IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.1264 of 2010
and M.P.Nos.1 of 2010
and 1 of 2011

M/s.Sapthagiri Finance & Investments,
44B/107, Sheikpet Naidu Street,
Kancheepuram - 631 501. ... Appellant/Respondent

Vs.

The Income Tax Officer,
Ward (1), 96, M.M.Avenue,
Kancheepuram. ... Respondent/Appellant

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 22.07.2009 in I.TA.No.683/Mds/08, against the order passed by the Commissioner of Income Tax (Appeals)IX, Chennai-34, made in ITA.No.12/06-07 dt.29/01/2008 and against the order passed by the Income Tax Officer Ward 1 (1), Kancheepuram made in GIR No.S-742/2000-01, dt.09/03/2006 and against the order passed by the Commissioner of Income Tax (Appeals)IX, Chennai-34, made in IT Appeal.Nos.267/02-03 dt 30/12/2004 and against the order passed by the Income Tax Officer, Ward 1(1), Kancheepuram GIR No.5-742 (Firm) 2000-01 dt 24/12/2002.

For Appellant : Mr.R.Venkatanarayanan,
for M/s.Subbaraya Aiyar

For Respondent : Mr.Rajesh,
Standing Counsel

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.683/Mds/08 in respect of the assessment year 2000-01 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench, the assessee has filed the above appeal.

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

> "1)Whether on the facts and circumstances of the case, the Tribunal was right in confirming the levy of penalty u/s 271(1)(c)?
>
> 2)Whether on the facts and in the circumstances of the case, the Tribunal was justified in not appreciating that the appellant had disclosed the facts relating to the computation of the total income/capital gains and hence penalty u/s 271(1)(c) is not exigible?"

3.When the appeal is taken up for hearing, the learned counsel appearing for the appellant - assessee submitted that in the case of the very same assessee, the Tribunal in I.T.A.No.261/05 dated 24.08.2005 held that the property belongs to the Firm and the short term capital gain is taxable in the hands of the Firm. Against the order of the Tribunal, the assessee filed an appeal before this Court in T.C.A.No.159 of 2006 and the Hon'ble Division Bench of this Court, by order dated 17.07.2012, set aside the order of the Tribunal and allowed the appeal. The learned counsel further submitted that in view of the order passed by the Hon'ble Division Bench of this Court in T.C.A.No.159 of 2006, the impugned order passed by the Income Tax Appellate Tribunal is also liable to be set aside.

4.Mr.Rajesh, learned standing counsel appearing for the respondent - Revenue fairly submitted that in view of the earlier order passed by the Hon'ble Division Bench, the impugned order is liable to be set aside.

5.It would be pertinent to extract the relevant portion of the order dated 17.07.2012 made in T.C.A.No.159 of 2006 [M/s.Sapthagiri Finance & Investments, 44B (Old No. 107), Sheikpet Nadu Street, Kanchipuram Vs. The Income Tax Officer, Ward I(4), Kanchipuram], which reads as follows:

> "...
>
> 13. As far as the present case is concerned, the provisions of Section 148 also uses the expression "so far as may be apply accordingly as if such return were a return required to be furnished under Section 139". Thus, understanding this provisions in the background of the decision of the Apex Court, on the facts

available, we are of the view that in completing the assessment under Section 148 of the Act, compliance of the procedure laid down under Sections 142 and 143(2) is mandatory. On the admitted fact that beyond notice under Section 142(1), there was no notice issued under Section 143(2), and in the light of the fact that the very basis of the reassessment was the failure on the part of the assessee in not disclosing the capital gains arising on the transfer of property for assessment and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to Section 148 of the Act, we hold that there was total failure on the part of the Revenue from complying with the procedure laid down under Section 143(2) of the Act, which is mandatory one as held by the Apex Court.

14. Although on merits, we do not agree with the contention of the assesee that the capital gains would not be assessable at the hands of the firm, yet for the reasons stated in the preceding paragraph that in the absence of notice under Section 143(2) reassessment could not be held to be validly made . Thus, we have no hesitation in setting aside the order of the Tribunal."

6.In view of the submissions made by the learned counsel on either side, following the earlier order passed by the Hon'ble Division Bench in T.C.A.No.159 of 2006, cited supra, the impugned order passed by the Income Tax Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside. Both the questions of law are decided in favour of the assessee and against the Revenue. The appeal is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Income Tax Officer,
Ward (1), 96, M.M.Avenue,
Kancheepuram.

3.The Commissioner of Income Tax(Appeals)IX,
Chennai-34.

+1cc to Mr.Subbaraya Iyer, Advocate, S.R.No.17189

T.C.A.No.1264 of 2010
and M.P.Nos.1 of 2010
and 1 of 2011

BS(CO)
CB(16/04/2021)