IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

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

T.C.A.No.752 of 2018

Thiru.A.R.Dilli Babu .. Appellant

Versus

The Income Tax Officer,
Non-Corporate Ward – 8(4),
Chennai – 600 034. .. Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 27.02.2018 made in I.T.A.No.2396/Chny/2017 relating to the Assessment Year 2009-10,

Appeal against the order dated 28.07.2017 made in ITA.No.79/CIT(A)-9/2016-17 on the file of the commissioner of Income tax (Appeals)-9, Chennai-600 034, for the Assessment Year 2009-10.

& As appeal against the order dated 30.12.2016 made in PAN.No./G.I.R.No.AIEPDO578J on the file of the Income Tax officer, Non corporate ward-8(4)(i/c), Chennai-600 034 for the Assessment Year 2009-10.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.Karthik Ranganathan
Senior Standing counsel

JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 27.02.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) in I.T.A.No.2396/Chny/2017 for the Assessment Year 2009-10. The appeal was admitted on 05.12.2018 on the following Substantial Questions of Law:

"Perversity:-

(i) Whether on the facts and in the

circumstances of the case, the order of the Income Tax Appellate Tribunal was perverse in introducing the proceedings of the Commissioner, Kundrathur dated 27.03.2007 which was neither considered while forming the belief envisaged u/s.147 as may be seen from the reasons recorded nor even while completing the reassessment and in the appeal proceeding before CIT (Appeal) and use such material as the sole ground for upholding the jurisdiction and that too contrary to proviso to s.147 and assuming perversely the role which even the Assessing Officer cannot assume in the light of reasons recorded?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was perverse in law in admitting material for the first time in second appeal stage to justify the reasons for reopening the assessment, which was not cited as material not disclosed by the appellant, in the reason for reopening, AO's correspondence with Appellant nor in the Reassessment Order?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was perverse on facts in holding that the reopening was based on fresh evidence available to the Assessing Officer and not on the basis of change of opinion, when the Assessing Officer had neither in the reasons recorded for reopening the assessment nor in the reassessment order, had placed reliance on the alleged proceedings of the Commissioner, Kundrathur dated 27.3.2007, as a fresh material formed the "reason to believe" that income had escaped assessment and that too, in the absence of finding of failure on the part of the appellant, is barred by limitation under the first proviso to S.147 of the Act??

Jurisdiction for Re-assessment:-

Reopening beyond 4 Years:-

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the jurisdiction of the Assessing Officer in reopening the assessment u/s.147 of the Income Tax Act 1961?

(v) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not cancelling the reassessment since the reopening after 4 years from the end of the Assessment Year without there being any failure on the part of the Assessee to disclose fully and truly all material facts necessary for assessment due to which any income chargeable to tax has escaped assessment?

Change of Opinion:-

(vi) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that there was no change of opinion even though the reopening of assessment was merely based on the Partition Deed which was available even at the time of scrutiny assessment?

Interest u/s.234B:-

(vii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in upholding the levy of interest u/s.234B(3) of the Income Tax Act, 1961, in the reopened assessment for the first time?

(viii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not holding that once the Assessing Officer gives credit for the advance tax paid against the tax demand in the original assessment, the advance tax ceases its character as advance tax and anything subsequent proceedings it can only be treated as tax already collected and not as advance tax and therefore provisions of section 234B will not apply?

(ix) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not holding that since the regular assessment u/s.143(3) was made without charging interest u/s.234B, charging the same while completing the reassessment u/s.147 for the entire period from 1st of April next following such financial year to the date of completion of reassessment would not be warranted, since no credit for payment of advance tax is involved in the reassessment u/s.147 contrasted to a first assessment made u/s.143(3) of the Act?

(x) Whether on the facts and in the circumstances of the case the reassessment proceedings without issuing notice u/s.143(2) of Income Tax Act, 1961 in respect of return filed in response to notice u/s.148 of the Income Tax Act, 1961, is valid in law?”

2. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.Karthik Ranganathan,

learned Senior Standing counsel for the respondent/Revenue.

3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 09.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeal stands disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Income Tax Officer,
Non- Corporate ward-8(4), Annexe Building
5th Floor, No.121, Nungambakkam High Road, Nungambakkam,
Chennai- 600 034.

3.The Commissioner of Income Tax (Appeals)-9,
Chennai-600 034.

T.C.A.No.752 of 2018

LN(CO)
RMP(08/12/2020)