IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM

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

T.C.A.No.317 of 2020

Commissioner of Income Tax
Corporate Ward 3(4)
Chennai. ..Appellant/Respondent

Versus

Shri.B.Suresh Kumar,
No.14, Poes Road, 1st Street,
Teynampet, Chennai 600 018
PAN ALHPS0004J ..Respondent/ Appellant

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''A'' Bench, Chennai dated 17.02.2020 in I.T.A.No.1152/Chny/2019.
TCA No.317 of 2020: Appeal against the order dated 25.01.2019 made in ITA.No.99(T)CIT(A)-7/2017-18 on the file of the Commissioner of Income Tax (Appeals-7) Chennai for the Assessment year 2009-10 and as against the Order dated 30.11.2016 made in PAN.ALHPS0004J on the file of the Income Tax Officer, corporate ward-3(4) Chennai for the Assessment year 2009-2010 and as against the order dated 29.06.2011 made in GIR NO/PANALHPS0004J on the file of the Assistant Commissioner of Income Tax, Company circle III(4), Chennai for the Assessment year 2009-10.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel

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

This appeal, filed by the Revenue, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 17.02.2020 passed by the Income Tax Appellate Tribunal Bench 'A' Chennai ('the Tribunal' for brevity) in I.T.A.No.1152/Chny/2019 for the Assessment Year under consideration (AY 2009-10). The appeal is entertained on the following Substantial Questions of Law:

1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in quashing the reassessment order of the assessing officer u/s.147?

2.Whether on the facts and in the circumstance of the case the Income Tax Appellate Tribunal was right in holding that the notice issued u/s.147 does not satisfy the legal condition laid in the 1st proviso of the Act?

2. We have elaborately heard Mr.M.Swaminathan, learned Senior Standing counsel assisted by Ms.V.Pushpa and Ms.S.Premalatha, learned standing counsels for the appellant / Revenue.

3. The assessee is a liasoning agent and trading in medical equipments. He filed its Return of Income on 28.09.2009, which was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny. Notice was issued under Section 143(2) of the Act and the Assessing Officer records that the assessee represented by a Chartered Accountant appeared and furnished details. After discussing with the assessee and his representative, the assessment was completed under Section 143 (3) of the Act by order dated 29.06.2011. After a period of four years and within the period of six years, the assessment was sought to be reopened by issuance of notice dated 25.01.2016. The reason for reopening appears to be that the Assessing Officer, on perusal of the records found from the Profit and Loss Account (P&L A/c) that the assessee has offered a sum of Rs.1,99,28,844/- of service charges for which the assessee has enclosed a statement of details and upon verification, the Assessing Officer found that there is differences between the charges received as per TDS certificate and charges offered in P&L A/c. The assessee requested for furnishing the reasons for reopening which was duly furnished, after which the assessee filed their objection on 19.10.2016. The objection raised by the assessee for reopening the assessment did not find favour with the Assessing Officer, who had rejected the same and completed the assessment under Section 143(3) read with Section 147 of the Act by order dated 13.11.2016.

4. Aggrieved by such order, the assessee preferred an appeal before the Commissioner of Income Tax-7, Chennai [CIT(A)]. The Commissioner took the appeal for consideration under two heads, firstly with regard to the reopening of the assessment and secondly with regard to the disallowance under Section 40(a)(ia) of the Act. With regard to the reopening of the assessment, the assessee appears to have given a elaborate submission as to why the Assessing Officer has initially completed the assessment under Section 143(3) of the Act. However, CIT(A) opined that as

per CBDT's instruction No.9/2006 dated 07.11.2006, remedial action has to be mandatorily taken where the Revenue Audit Party raises an objection which is the case of the respondent and the Assessing Officer has also taken the approval of the Principal Commissioner of Income Tax to reopen the assessment beyond 4 years. Therefore, the objection raised by the assessee was rejected. Thus we find that the CIT(A) did not examine the assessee's objection as to whether the reopening was justified and the parameters required to be fulfilled under First Proviso to Section 147 of the Act. What appears to have run in the minds of the CIT(A), is the instructions given by the Central Board of Direct Taxes (CBDT). This Court heard the learned Senior Counsel for the Revenue on this aspect from which we were able to decipher the normal procedure that is followed when an audit objection is raised, it is communicated to the Income Tax Department and to the assessee. At the first instance, it is for the Income Tax Department to satisfy the Audit Department by proper explanation or otherwise the issue has to be taken with the assessee, one such mode being reopening the assessment. Therefore, the CIT (A) may not be right in stating that on account of the instructions issued by the CBDT, mandatorily, the assessment has to be reopened. The reopening of the assessment would arise, if in the opinion of the Department (Income Tax Department) the objection raised by the Audit Department is justified.

