In the High Court of Judicature at Madras

Dated : 15.07.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.434 of 2018

Principal Commissioner of Income Tax
Central 1,
No.108, Mahatma Gandhi Road,
Chennai. ...Appellant/Respondent

Vs

Shri S.A.Kamlesh Kumar (HUF)
Rep. By Kartha Kamlesh Kumar
No.55, N.M.N.Street, Teynampet,
Chennai-18
PAN: AADHK0824K ...Respondent/Appellant

Prayer: APPEAL filed under Section 260A of the Income Tax Act, 1961 against the order dated 12.12.2017 in ITA No.3169/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2013-14 and against the order of the Commissioner of Income Tax (Appeals) 18, Chennai-34, dt.31.8.16 ,ade in ITA.No.45/2015-16, for the Assessment Year 2013-14 and against the order of the Deputy Commissioner of Income Tax, Central Circle 1(2) Chennai-34, dt.31.3.2015, made in PAN.No.AADHK0824K, for the Assessment Year 2013-14.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel and
M/s.K.G.Usha Rani

For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and M/s.K.G.Usha Rani, learned counsel appearing for the appellant and Mr.A.S.Sriraman, the learned counsel appearing for the respondent.

2.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 12.12.2017 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench (for brevity, the Tribunal) in ITA No.3169/Mds/2016 for the assessment year 2013-14.

3.The following substantial questions of law have been raised by the revenue in this appeal:

> "1.Whether the Appellate Tribunal right in setting aside the orders of the lower authorities with a direction to the Assessing Officer to do the same assessment afresh which unwarranted?
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> 2.Whether the Appellate Tribunal is justified in holding that the assessee has right to produce evidence in later part of proceedings against his own submission made in the statement u/s.132(4) of the Act and to retract the same, ignoring the probative value of such statement and the fact that such retracting is of no avail in view of the provisions of Section 132(4) and its Explanation of the Income Tax Act?
>
> 3.Whether Appellate Tribunal is correct in entertaining the afterthought submission of the assessee that the excess cash found at the time of search relates to sales and the bills were pending for updation at the time of search, which is contrary to the submission made in the statement u/s.132(4) of the Act when he does not maintain any books of accounts and he has no proof for the claim that the excess cash represents sale bills?
>
> 4.Whether the Appellate Tribunal is justified in ignoring the fact that the provisions of sub-section (2) of Section 271AAB of the Act have granted sanctity for the statement delivered u/s.132(4) of the Act, when it comes to immunity from the penalty under that section and as such, similar sanctity has to be accorded for the additions made based on such statement?

4.The assessee is the Kartha of Hindu Undivided Family and is a retail trader carrying on business in jewellery. A search woperation ws conducted on 21.11.2012, wherein 22590.760 gms of gold, 3272.620 gms of bullion and Rs.22,74,500/- cash were seized. The assessee had filed return of income on 11.06.2013 admitting total income of Rs.4,07,29,870/-. Assessment was completed under Section 143(3) r/w. Section 153B(1)(b) on 31.03.2015 determining the income at Rs.6,30,24,850/- making addition of Rs.5,45,72,620/- towards undisclosed gold jewellery, Rs.58,34,206/- towards undisclosed bullion and Rs.22,74,500/- towards undisclosed income. The computation of the undisclosed gold jewellery has been referred to by the learned Senior

Standing Counsel for the revenue by stating that this was done after considering the evidence produced by the assessee before the Assessing Officer. It is further submitted by the learned Senior Standing Counsel for the revenue that the assessee during the course of search was unable to give proper explanation for the source of cash and it was treated as undisclosed income for the relevant assessment year and added as such to the income the assessee.

5.The assessee being aggrieved by the order of assessment filed appeal before the Commissioner of Income Tax (Appeals)-18 [CIT(A)], Chennai. The appeal though was partly allowed in respect of the cash found and seized as the assessee could not substantiate with documentary evidence, the finding of the Assessing Officer was upheld and the appeal to that extent was dismissed. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal by the impugned order remanded the matter to the Assessing Officer for doing the assessment de novo stating that such order of remand would meet the ends of justice.

6.The learned senior standing counsel strenuously contended that the Tribunal erred in remanding the assessment for de novo assessment as there is every possibility of the assessee retracting his earlier stand and also pave way for producing fabricated document. The learned senior standing counsel also referred to the statement which was recorded under Section 132 (4) of the Act on 21.11.2012 and the response of the assessee to the various queries which were raised and the same were ignored by the Tribunal not with the Tribunal confront the assessee regarding non-availability of evidence in respect of the claim at the time of search and availability of such proof only subsequent to the search especially when the assessee had not mentioned about the availability of evidence when statement was recorded under Section 132(4) of the Act. Further, it is submitted that the probative value of the statement delivered under Section 132(4) of the Act being undeniable, the order of remand passed by the Tribunal would lead to various other disastrous consequence. Therefore, it is submitted that the order of remand to the Assessing Officer is total uncalled for and the Tribunal failed to record any reasons justifying the order of remand for de novo adjudication.

6.The learned counsel for the respondent/assessee submitted that the order of remand has been complied with and the Assessing Officer has passed an order which was adverse to the assessee and therefore, the assessee has filed an appeal before the CIT(A).

7.After elaborately considering the contentions on either side, we are of the view that the Substantial Questions of law need not be answered in the instant case as they have become academic. It is true that a Superior Tribunal or a Court cannot mechanically remand matters for fresh consideration or de novo adjudication unless and until it finds a justifiable need for such a remand. Be that as it may, in the instant case, the Assessing Officer has passed a given effect to order under Section 143(3) r/w. Section 254 of the Act dated 31.12.2018 and such order is adverse to the assessee as the assessee was not able to establish anything and therefore, the Assessing Officer held that the assessee has concealed the particulars of income and had no explanation worthwhile to offer. Further, we are informed that the assessee has filed an appeal to the Commissioner of Income Tax (Appeals) against the order dated 31.12.2018 and the same is pending.

8.In the light of the above, the tax case appeal is disposed of and the Substantial Questions of law are left open as we find that the issue has become academic in the case due to developments which have taken place during the pendency of this appeal. No costs.

-s/d-
Assistant Registrar(CS-)

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Madras 'D' Bench.

2.The Commissioner of Income Tax (Appeals)-18,
Chennai-34.

3.The Deputy Commissioner of Income Tax,
Central Circle 1(2),
Chennai-34.

Mr(co)
krd 25/8

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