IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On 07.12.2020	Judgment Pronounced On 16.12.2020

Review Application No.99 of 2020

M/s.Gangotri Textiles Ltd.,
35, Robertson Road,
RS Puram, Coimbatore.
PAN: AAACG 8018M .. Petitioner/Appellant

-vs-

The Deputy Commissioner of Income Tax,
Corporate Circle-2,
Coimbatore. .. Respondent/Respondent

Review Application under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure, 1908 to review the Judgment and Order in T.C.A.No.266 of 2018, dated 25.08.2020.

For Petitioner	:	Ms.S.Yogalakshmi
For Respondent	:	Ms.K.G.Usha Rani, Standing Counsel &
	:	Mr.T.S.Senthil Kumar, Senior Standing Counsel

ORDER

T.S.Sivagnanam, J.

The petitioner/assessee has filed this Review Application under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure, 1908 (for brevity "CPC"), to review the judgment and order in T.C.A.No.266 of 2018, dated 25.08.2020.

2.The petitioner/assessee had filed the said tax case appeal questioning the correctness of the order dated 26.05.2017 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai (for brevity "the Tribunal") in I.T.A.No.3413/Mds/2016 for the assessment year 2012-13. The tax case appeal was entertained on the following substantial questions of law:-

"1.Whether the penalty imposed u/s. 271(1)(c) of the Act for the Assessment Year 2012-13 is sustainable in

law despite the invalid initiation of the said proceedings on the issuance of the show cause notice dated 12.03.2015?

2.Whether the penalty imposed u/s. 271(1)(c) of the Act for the Assessment Year 2012-13 is sustainable in law despite the complete disclosure of the sale of windmills and vacant lands in the financial statements which formed part of the annual report and return of income? and

3.Whether the penalty under consideration is sustainable on the debatable issue on the reporting of capital gains pertaining to the sale of windmills and vacant lands?

3.The issue which was decided in the tax case appeal was whether, the penalty imposed on the petitioner/assessee under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was sustainable in law. By judgment dated 25.08.2020, the tax case appeal was dismissed and the substantial questions of law were answered against the petitioner/assessee.

4.Ms.S.Yogalakshmi, learned counsel appearing for the petitioner/assessee submitted that the bonafides of the assessee was to be considered by this Court, as the assessee had disclosed the capital gains in the P & L account which formed part of the income tax report filed by the assessee for the financial year 2012-13. This fact will go to show that the non-disclosure of the capital gains, in the required column in the income tax report, for the relevant financial year, was purely due to inadvertence and this may be considered by this Court and the judgment may be reviewed and the penalty may be deleted.

5.Further, it is submitted that there is gross inconsistency between the order passed by the Assessing Officer, the Commissioner of Income Tax (Appeals)-1, Chennai (for brevity "the CIT(A)") and the Tribunal. The order of penalty, which was confirmed by the Tribunal was not for concealment, but the Tribunal unilaterally concluded that there was concealment when no such allegation was put against the assessee by issuing a notice.

6.The learned counsel further submitted that this review application has been filed under Order 47 Rule 1 CPC not on the ground that the assessee discovered a new and important matter or evidence, which after the exercise of due diligence was not within his knowledge, nor the review application has been filed on account of some mistake or error apparent on the face of the record, but has been filed by invoking the third limb of Order 47 Rule 1(1) CPC, that is, for any other sufficient reason which would entitle the petitioner/assessee to apply for review of the judgment passed by this Court.

7.Ms.K.G.Usha Rani, learned Standing Counsel appearing for the respondent submitted that there are absolutely no grounds made out for reviewing the judgment in the tax case appeal and all issues have been brought out by this Court by considering the submissions made by the petitioner/assessee when the appeal was heard. In this regard, the learned counsel has referred to paragraphs 4, 6 and 12 of the judgment dated 25.08.2020. Further, this Court in paragraph 12 of the judgment has considered as to how the assessee did not act bonafidely and the Court after considering the factual position has held that it is not only a case of filing inaccurate particulars, but also a case of concealment of income. Further, it is submitted that the review application may be dismissed.

8.Ms.S.Yogalakshmi, learned counsel for the petitioner/assessee would fairly submit that the review application has not been filed on the ground that the petitioner/assessee was not able to produce any document or any evidence which could not be produced by them earlier or was not within their knowledge, nor there is any mistake or error apparent on the face of the judgment, but it is the submission of the learned counsel that the review application has been filed seeking to bring the case under "any other sufficient reasons" to review the judgment. The decision of the Privy Council in ***Chhajjuram vs. Neki [AIR 1922 PC 112]*** interpreted the words "any other sufficient reason" to mean "a reason sufficient on grounds at least analogous to those specified immediately previously", that is, excusable failure to bring to the notice of the Court new and important matters or error apparent on the face of the record. This restricted meaning would virtually limit the grounds of the review and for all practical purposes to the two grounds specified in the

Rule. The words "any other sufficient cause" has not been defined in CPC, however, in the decisions of the Privy Council in ***Chhajjuram*** (supra) and ***Bisheshwar Pratap vs. Parath Nath [AIR 1934 PC 213]*** and the decision of the Federal Court in ***Harishanker vs. Anath Nath [AIR 1949 FC 106],*** it has been held that the word "any other sufficient reason" must mean a reasonable sufficient on grounds at least analogous to those specified in the Rule. From these decisions, it is clear that unless any other sufficient reason is analogous to other two conditions, review cannot be granted. Therefore, the argument of Ms.S.Yogalakshmi, that she seeks to invoke the third limb of order 47 Rule 1(1) CPC is not acceptable, because the third limb has been explained to mean that unless any other sufficient reason is analogous to the other two conditions, viz., excusable failure to bring to the notice of the Court new and important matters or error apparent on the face of the record, a review cannot be entertained. The grounds canvassed in this review application were in fact argued in the appeal and the Court has taken into consideration the arguments and held against the assessee.

9.As rightly pointed out by Ms.K.G.Usha Rani, learned Standing Counsel, the finding of this Court, more particularly, in paragraphs 6 and 12 is a clear answer to the grounds canvassed before this Court in this review application. Thus, in the absence of any grounds made out to exercise review jurisdiction of this Court, this review application has to necessarily fail.

10.In the result, this review application is dismissed. No costs.

(T.S.S., J.) (V.B.S., J.)
16.12.2020

Index : Yex/No
Speaking Order/Non-Speaking Order

abr

To

The Deputy Commissioner of Income Tax,
Corporate Circle-2, Coimbatore.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

Pre-delivery Judgment made in
Review Application No.99 of 2020

16.12.2020