5. Be that as it may, the CIT(A) did not consider as to whether the income chargeable to tax has escaped assessment, on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for the Assessment for the relevant Year.

6. It is an argument of Mr.M.Swaminathan, learned Senior Counsel for the Revenue that the case of the assessee would fall under 1st proviso to Section 147 of the Act and the reasons assigned by the Tribunal for setting aside the revised assessment is incorrect and falls foul of Explanation 1 of Section 147 of the Act. It is the further argument that mere production of records and account books before the Assessing Officer would not necessarily amount to disclosure within the meaning of 'Disclosure' as mentioned under 1st proviso to Section 147 of the Act.

7. The correctness of the submission will be decided by examining the relevant facts. At the first instance, the assessee objected to the reopening of the assessment by contenting that there was no fresh tangible materials with the Assessing Officer to reopen the assessment. After obtaining the reasons for reopening, the assessee has specifically stated that when the original assessment was completed under Section 143(3)

of the Act, all the details were called for by the Assessing Officer which were furnished in full form and details of party wise service charges credited in the P&L A/c was also furnished. Further the assessee stated that in the original Assessment Order dated 29.06.2011, while giving credit for TDS, the Assessing Officer has clearly mentioned that the TDS credited is as per NSDL. Further more, the assessee specifically stated that the Assessing Officer has verified the credit of TDS in accordance with the NSDL as well as corresponding service charges admitted in the return of income. If such was the stand taken by the assessee, it was the duty on the part of the Assessing Officer who proposes to reopen by exercising his power under Section 147 of the Act to test the correctness of the submission, for which, the assessment files should have been examined in its entirety. A change of the Assessing Officer cannot be a ground for exercising the power of re-assessment especially when scrutiny assessment under Section 143(3) of the Act was completed. Further more, in the original Assessment Order dated 29.06.2011, the Assessing Officer has specifically recorded that in response to the notice issued under Section 143 (2) of the Act, a Chartered Accountant of the assessee appeared and details called for were filed and the matter was discussed with the assessee and the Chartered Accountant and it was completed. Further it could be seen from the original Assessment Order that TDS credit was as per NSDL. If such is the circumstances, it needs to be seen as to whether any fresh tangible material was available with the Assessing Officer to justify the reopening of the assessment. We find none to be available on record as is evident from the Assessment Order dated 30.11.2016, wherein the Assessing Officer himself states that after the assessment was completed under Section 143(3) of the Act, on perusal of the records, it was seen from the P&L A/c that there is differences between charges received as per TDS Certificate and charges offered in the P&L A/c. When the assessment was completed under Section 143(3) of the Act, this aspect, was noted by the Assessing Officer, namely the differences between the charges received as per TDS Certificate and charges offered in P&L A/c and that perhaps was the reason for the Assessing Officer to record the TDS credit is as per NSDL.

8. Therefore, in our considered view, the Tribunal was fully justified in holding that reopening the assessment beyond four years was a clear change of opinion and did not satisfy the requirements to be fulfilled in terms of 1st proviso to Section 147 of the Act. Thus, the Revenue has not made out any ground to interfere with the order passed by the Tribunal.

9. Accordingly, the Tax Case Appeal is dismissed and the Substantial Questions of Law are answered against the Revenue. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
A Bench, Chennai

2.The Commissioner of Income Tax(Appeals)-7,
Chennai

3.The Income Tax Officer,
Corporate Ward-3(4), Chennai

4.The Assistant Commissioner of Income Tax,
Company Circle III(4), Chennai

+1cc to Mr.M.Swaminathan, Advocate in SR.NO..30353

T.C.A.No.317 of 2020

LN(CO)
RV(13/10/2020)