IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. No.215 of 2013

M/s.Ramgosri Constructions P Ltd.,
No.225, Mettukuppam
Okkiam, Thoraipakkam,
Chennai - 600 096. ... Appellant

Vs.

The Deputy Commissioner of Income Tax,
Company Circle - V(3),
Chennai - 600 034. ... Respondent

Tax Case Appeal preferred under Section 27A of the Wealth Tax Act, 1957, against the order, dated 25.02.2011, passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, in W.T.A.No.41/Mds/2010, for the Assessment Year 1998-99. Against the order of the Commissioner of Wealth Tax(Appeals V Chennai-34 dated 26.08.10 WTA No.341/05-06 for the assessment year 1998-99 and against the order of the wealth tax officer(OSD) Company Circle V(3) Chennai-34 dated 30.09.2005 PAN No/GJR No.AABCR9988E for the assessment year 1998-99.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Tax Case Appeal has been filed by the assessee under Section 27A of the Wealth Tax Act, 1957 ("the Act" for brevity), challenging the order, dated 25.02.2011, passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, in W.T.A.No.41/Mds/2010, for the Assessment Year 1998-99.

2.The assessee has raised the following substantial questions of law in this appeal :

"1.Whether the Appellate Tribunal is correct in law in accepting the appeal of the Department/respondent relating to the Assessment Year 1998-99 exparte without granting reasonable opportunity of hearing while grossly violating the principles of natural justice?

2.Whether the Appellate Tribunal is correct in law in rejecting the plea for exclusion of the value of the factory land and buildings within the scope of the exception carved out in the definition of net wealth in Section 2(ea) of the Act read with the charging provisions of the Act by overlooking the purposive legislation as well as the schematic interpretation of such provisions?

3.Whether the Appellate Tribunal is correct in law in rejecting the plea for exclusion of the value of factory land and buildings within the purview of charging provisions of the Act even though the said asset was a commercial asset occupied and used for commercial purposes?"

3.We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel for the respondent/Revenue.

4.Three questions arise for consideration in the present appeal, the first of which is, whether the Tribunal was right in proceeding ex parte on the ground that the counsel, who was engaged to appear in the matter and filed a petition for adjournment, had not filed vakalat or Power of Attorney empowering to appear on behalf of the assessee. Therefore, the Tribunal refused to entertain the request for adjournment and proceeded to decide the matter on merits. The assessee had filed a Miscellaneous Petition on 14.10.2011 stating that the notice was handed over to the Chartered Accountant to defend the case of the assessee and on account of sickness, the Chartered Accountant could not brief the counsel who was engaged to defend the assessee and in his absence, an adjournment letter was filed on the first date of hearing of the matter. Further, the learned counsel, who filed the said letter of adjournment, appeared before the Hon'ble High Court of Kerala on the said date of hearing before the Tax Bench. Therefore, it was submitted that the inability of the Chartered Accountant and the counsel to file a letter of adjournment should not have resulted in passing an ex parte order, inasmuch as the assessee should not suffer for the default of the Chartered Accountant and the counsel who moved the petition on their behalf, stating personal reasons/professional preoccupation. Therefore, the assessee pleaded that their case should be considered as reasonable and sufficient for non appearance within the scope of Rule 25 of the Appellate Tribunal Rules, 1963. It is pointed out that the proviso to the said Rule gives scope for the recall of the ex parte order and in fact, the said proviso uses the term "shall" which conveys the mandatory nature of the power to recall vested with the Tribunal.

5.In the said Miscellaneous Petition, the present counsel, who is appearing for the assessee before us, was engaged. The Tribunal held that there is no mistake, whatsoever, which has been pointed out by the assessee on the decision taken by the Tribunal, dated 25.02.2011, which was on merits and accordingly, the Miscellaneous Petition was dismissed. As mentioned above, the issue is whether the Tribunal should have afforded an opportunity to the assessee to appear and make submissions on merits. The other two substantial questions of law which have been raised are on the aspect whether the Tribunal was correct in rejecting the plea for exclusion of the value of the factory land and building by bringing the same under Section 2(ea) of the Act, even though the asset was a commercial asset occupied and used for commercial purposes.

