IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.190 of 2021

Shri Perumallur Vankipuram Janardhanan ...Appellant/Appellant

Vs

The Income Tax Officer,
Ward - 2,
Thiruvallur. ...Respondent/Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 31.01.2020 made in ITA.No.144/Chny/2020 for the assessment year 2011-12 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench against the order of the Commissioner of Income-Tax(Appeals)-7, No 121, Mahatma Gandhi Road, Chennai-34 dated 27.06.2019 in ITA.No.78/CIT(A)-7/2018-19 and arising out of the Assessment Order of the Income Tax Officer, Ward-2, Tiruvallur dated 17-12-2018 in PAN-AQGPJ7092M for the Assessment year 2011-12.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.Karthik Ranganathan,
SSC

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 31.01.2020 made in ITA.No.144/Chny/2020 for the assessment year 2011-12 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench ('the Tribunal' for brevity).

2. The appeal was admitted on 15.03.2021 on the following substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the notice issued under Section 148 of the Act was with jurisdiction?
>
> 2. Whether under the facts and circumstances of the case, the re-assessment proceedings and the order complies with the mandatory condition laid down under Section 147?"

3. We have elaborately heard Mr.N.V.Balaji, learned counsel for the appellant-assessee and Mr.R.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent-Revenue.

4. After hearing the learned counsel on either side for a considerable length of time, we find that the arguments made on behalf of the appellant/assessee does not stem out on the finding rendered by the Tribunal in the impugned order, but, attempt appears to be to question the correctness of the assessment order and the jurisdiction of the Assessing Officer at New Delhi to issue a notice under Section 148 of the Act. It may be true that the assessee had, while filing the appeal before the Tribunal, raised a ground that the Commissioner of Income Tax (Appeals) - 7, Chennai [CIT(A)] ought to have noted that the notice under Section 148 was not served on the appellant and the consequential assessment is therefore illegal and requires to be set aside.

5. The Tribunal has taken a decision with regard to the plea of lack of opportunity and violation of principles of natural justice and on this ground interfered with the order passed by the CIT(A) as well as that of the Assessing Officer and remitted the matter back to the file of the Assessing Officer for a fresh adjudication.

6. We have perused the order passed by the CIT(A), from which, it is seen that the assessee did not seriously contest the matter and it is in fact an ex-parte order. The ground, which were raised before the CIT(A), are only with regard to the violation of principles of natural justice, as could be seen from paragraph 4 of the order passed by the CIT(A), dated 27.06.2019.

7. The learned counsel for the appellant would strenuously contend that the notice issued under Section 148 of the Act was never served on the appellant and failure to serve the same

within a reasonable period atleast before the completion of assessment, would result in the assessment being void. Further, it is submitted that the assessment made by the Assessing Officer is invalid, since it was made pursuant to a notice issued by the Income Tax Officer at Delhi, who does not have jurisdiction over the assessee's case.

8. In reply, the learned Senior Standing Counsel appearing for the respondent would submit that the assessee did not cooperate in the proceedings and several notices were issued and it is submitted that the assessee has been treated to be an accommodative assessee and notice, dated 30.03.2018 was issued to as many as 49 people and notice was sent to the assessee as well. In this regard, the learned counsel has filed a typed set of papers containing certain documents. Further, the learned counsel has drawn our attention to the order passed by the Income Tax Officer, Ward 49(1), New Delhi, dated 09.10.2018 transferring the assessment records in the case of the assessee to the Income Tax Officer, Ward-2, Tiruvallur. Further, the learned counsel has also referred to the notice issued by the Income Tax Officer, Ward-2, Tiruvallur, dated 30.10.2018 to the assessee under Section 148 of the Act. The learned counsel relied upon a report of the Inspector of Income Tax, Ward-2, Tiruvallur, who stated that he visited the last known address of the assessee to verify the address of the assessee and found that the address belonged to the assessee, but the house was let out and the tenants informed him that they have been receiving the notices by the Department and forwarding them to the assessee and the tenants could not give the latest address of the assessee. Therefore, it is submitted that proceedings have been initiated in a proper manner.

9. In any event, the Tribunal has remanded the matter back to the Assessing Officer to adjudicate the matter afresh, since, right through, the assessee was contending that there was lack of opportunity and there was violation of principles of natural justice.

10. Thus, we are of the considered view that there is no good ground made out by the assessee to interfere with the order passed by the Tribunal and there is no question of law, much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal fails and it is dismissed. No costs.

11. After we have dictated the judgment, the learned counsel for the appellant submitted that the appellant should be permitted to raise the question of jurisdiction before the Assessing Officer.

12. In our considered view, no such liberty is necessary, because it goes without saying that the assessee is entitled to plead all issues on facts as well as on law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai.

2.The Income Tax Officer,
Ward - 2,
Thiruvallur.

3.The Commissioner of Income-Tax(Appeals)-7,
Room No.218, Main Building, IInd Flr,
121, Mahatma Gandhi Road, Chennai - 34

4.The Income Tax Officer,
Ward-2, No.2, J.N. Road,
Near Janani Hospital,
Tiruvallur - 602001.

5.The Assistant Registrar,
Income Tax Appelllate Tribunal,
III Flr, Rajaji Bhavan,
Besant Nagar,
Chennai - 90.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.21541

GP2(CO)
RN(03/05/2021)