

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

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

Tax Case Appeal No.350 of 2020

Commissioner of Income Tax,
Ward - 3,
Tirunelveli .. Appellant /Respondent

Vs.

Smt.Padmavathi .. Respondent /Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.1306/Chny/2019 dated 02.12.2019 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai for the Assessment Year 2014-2015; and

Against the order of the Income Tax Officer(H.Qurs)-2, O/o.The Commissioner of Income Tax, Madurai-2, madurai, dt.18.3.2019 in C.No.114/52/PCIT-2/MDU/2018-19 and against the order of the Income Tax Officer, Ward-3, Tirunelveli, dt.28.12.2016 in PAN.No.BSVPP4320E.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
Assisted by
Ms.V.Pushpa
Junior Standing Counsel

For Respondent : Mr.G.Baskar

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This appeal, at the instance of the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai in ITA No.1306/Chny/2019 dated 02.12.2019 for the Assessment Year 2014-2015.

2. The following Substantial Questions of Law were raised

for consideration:

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in coming to conclusion that in a limited scrutiny case, the CIT cannot exercise the power of revision u/s. 263 of the Income Tax Act to look in to any other issue which the Assessing officer himself could not look?

2. Whether on the facts and in the circumstance of the case the Income tax Appellate Tribunal was right in holding that invoking of Section 56(2)(vii) (b) of the Income Tax Act 1961 is beyond the purview of the Assessing officer when the reason for limited scrutiny is 'purchase of property' and the same issue is very much related to the purchase of property?

3. Whether on the facts and in the circumstance of the case the Income Tax Appellate Tribunal was right in concluding that while completing the assessment under limited scrutiny the Assessing Officer cannot look beyond the issue for which the case was selected for scrutiny without noting that the CBD instruction No.20/2015 has exception clause in 3(d) to convert the same into a complete scrutiny?"

3. The assessee is an individual and a partner in a firm under the name and style of Sri Ram Associates. She filed her return of income on 27.10.2015 admitting a total income of Rs.2,58,110/-. The return was processed under Section 143(1) of the Act. Subsequently, the case was selected under Computer Aided Scrutiny Selection [for brevity 'CASS'] 'Limited Scrutiny' with regard to a purchase of a property by the assessee. The assessing officer after hearing the assessee, verifying the source of funds completed the assessment by order dated 28.12.2016 under Section 143(3) of the Act and made an addition of Rs.8,00,000/-.

4. The Principal Commissioner of Income Tax, Madurai [for brevity 'PCIT'] invoked his power under Section 263 of the Act, issued show cause notice dated 26.10.2018 to the assessee for the reason that the assessee had purchased the immovable property by a sale deed registered as document no.7165 of 2013 on the file of Sub-Registrar, Thirumangalam for a consideration of Rs.41,50,000/-, whereas, the guideline value fixed by the State Government was Rs.77,19,000/- and there is a difference of Rs.35,69,000/- which was not properly enquired into by the assessing officer and not considered during the course of assessment. For such reason, the assessing officer proposed to invoke his powers under Section 263 of the Act.

5. The assessee submitted her reply dated 11.01.2019 and also

appeared in-person through her Authorised Representative, a Chartered accountant. In the explanation, the assessee pointed out that even going by the averments in the show cause notice shows that the assessing officer did make an enquiry, but the PCIT was of the opinion that the assessing officer did not make proper enquiry and contended that there is a difference between lack of enquiry and inadequate enquiry and in this regard, referred to a decision of the High Court of Delhi in C.I.T. V. Anil Kumar Sharma reported in [2011] 335 ITR Page 83.