6.We have perused the order passed by the Tribunal, dated 25.02.2011, and it is clear from Para No.8 that the order is an ex parte order. It is true that, unless and until the counsel or the authorized representative has been duly authorized to appear in the matter, the Courts and Tribunals will not entertain the said person to represent, as the assessee can always take a stand that the person who had appeared had not been authorized to appear. In the instant case, facts had to be adjudicated. We find that the order passed by the Commissioner of Wealth Tax (Appeals)-V, Chennai ("CWT(A)" for brevity), dated 26.08.2010, which was impugned before the Tribunal at the instance of the Revenue, has not elaborately gone into the facts, nor has the Assessing Officer done so while passing the Assessment Order dated 30.09.2005. Therefore, the duty cast upon the Tribunal became more onerous and it has done in-depth study of the nature of transactions done by the assessee. However, if the assessee had an opportunity to place their submissions before the Tribunal, the order would have been more elaborate and a speaking order and it would satisfy the principles of natural justice and the principle of audi alteram partem. In our considered view, this opportunity could have been granted to the assessee when they filed the Miscellaneous Petition, which was filed within the reasonable time.

7.Before us, elaborate submissions have been made by the learned counsel for the appellant/assessee as well as the learned Senior Standing Counsel for the respondent/Revenue.

8.The learned counsel for the appellant would place reliance on the decision of the Hon'ble High Court of Gujarat in the case of Commissioner of Wealth Tax v. Dr.Narayan T. Baddi [Tax Case No.TAXAP/540/2006 dated 16.06.2012] and submitted that the Court had taken note of and followed the decision of the Calcutta High Court in the case of Maynak Poddar (HUF) v. Wealth Tax Officer reported in (2003) 262 ITR 633, which has been taken note of by the CWT(A) while passing the order dated 26.08.2010.

9.The learned Senior Standing Counsel would submit that the decision of the High Court of Kerala in the case of Commissioner of Income-tax, Thiruvananthapuram v. Ponnamma Lakshmi Narayani Asiatic Export Enterprises reported in (2010) 324 ITR 278 (Kerala) would squarely apply to the facts and circumstances of the case, as the case pertains to the very same Assessment Year, which is subject matter of the present appeal, viz., 1998-99. The learned counsel for the appellant would submit that, factually the said decision is distinguishable.

10.As noticed above, the reason assigned by the assessee in the Miscellaneous Petition as to why they sought for adjournment, appears to be a reasonable explanation, more particularly, when the Revenue did not controvert the facts stated in the Miscellaneous Petition nor it was found to be a false statement. Therefore, we are of the view that an opportunity could have been granted to the assessee to place the factual position before the Tribunal for a more effective adjudication and decision on merits. Hence, on that ground alone, we are inclined to interfere with the order passed by the Tribunal, leaving the legal issues open to be decided by the Tribunal on remand.

11.For the above reasons, this Tax Case Appeal is allowed to the extent indicated and the order passed by the Tribunal in the Miscellaneous Petition, dated 16.03.2012, as well as the order dated 25.02.2011, are set aside and the matter is remanded back to the Tribunal for fresh consideration. Consequently, the substantial question of law No.1 is answered in favour of the appellant/assessee and the substantial questions of law Nos.2 and 3 are left open. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai, “C” Bench, Rajaji Bhavan,
Besant Nagar,
Chennai-90.

2.The Deputy Commissioner of Income Tax,
Company Circle – V(3),
Chennai – 600 034.

3.The Commissioner of Wealth Tax Appeals V,
121, Nungambakkam High Road,
Chennai-34.

4.The Wealth Tax Officer(OSD)
Company Circle V 3
121, Nungambakkam High Road,
Chennai-34.

+1cc to Mr.Ravikumar, Advocate, S.R.No.41929
+1cc to Mr.Sridhar, Advocate, S.R.No.42222

T.C.A. No.215 of 2013

MG(CO)
CB(17/09/2021)