel for the Appellant/Revenue submitted that the Tribunal had quashed the block assessments for the Assessee for the following observations:

> ".... In this case, un-disputably there is no satisfaction recorded by the Assessee Officer before issuing the notice under sec.158BD. We have also perused the block assessment passed under sec.158BC in the case of Veeraswamy Chettiar and found that the Assessing Officer has not even recorded any material found during the search showing the undisclosed income of the assessee. Therefore, in the absence of mandatory requirement of recording of satisfaction and moreover there was no material found during the search, the Assessing Officer was lacking the jurisdiction to

invoke the provisions of sec.158BD against the assessee. In view of these facts and circumstances as well as the legal proposition, we hold that the proceedings initiated under sec.158BD in the case of the assessee is also invalid and void ab initio. Accordingly, we set aside the order of Assessing Officer and cancel the block assessment in the case of the assessee."

2.He however submitted that the CBDT had recently issued a Circular No.24/2015 dated 31.12.2015, according to which, where satisfaction is not recorded by the competent authority then appeals against such orders of Tribunal granting relief to the Assessee has to be withdrawn by the Revenue Department. The said Circular No.24/2015 dated 31.12.2015 is also quoted below for ready reference:

"RECORDING OF SATISFACTION NOTE UNDER SECTION 158BD/153C OF THE ACT. The issue of recording of satisfaction for the purposes of section I58BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014 = 2014-TIOL-30-SC-IT has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon’ble Court held that “the satisfaction note could be prepared at any of the following stages:

a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act: or

(b) in the course of the assessment proceedings under section 158BC of the Act; or

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon’ble SC, apply to proceedings u/s 153C of the lT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon’ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may

be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the “other person” is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.

F.No.279/Misc./140 /2015/ITJ
Sd/-
(Ramanjit Kaur Sethi)
DCIT (OSD)(ITJ)
CBDT,New Delhi.

3.In view of the aforesaid Circular, Mr.T.R.Senthil Kumar does not want to press the appeals on merits and seeks leave of this Court to withdraw the same. Mr.Venkat Narayanan, learned counsel for the Respondent/Assessee has not opposed the same. Accordingly, the appeals are dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals),
Coimbatore.

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

+1cc to Mr.T.R.Senthil Kumar, Advocate Sr.No.6048
+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate Sr.No.6045

AKM/27.02.2020 /3p-6c/