6. Further, the assessee contended that the assessing officer has clearly recorded the guideline value and the sale consideration in the assessment order, which proves that he conducted necessary enquiry, as deemed fit by him. Therefore, the assessee contended that there was no reason to invoke the power under Section 263 of the Act, when there was an enquiry and on the ground that the enquiry was inadequate. Without prejudice to the said submission, the assessee contended that the guideline value be automatically taken as deemed purchase consideration and the assessing officer has to refer to the valuation officer under Section 50(C)(2) of the Act and since the assessment was getting time barred, the assessing officer, stepped into the shoes of the valuation officer, made enquiry and ascertained that the guideline value was not fair market value of the property and the actual consideration paid by the assessee represented the fair market value. Therefore, it was contended that there was no occasion for the PCIT to invoke the power under Section 263 of the Act. The assessee placed reliance on the decision of Agra Tribunal in the case of Income Tax officer, 1(3) Vs. Ramesh Chandra Kulshresth and others ITA No.228/Agra/ 2018.

7. The PCIT considered the explanation and held that in the first place a request has to be made by the assessee for valuation of property and nothing is discernible from the records that the assessee made any request, which needs to any inference that the assessing officer did apply his mind to the fair market value and the consequential taxability of the investment as 'unexplained investment' under Section 56(2)(vii)(b)(ii) of the Act.

8. The PCIT further held that though the assessing officer verified the source of funds, he failed to apply the said provision, namely, Section 56(2)(vii)(b)(ii) of the Act. Thus, the PCIT rejected the explanation given by the assessee and set aside the assessment and referred back the same to the assessing officer to redo the assessment. The assessee challenged the said order dated 18.03.2019 passed under Section 263 of the Act by filing an appeal before the Tribunal. The Tribunal held that the value adopted for stamp duty purposes is taken as 'deemed

consideration' under Section 56(2)(vii)b of the Act and this is only a deeming provision and there is no occasion for the assessee to explain the source for deemed consideration. Further, the Tribunal held that since the assessment was under limited scrutiny, it would be beyond the powers of the assessing officer to look into any other issue, which has come to his notice clearing the course of assessment and also faulted the PCIT for invoking his power under Section 263 of the Act. Challenging the said order, the Revenue is before us by way of this appeal.

9. We have heard Mr.M.Swaminathan, learned senior standing counsel assisted by Ms.V.Pushpa, learned junior standing counsel for the appellant / revenue and Mr.G.Baskar, learned counsel, accepting notice on behalf of the respondent / assessee.

10. We take up the substantial question of law No.3 for consideration at the first instance. The revenue would contend that the finding rendered by the Tribunal with regard to the scope of limited scrutiny and the role of the assessing officer in a limited scrutiny is incorrect and such finding has been rendered by the Tribunal without taking note of the instruction issued by Central Board of Direct Taxes, [for brevity 'CBDT'] in instruction No.20/2015 dated 29.12.2015. Drawing our attention to the said instruction, it is submitted that during the course of assessment proceedings in limited scrutiny cases, if it comes to the notice of the assessing officer that there is potential escapement of income exceeding Rs.5 Lakhs [for metro charges, the monetary limit shall be Rs.10 Lakhs] requiring substantial verification on any other issue, then, the case may be taken up for 'complete scrutiny', with the approval of the PCIT / CIT concern. In such cases, the procedure stipulated in paragraph no.3.a.b.c. of the instructions, would not apply. For better appreciation, the relevant portion of the instruction is quoted herein below:

'3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial year - one is 'Limited Scrutiny' and other is 'complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited scrutiny' cases shall be as under:

a. In 'Limited scrutiny' cases, the reasons / issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only

to the specific reasons / issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. Five lakhs (for metro charges, the monetary limit shall be Rs.Ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'complete Scrutiny' with the approval of the Pr.CIT/CIT concerned. However, such an approval shall be accorded by the Pr.CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particula case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro Charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).'

11. It is further submitted that the Tribunal in a subsequent decision, authored by the very same Hon'ble Member took note of the circular and decided the case against the assessee in ITA No.1498/Chny/2019 in the case of M/s Sahayamatha Salterns Private Limited, Tuticorin Vs. Deputy Commissioner of Income Tax, Circle I, Tuticorin dated 11.12.2019. Therefore, it is submitted that the Substantial Question of Law no.3 has to be answered in favour of the revenue.

