IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.No.1061 of 2019

S.Arputharaj ... Appellant

Vs

The Deputy Commissioner of Income Tax,
Central Circle - 1,
Coimbatore. ... Respondent

PRAYER: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961 against the order dated 13.06.2018 in I.T.A.No.1494/CHNY/2018 on the file of the Income Tax Appellate Tribunal Chennai 'C' Bench for the assessment year 2010-11, against the order dated 19.02.2018 on the file of the Commissioner of Income Tax (Appeals)18, Chennai, ITA.No.426/16-17, for the assessment year 2010-2011 against the order pf the Deputy Commissioner of Income Tax, CBE dated 30.12.2016.

For Appellant : Mr.T.P.Prabhakaran
For Respondent : Mr.T.R.Senthil Kumar,
Senior Standing Counsel.

J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

This tax case appeal has been filed against the order of the Income Tax Appellate Tribunal dated 13.06.2018 in I.T.A.No.1494/CHNY/2018 on the file of the Income Tax Appellate Tribunal Chennai 'C' Bench for the assessment year 2010-11, only with regard to the question regarding the discharge of liability with regard to the purchase by the appellant from M/s.Mars Export and added 16.5 Crores as additional income. Though the appellant has filed assessment, taking note of the discharge of the liability in respect of the property purchased by the appellant from M/s.Mars Export, the assessment officer added 16.5 Crores as income.

2.Against the said order, the appellant filed an appeal along with other issues before the Commissioner of Income Tax (Appeals) who had also confirmed the said Assessment order. The said order was unsuccessfully challenged by the assessee before the Tribunal. Against the said order of the Tribunal, bunch of appeals have been filed by the appellant before this Court in T.C.A.Nos.718 to 720 and 805 to 809 of 2018. Though bunch of cases have been filed by the appellant including the order covering the assessment year 2010-2011, which has been challenged in the present case, this particular issue has not been raised by the appellant. Therefore, the present appeal has been filed.

3.Heard Mr.T.P.Prabhakaran, learned Counsel for the appellant and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the respondent.

4.This Tax Case Appeal is admitted on the following substantial questions of law:

> "(i)Whether the Income Tax Appellate Tribunal is correct in law to ignore the facts and documents submitted in defence by the appellant before the Commissioner of Income Tax (Appeal) as well as before the Assessing Officer for assessing the income for the AY 2010 - 2011 pursuant to addition of income Rs.16.5 crores in the issue of M/s.Mars Exports is concerned without proper application of mind to confirm the assessment of income for certain issues?
>
> (ii)Whether the Income Tax Appellate Tribunal is correct in law in confirm the order of the Commissioner of Income Tax (Appeal) in certain issues for the Assessment year 2010 - 11 for statistical purposes without appreciating the materials and evidences made available before the Appellate Tribunal in proper perspective?"

5.It is brought to the notice of this Court that in assessee's own case in T.C.A.Nos.718 to 720 and 805 to 809 of 2018, this Court had set aside the common order passed by the Income Tax Appellate Tribunal and remanded the matter to the Tribunal. The relevant paragraphs of the said common Judgment are usefully extracted as follows:

> "22.Thus, considering the peculiar facts and circumstances of the case, we deem it appropriate to remand the matters to the Tribunal to consider the above referred two substantial questions of law. We make it clear that in so far as the issues, which have been remanded by the Tribunal to the Assessing Officer, against which, no appeals have been filed by either the Revenue or the assessee, we do not interfere with the

same and the Assessing Officer is directed to carry out the directions issued by the Tribunal.

23.In the result, the above tax case appeals are allowed, the common impugned order passed by the Tribunal is set aside to the extent indicated above and the Tribunal shall afford an opportunity to the learned Counsel for the assessee to make his submissions and consider the matters in accordance with law. The assessee shall not take any adjournment before the Tribunal and fully cooperate with the Tribunal by arguing the matters and placing all the matters before the Tribunal. In the light of the above, the substantial questions of law are left open for a decision by the Tribunal. No costs. Consequently, the connected CMPs are closed."

6.Following the Judgment of the Division Bench of this Court, the order of the Appellate Tribunal is set aside and the matter is remanded back to the *ITAT to consider the case afresh after hearing the parties along with other cases.

7.In the result, this Tax Case Appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS-VI)

***Corrected as per order of this Court dated 28.02.2020**
-s/d-
Assistant Registrar(CSVI)
dt 12/03/2020

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax, Central Circle – 1, Coimbatore.

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

3.The Commissioner of Income Tax (Appeals) 18, Chennai.

Amended order to be
For the order already
despatched on 27.02.2020

+1cc to Mr.T.P.Prabakaran, Advocate, SR.No.620,.
+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.**18640**

T.C.A.No.1061 of 2019

NR(CO)
CSR: 26.02.2020 A.SK(12/03/2020)