IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NOS.34 TO 40 OF 2018

& ALL CONNECTED PENDING CMPS

(heard through video conferencing)

Sri.M.Palani Adaicalam ...Appellant in all the appeals

Vs

The Assistant Commissioner of Income Tax, Circle-I, D.P.Thottam, Muthialpet, Puducherry-3.

...Respondent in all the appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.3.2016 made in ITA.Nos. 264 to 270/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai ‘B’ Bench respectively for the assessment years from 2006-07 to 2012-13 and against the order of the Commissioner of Income Tax (Appeals)VI Chennai 34 dated 14.11.2014 made in I.T.A. No. 1504/MDS/13-14 to 1510/MDS/13-14 and against the order of the Joint Commissioner of Income Tax, Puducherry Range, Puducherry dated 29.04.2013 made in C.R. No. 32/JCIT/PDY/271D/2012-2013 and C.R. No. 32/JCIT/PDY/271E/2012-2013.

For Appellant : Mr.A.S.Sriraman
For Respondent : Mr.J.Narayanaswamy, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant - assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondent - Revenue.

2. Totally there are seven appeals. This bunch of seven appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 31.3.2016 made in ITA.Nos.264 to 270/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai ‘B’ Bench (for brevity, the Tribunal) respectively for the assessment years from 2006-07 to 2012-13.

3. The appeals are entertained to decide the following substantial questions of law :

> "i. Whether the Appellate Tribunal is correct in law in restoring the action of the Original Authority/Assessing Officer in imposing penalty under Section 271D of the Act for the assessment years 2006-07 and 2012-13 on the presumption of violation of Section 269SS of the Act while overlooking the provisions of Section 273B of the Act ? and
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> ii. Whether the Appellate Tribunal is correct in law in restoring the action of the Original Authority/Assessing Officer in imposing penalty under Section 271E of the Act for the assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 on the presumption of violation of Section 269T of the Act while overlooking the provisions of Section 273B of the Act? "

4. The common issues involved in all these appeals are as to whether the Assessing Officer was justified in imposing penalty under Sections 271D and 271E of the Act for the violation of Section 269SS of the Act and Section 269T of the Act respectively without applying the provisions of Section 273B of the Act and as to whether the Tribunal was right in reversing the orders dated 14.11.2014 passed by the Commissioner of Income Tax (Appeals)-VI, Chennai [hereinafter called the CIT(A)] restoring the orders of penalty as passed by the Assessing Officer.

5. We have carefully gone through the common order passed by the Tribunal.

6. The assessee contended before the Tribunal that in his own case in respect of identical transactions for the same and other assessment years, the Tribunal held in favour of the assessee while coming to the conclusion that the provisions of Section 273B of the Act could be applied to the assessee's case and penalty was vacated.

7. Interestingly, in the orders relied upon by the assessee namely ITA.Nos.1820 to 1825/Mds/13 dated 31.10.2013 and ITA.Nos. 2047 to 2051/Mds/2013 dated 22.7.2014, the very same assessment years, which are under consideration in this bunch of appeals were also involved and the cases were decided in favour of the assessee.

8. Therefore, the sheet anchor of the argument of the assessee before the Tribunal was requesting the Tribunal to apply the decisions in the assessee's own case and grant the relief. The Tribunal, though referred to the decisions cited by

the assessee before it, thought fit to follow the case of the assessee's father in ITA.Nos.220 to 228/ Mds/2014 dated 29.5.2014 and sustained the penalty imposed by the Assessing Officer.

9. On a reading of the common order passed by the Tribunal, we find that the Tribunal did not render any finding as to why the decisions in the assessee's own case in ITA.Nos.1820 to 1825/Mds/ 2013 dated 31.10.2013 and ITA.Nos.2047 to 2051/Mds/ 2013 dated 22.7.2014 were not applicable.

10. It is seen that the Tribunal noted the submissions made by the assessee that his case was covered by those two decisions. If such is the submission made by the assessee before the Tribunal, the Tribunal is enjoined upon a duty to consider the said orders and upon consideration, to our mind, three options are available to the Tribunal, firstly, to apply the decisions and decide the case in favour of the assessee. The second option being to distinguish the decision in the assessee's earlier case on factual grounds and set out reasons as to how they do not apply to the assessment year under consideration and distinguishable. The third and last being would be to consider the findings given by the Coordinate Bench of the Tribunal and assign reasons that in the opinion of the Tribunal, the decisions do not lay down the correct legal principle or there is any error of law committed by the Coordinate Bench prompting the Tribunal to take a different decision and after abiding by the cardinal principles of judicial discipline, the Tribunal ought to have referred the matter to the Principal Bench to be referred to a Larger Bench for a decision. We find that the Tribunal did not follow any one of the above three principles.

11. Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondent - Revenue has relied upon the judgment of the Hon'ble First Bench of this Court in the case of the assessee's brother - M.Sougoumarin Vs. ACIT [TCA.Nos.838 & 839 of 2017 dated 13.3.2018]. It is submitted by the learned Senior Standing Counsel that the penalty, which was imposed on the appellant - assessee was affirmed by the Tribunal as confirmed by the Division Bench of this Court by dismissing the assessee's appeal. Therefore, it is also submitted that the Court should follow the said decision in the case of M.Sougoumarin and sustain the order passed by the Tribunal in the instant case.

12. The admitted legal principle is that the Tribunal is the last fact finding Authority in the hierarchy of remedies under the Act. The scope of adjudication by this Court has been clearly circumscribed under the Statute, which can be culled out by reading the provisions of Section 260A of the Act and other related provisions. The Tribunal, as the last fact finding

Authority/Forum, had held that the assessee had a reasonable cause to be entitled to the benefit of Section 273B of the Act, which states that notwithstanding anything contained in the provisions of Sections 271D and 271E of the Act, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure. It is the further submission of Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondent - Revenue that there was no reasonable cause brought out by the assessee to be entitled to the benefit of the said provision.

13. However, we find that the Tribunal did not examine the nature of transaction and the issue as to whether the CIT(A) was justified in accepting the cause shown by the assessee to be a reasonable cause to be entitled to the benefit of Section 273B of the Act. The decision, which has been referred to in paragraph 8 of the impugned order, does not relate to the assessee. The Tribunal referred to the said decision and allowed the Revenue's appeal and affirmed the penalty imposed by the Assessing Officer. We find that there is no discussion as to why those two decisions rendered by the Coordinate Bench of the Tribunal in the assessee's own case respectively dated 31.10.2013 and 22.7.2014 could not be applied to the facts and circumstances of the present case.

14. In the case of the assessee's brother - the said M.Sougoumarin, which was relied upon by the Revenue before us, the Hon'ble First Bench of this Court held that the Tribunal, on consideration of facts, was of the view that there was no such reason for regular loan transactions of borrowing and repayment in cash of amounts exceeding Rs.20,000/- so as to escape penal liability under Sections 271E and 271D of the Act and that there was no question of law, not to speak of any substantial question of law, involved in those appeals.

15. However, in the instant case, there are two decisions of the Coordinate Bench of the Tribunal, which held that the assessee had a reasonable cause and consequently entitled to the benefit of Section 273B of the Act. Therefore, in our considered view, the decision in the case of the assessee's brother - M.Sougoumarin is distinguishable on facts and this decision cannot be applied to the facts and circumstances of the case on hand.

16. Mr.A.S.Sriraman, learned counsel appearing for the appellant - assessee has referred to the decisions of this Division Bench in the case of Sarvodaya Mutual Benefit Trust Vs. PCIT [TCA.No.682 of 2018 dated 03.7.2019] and in the case of A.S.Shipping Agencies Private Limited Vs. DCIT [TCA.Nos.596 to 600 of 2019 dated 09.8.2019]. These decisions are referred to in support of his submission that the Tribunal ought to have

applied the decision in the assessee's own case and should not have dismissed the assessee's appeal.

17. In both these cases, there were earlier orders passed by the Tribunal, which were neither noted nor dealt with by the Tribunal. In the decision in the case of Sarvodaya Mutual Benefit Trust, we had referred to the decision of the Hon'ble Supreme Court in the case of Union of India & Others Vs. Kamlakshi Finance Corporation [reported in (1992) 1 SCC 648] wherein the principle of judicial discipline was pointed out as well as the decision of the Division Bench of this Court in the case of CIT Vs. L.G.Ramamurthi And Ors. [reported in (1977) 110 ITR 453]. Accordingly, without venturing into the merits of the matter nor attempting to answer the substantial questions of law, the matters were remanded to the Tribunal for a fresh consideration.

18. It is argued by Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondent - Revenue that the factual circumstances involving the assessee will clearly show that they are not entitled to the benefit under Section 273B of the Act.

19. We are not inclined to examine the merits of the matter nor make an attempt to answer the substantial questions of law, as we are of the considered view that the matters require to be reconsidered by the Tribunal for the reasons we have set out in the preceding paragraphs. It is for the Tribunal to take note of the fact and deal with the earlier orders passed by its Coordinate Bench respectively dated 31.10.2013 and 22.7.2014, which ended in favour of the assessee.

20. For the above reasons, these appeals are allowed, the impugned orders are set aside and the matters are remanded to the Tribunal for a fresh consideration bearing in mind the observations made by us in this common judgment. The substantial questions of law are left open. No costs. Consequently, all connected pending CMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.

2.The Assistant Commissioner of Income Tax, Circle-I, D.P.Thottam,Muthialpet, Puducherry-3.

3.The Commissioner of Income Tax(APPeals)VI
Chennai 34.
4.The Joint Commissioner of Income Tax
Puducherry Range
Puducherry

TCA.Nos.34 to 40 of 2018 &
All connected pending CMPs

BR(CO)
SP(29/09/2020)