12. Mr.G.Baskar, learned counsel appearing for the respondent / assessee submitted that the revenue is right in submitting that in the case of Sahayamatha Salterns Private Limited, the Tribunal noted the instruction No. 20/2015 dated 29.12.2015 and decided the matter against the assessee. However, the assessee has filed an appeal before this Court in TCA No.158 of 2020 and the appeal has been admitted to consider the substantial question of law, which has been framed almost on similar lines, as substantial question of law no.3 above.

13. We note that the Tribunal did not consider the effect of instruction no.20/2015, which had been considered in the case of Sahayamatha Salterns Private Limited, which issue is now pending before the Division Bench of this Court by way of a Tax Case Appeal, therefore, we are of the view that the Revenue can agitate the said question in the said tax case appeal and it would suffice to vacate the observations made by the Tribunal in

the impugned order to the extent with regard to the scope of 'limited scrutiny assessments'.

14. Accordingly, that portion of the order and observations made in paragraph no.7 of the impugned order are set aside and the substantial question no.3 is left open to be agitated by the Revenue in TCA No.158 of 2020.

15. The substantial question nos.1 and 2 are interconnected namely, the power of the PCIT under Section 263 of Act and whether he could have set aside the assessment on the ground that the assessing officer did not invoke Section 56(2)(vii)b (ii). The reading of the assessment order shows that the case was selected for limited scrutiny only on this aspect regarding the sale consideration paid by the assessee for purchase of the immovable property and the source of funds. The assessing officer has noted that the sale consideration paid by the assessee was Rs.41,50,000/- and she has paid stamp duty and other expenses of Rs.5,75,000/-. The source of funds was verified and the assessing officer was satisfied with the same. The PCIT while invoking his power under Section 263 of Act, faults the assessing officer on the ground that he did not make proper enquiry. It is not clear as to what in the opinion of the PCIT is 'proper enquiry'. By using such expression, it presupposes that the assessing officer did conduct an enquiry. However, in the opinion of the PCIT, the enquiry was not proper in absence of not clearly stating as to why in the opinion of PCIT, the enquiry was not proper, we have to necessarily hold that the invocation of the power under Section 263 of the Act was not justified.

16. The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale consideration reflected in the registered document. The question would be as to what is the effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue.

17. The assessing officer in his limited scrutiny, has verified the source of funds, noted the sale consideration paid, the expenses incurred for stamp duty and other charges. Furthermore, the assessee in their reply dated 11.01.2019 to the show cause notice dated 26.10.2018 issued by the PCIT has

specifically stated that the assessment was getting time barred, assessing officer took upon himself the role of a valuation officer under Section 50(C)(2) and found that the guideline value was not actual fair market value of the property and the actual consideration paid was the fair market value and therefore, he did not choose to make any addition under Section 50(C) of the Act.

18. The PCIT, has not dealt with this specific objection, but, would fault the assessing officer for not invoking Section 56(2)(vii)(b)(ii) merely on the ground that the market value was higher. As point out earlier, the guideline value is only an indicator and that will always not represent the fair market value of the property and therefore, the invocation of the power under Section 263 of the Act by the PCIT is not sustainable in law.

In the result, the present appeal is dismissed and the substantial question of law nos.1 and 2 are answered against the revenue and the substantial question of law no.3 is left open to the revenue to agitate the same in TCA No.158 of 2020. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
'C' Bench, Chennai/

2.The Income Tax Officer,
Ward 3, Tirunelveli.

3.The Income Tax Officer(H.Qurs)-2,
O/o.The Commissioner of Income Tax, Madurai-2, madurai.

+1 cc to Mr.M.Swaminathan, Advocate,sr.32836

+1 cc to Mr.G.Baskar,advocate,sr.32876.

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krd 5/11

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