In the High Court of Judicature at Madras

Dated : 27.7.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1074 to 1077 & 1079 of 2014

The Commissioner of Income Tax,
Central Circle, Chennai ...Appellant/Appellant

Vs

Shri S.Duraipandi ...Respondent/Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 29.4.2011 made respectively in ITA.Nos. 1745 to 1748 & 1750/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment years from 2002-03 to 2005-06 and 2007-08 against the order of the Assistant Commissioner of Income Tax, Central Circle -III(4) Chennai, dated 27.05.2011 made in CO.Nos.1074, 1075, 1076, 1077 and 1079 of 2010 for the Assessment Years 2002-03 to 2005-06 and 2007-08.

For Appellant : Mr.T.R.Senthilkumar, SSC
assisted by
Ms.K.G.Usharani, SC

For Respondent : Mr.R.Sivaraman

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

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent - assessee.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act), are directed against the common order dated dated 29.4.2011 made respectively in ITA.Nos. 1745 to 1748 & 1750/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for short, the Tribunal) for the assessment years from 2002-03 to 2005-06 and 2007-08.

3. The appeals were admitted on 10.3.2015 on the following substantial questions of law :

> "TCA.Nos.1074 to 1077 of 2014:
>
> "1. Whether on the facts and circumstances of the case, the Tribunal was right in presuming the assessee earned agricultural income merely relying on Chitta and Adangal extracts issued by VAO despite the fact that no evidences pertaining to agricultural activities were furnished by the assessee?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal can estimate the agricultural income without there being any proof that the assessee was actually engaged in agricultural activity and the onus to prove the same was agricultural income lies on the assessee?
>
> 3. Whether on the facts and circumstances of the case, the Tribunal was right in presuming that the agricultural income based on the land holding of the assessee including lease hold lands on the oral contracts with the lessees even though the assessee failed to produce any evidence in support of such a claim for its agricultural activities?"
>
> TCA.No.1079 of 2014:
>
> "1. Whether on the facts and circumstances of the case, the Tribunal was right in presuming the assessee earned agricultural income merely relying on Chitta and Adangal extracts issued by VAO despite the fact that no evidences pertaining to agricultural activities were furnished by the assessee?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal can estimate the agricultural income without there being any proof that the assessee was actually engaged in agricultural activity and the onus to prove the same was agricultural income lies on the assessee?

3. Whether on the facts and circumstances of the case, the Tribunal was right in presuming that the agricultural income based on the land holding of the assessee including lease hold lands on the oral contracts with the lessees even though the assessee failed to produce any evidence in support of such a claim for its agricultural activities?

4. Whether on the facts and circumstances of the case, the Tribunal was correct in presuming that an addition of Rs.4.9 crores is to be done in the case of S.Duraipandi (individual) and not as AOP in spite of the fact that the assessee has admitted the same and as per the documents seized? and

5. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition of Rs.50 lakhs being the money paid by the assessee to Jaya Krishnamurthy in respect of the land deal contrary to Section 68 of the Income Tax Act?”

4. It is submitted by the learned Senior Standing Counsel appearing for the Revenue that the above questions have also been admitted in the assessee's own case in TCA.Nos.1078 and 1080 of 2014 and that therefore, though in the above five tax case appeals, the tax effect is lower than the threshold limit, the Revenue may be permitted to pursue the matters together so that in the event of the Revenue succeeding in the appeals, the exchequer will be able to recover tax.

5. In our considered view, the proper interpretation of the circular issued by the Central Board of Direct Taxes is that if the tax effect is lower than the threshold limit, the Revenue cannot file nor pursue the appeals, which are pending either before the Tribunal or before this Court or before the Hon'ble Supreme Court. However, in order to safeguard the concern expressed by the learned Senior Standing Counsel for the Revenue, we make an observation to the effect that though the aforementioned five appeals are to be disposed of on the ground of low tax effect, the same will not be a bar for the Revenue to canvass the aforementioned substantial questions of law, which are also the substantial questions of law framed for consideration in TCA. Nos.1078 & 1080 of 2014.

6. Accordingly, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases is above the threshold limit fixed in the said

circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

RS

To

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

2. The Assistant Commissioner of Income Tax,
Central Circle -III(4), Chennai.

3. The Commissioner of Income Tax,
Central Circle, Chennai.

4. The Section Officer,
VR Section, High Court, Chennai.

+1cc to Mr.T.S.Senthil Kumar, Advocate SR.No.25335

TCA.Nos.1074 to 1077 & 1079 of 2014

AK(CO)
GMY(18/08/2020)