IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.No.821 of 2018
and
C.M.P.No.20409 of 2018

Shri Gopal Yadav Selvakumar
65 Vellore Main Road,
1st Street, Arcot, 6325033 ... Appellant

Vs.

The Income Tax Officer,
Ward II,
Vellore. ... Respondent

Tax Case Appeal is filed under Section 260A of the Income Tax Act, 1961 against the order dated 22.06.2018 made in I.T.A.No.111/Chny/2018 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, for the assessment year 2011 - 2012 arising against the order of the Commissioner of Income Tax (Appeals)-13, Chennai-34, daed 18/09/2017 in ITA NO.19/CIT (A)-13/2011-12, against the Assessment order of the Income Tax Officer, Ward-2, Vellore (PAN BTSPS5973E) dated 30.03.2016 against the original Assessment order of the Income Tax Officer, Ward I(2) Vellore, Assessment Year 2011-12, (PAN BTSPS5973E), dated 14.03.2013.

For Appellant : Mr.Salai Varun

For Respondent : Ms.V.Pushpa
Standing Counsel

Judgment

(Judgment was delivered by T.S.SIVAGNANAM.J)

This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order dated 22.06.2018 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.111/Chny/2018, for the assessment year 2011 - 2012.

2. The tax case appeal was admitted on the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in remitting the matter back to the file of the Commissioner for consideration on merits alone without adjudicating upon the specific grounds on the validity of the assumption of jurisdiction under Section 147 of the Income Tax Act, 1961?

ii. Whether the Tribunal was right in not taking cognizance of the fact that reassessment was based on change of opinion sans any fresh tangible material?

Iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that the reassessment was invalid in view of non disposal of objections of the appellant against reassessment under Section 147 vide a separate order before passing the order of assessment?

iv. Whether the Tribunal was right in directing the Commissioner of Income Tax (Appeals) to adjudicate the issue on merits alone with regard to the addition made under Section 69 of the Income Tax Act, 1961, when the validity of the reassessment under Section 147 after completion of scrutiny assessment under Section 143(3) itself was challenged by the appellant before the Tribunal? And

v. Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that issue of notice under Section 147 and reassessment is not justified when proceeding under Section 154 is pending for the same assessment?"

3. We have heard Mr.Salai Varun, learned counsel appearing for the appellant/assessee and M/s.V.Pushpa, learned Standing Counsel appearing for the respondent/revenue.

4. The assessee is an individual and a partner of a firm under the name and style of M/s.Gokulam Auto Finance & Consultancy. The assessee's case was taken up for limited scrutiny in so far as the deposits in the savings back account, to which, the assessee stated that the deposit or funds belonging to the above said partnership firm, wherein, he and his wife were the partners. Assessment was completed under Section 143(3) of the Act, by order dated 14.03.2013 with an addition of Rs.27,000/-. The assessment was reopened by issuance of notice under Section 148 of the Act on 21.10.2014. The assessee's case was that the reopening is not

valid in law as it is a clear case of change of opinion. The contention advanced by the assessee was not accepted and the reassessment proceedings were completed on 30.03.2016 determining the total taxable income as Rs.54,43,060/-. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of IncomeTax (Appeals) - 13, Chennai.

5. The assessee contended that mere audit objection could not form basis to reopen the completed assessment and refered to the decision in the case of Smt.Shalu Sachdeva Vs. ACIT (2015) Taxmann.com and CIT Vs. Mettur Chemical and Industrial Corporation (2000) 242 ITR 119). Further It was also contended that the Assessing Officer had no reason to believe to reopen the assessment and the reopening amounts to change of opinion. Further, it was contended that the reassessment is void, since the Assessing Officer did not dispose off the objections raised by the assessee for the reassessment in their letter dated 27.06.2015 and followed the guidelines laid down by the Hon'ble Apex Court in G.K.N Drive Shaft India Ltd. Vs. ITO (2013) 259 ITR 19.

6. Further, the assessee also stated about the existence of books of accounts and submitted that the finding of the Assessing Officer that there were no books of accounts is incorrect. Further, it was contended that the entries relating to outstanding interest and bank interest which are also other additions made by the Assessing Officer in the assessment are entries relating to the firm which is assessed separately as an entity and that cannot be a reason for reopening the individual assessee's assessment. Further, It was contended that the assessment order is void as it is passed after the time limit prescribed under the Act since it is passed and dispatched only on 05.04.2016 with a predetermined addition entered on 30.03.2016.

7. The CIT(A) dismissed the assessee's appeal insofar as the reopening of assessment is concerned, and on the merits, the CIT(A) held that the assessee has not raised any ground of appeal that is to presume that the assessee has not pressed the ground of addition made by the Assessing Officer on the issue of addition of Rs.1,51,79,950/-. Accordingly, confirmed the addition. The net result being the appeal dismissed in toto. The assessee preferred an appeal before the Tribunal raising all the issues and the Tribunal remanded the matter to CIT(A) to adjudicate the issue on merits.

8. So far as the validity of the reopening is concerned, we find that the Tribunal did not render any specific finding. After carefully going through the impugned order, we find that the Tribunal ought to have adjudicated all the grounds raised by the assessee that is whether the reopening is valid in law and whether there were materials in the hands of the Assessing Officer for reopening the assessment. So the assessee is right in contending that the audit objection cannot be the basis for

reopening. The Assessing Officer has not recorded any reasons as to why he came to the conclusion that the income chargeable to income tax has escaped assessment and what was the belief which led to issuance of notice under Section 148 of the Act.

9. Factually, whether the assessee had produced the books of accounts and such other material as we find that the Tribunal did not consider these issues. We deem it appropriate to set aside the order passed by the Tribunal and remand the matter back to the Tribunal for fresh consideration.

10. Accordingly, the appeal filed by the assessee is allowed and the order dated 22.06.2018 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.111/Chny/2018, is set aside and the appeal is restored to the file of the Tribunal to hear the matter afresh and in accordance with law. The assessee is entitled to raise all the contentions both factual and legal before the Tribunal which shall be decided on merits.

11. In the light of the remand order, the question of answering the substantial questions of law does not arise and they are left open. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax (Appeals)-13, Chennai-34.

3. The Income Tax Officer, Ward-III, Vellore.

+1cc to Mr.M.Swaminathan, Advocate SR.No.24904

T.C.A.No.821 of 2018
and
C.M.P.No.20409 of 2018

RSK(CO)
GMY(27/08/2020)