IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.Nos.526 & 527 of 2019

Principal Commissioner of Income Tax
Central 1
No.108, Nungambakkam High Road
Chennai - 600 034 ..Appellant/Appellant in both TCAs

Versus

Shri.S.Martin ..Respondent/Respondent in both TCAs

Common Prayer:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 05.10.2018 made in I.T.A.No.2382/Chny/2016 and I.T.A.No.3146/Chny/2017 relating to the Assessment Years 2009-10 and 2015-16 respectively. against the Order of the Commissioner of Income Tax (Appeals)-18, Chennai -34, made in ITA No.926/2015-16 dated:27.09.2017 against the Order of the Deputy Commissioner of Income Tax, Company Circle-I(3), Coimbatore made in PAN/GIR No.AEWPM3703Q dated 30.12.2011 and Assistant Commissioner of Income Tax Central Circl-2, Coimbatore made in PAN/GIR No.AEWPM37039 dated 31.12.2016 for the Assessment year 2009-10 and 2015-16 respectively.

For Appellant : Mr.T.R.Senthilkumar
Senior Standing counsel
[in both TCAs]
For Respondent : Mr.A.S.Sriraman
[in both TCAs]

COMMON JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals have been filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 05.10.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) in I.T.A.No.2382/Chny/2016 and I.T.A.No.3146/Chny/2017 for the Assessment Years 2009-10 and 2015-16 respectively. The appeals were admitted on 29.07.2019 on the following Substantial Questions of Law for consideration:

> "T.C.A.No.526 of 2019:
>
> i. Whether the Appellate Tribunal is correct in law upholding the deletion of penalty levied under Section 271(1)(c) of Rs.22,75,34,990/- when the assessee deliberately and wilfully furnished inaccurate particulars to the Assessing Officer?
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> ii. Whether the Appellate Tribunal is right in law in not taking cognizance of the Hon'ble Apex Court's decision in the case of Dilip N.Shroff vs. JCIT [reported in 291 ITR 519] wherein the term 'inaccurate particulars of income' was explained? And
>
> iii. Whether the Appellate Tribunal was legally correct in not appreciating that the assessee's claim of deductions not being bona fide, penalty under Section 271(1)(c) gets attracted as held by the Madras High Court's decision in the case of Sharma Alloys (India) Ltd. Vs. ITO [reported in 357 ITR 379] and the Delhi High Court's decision in the case of CIT Vs. Zoom Communication (P) Ltd. [reported in 327 ITR 510]?
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> "T.C.A.No.527 of 2019:
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> i. Whether the Tribunal is correct in law in upholding the deletion of penalty of Rs.15 Crores levied under Section 271AAB of the Income Tax Act on the ground that the offer of Rs.50 Crores by the assessee, during the course of search, was only 'additional income' and not 'undisclosed income'?
>
> ii. Whether the Tribunal is correct in law in holding that during the course of search, the transactions that gave rise to income assessable under the head 'other sources', which were not recorded in the books of account, which invited application of Section 271AAB of the Income Tax Act? And
>
> iii. Whether the Appellate Tribunal was correct in importing the definition of 'undisclosed income' from Section 158B(b) of the Act on the premise that the term 'undisclosed income' has not been defined in Section 271AAB, when actually there is a definition of the said term given in Clause (c) of the Explanation to Section 271AAB?"

2. We have heard Mr.T.R.Senthilkumar, learned Senior counsel appearing for the appellant/Revenue and Mr.A.S.Sriram, learned counsel for the respondent/assessee.

3. The learned counsel for the respondent / assessee, on instructions, submitted that the respondent / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of

the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, we direct the respondent / assessee to file the Form No.I on or before 09.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeals stand disposed of with the aforementioned liberty and Consequently, 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,
'C' Bench, Chennai.

2. The Commissioner of Income Tax(Appeals)-18,
Chennai.

3.The Deputy Commissioner of Income Tax,
Company Circle-I(3), Coimbatore.

4.The Assistant Commissioner of Income Tax,
Central Circle-2, Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate in SR.NO..33999

T.C.A.Nos.526 & 527 of 2019

NMI(CO)
RV(18/11/2020)