IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal No.497 of 2020

Shri Ramesh Kumar (HUF) ...Appellant

Vs

The Income Tax Officer,
Non Corporate Ward - 9(5),
Chennai. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.06.2019 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai in I.T.A.No.828/Chny/2019 and ITA.No. 828/CHNY/2019 as against the order dated 31.01.2019 by the Officer of the Commissioner of Income - Tax (Appeals) - 10 in ITA.No. 14/17/18/CIT(A)-10 and as against the order dated 23.12.2016 by the Office of the Income Tax Officer - Non Corporate Ward - 9 (5) in PAN No.AAEHR 3984C for the Assessment year 2014-15.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.SIVAGNANAM,J)

This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 11.06.2019 made in I.T.A.No.828/Chny/2019 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2014-15.

2. The appellant/assessee has filed this appeal by raising the following substantial questions of law:

"1. Whether the Appellate Tribunal is correct in passing the exparte order by not granting adequate opportunity of hearing especially in the context of the legal requirement for the adherence to the principles of natural justice?

2. Whether the dismissal of the appeal on the technical ground of the presumed defect in the appeal fee paid/remitted is legally sustainable on the consideration of the limited powers vested with the Appellate Tribunal in dealing with the defective appeals and further on the consideration of the gross violation of the principles of natural justice?

3. Whether the claim for tax exemption u/s 10(38) of the Act is valid on the facts and in the circumstances of the case relating to the bonafide and genuine share transaction entered into by the appellant?"

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

4. The Tribunal, by the impugned order, has dismissed the appeal filed by the assessee on the ground of non-rectification of defects. Identical issue was considered by us in the case of M.Mukesh Kumar vs Income Tax Officer in T.C.A.No.2 of 2021 dated 04.01.2021. The operative portion of the judgment reads as follows:

> "4. It may not be necessary for us to go into the factual matrix, as the appeal filed by the assessee before the Tribunal was dismissed on the ground that the appeal was defective. From the defect memo, which was notified to the assessee, we find that the initial of the assessee was shown as 'I' instead of 'M' and owing to such a reason, the appeal was dismissed as defective by the impugned order. In fact, hearing of the appeal took place on 27.3.2019 and none appeared for the assessee. It is relevant to note that in the impugned order passed by the Tribunal, the initial of the assessee has been correctly shown as 'M'. Thus, the Tribunal itself rectified the mistake.

> 5. In any event, the mistake, being an insignificant or inadvertent error, ought to have been permitted to be rectified instead of dismissing the appeal on the ground that it was defective despite Rule 12 of the Income Tax (Appellate Tribunal) Rules, 1963 provides for such a procedure to be adhered to. Further, we are informed that the defect memo issued by the Registry of the Tribunal along with hearing notice and the papers were not returned earlier to the assessee or to their authorized representative.
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> 6. It is high time that the Tribunal evolves a procedure, by which, the defective papers are returned to the assessee or the Revenue and reasonable time can be granted for rectifying the defects. In fact, such a procedure is being followed in this Court, as a result of which, many of the minor defects were rectified and cases are numbered. Thus, considering the fact that the appeal was dismissed on a technical ground, which, in our opinion, appears to be on a hyper technical ground, we are inclined to interfere with the impugned order.
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> 7. Accordingly, the above tax case appeal filed by the assessee is allowed, the impugned order is set aside and the appeal is restored to the file of the Tribunal to be heard and decided on merits and in accordance with law. We direct that the name of the assessee shall be mentioned as 'M.Mukesh Kumar' in all the appeal papers and the assessee/his authorized representative shall be permitted by the Registry of the Tribunal to carry out the corrections and if necessary, clean copies of the appeal papers shall be made available. The substantial questions of law raised are left open. No costs."

5. We find that the above decision is squarely applicable to the case on hand. That apart, the Tribunal, while dismissing the appeal as being defective, has also touched upon the merits of the matter, which should not have been done. Moresoever, none appeared for the assessee. This is also one of the reasons for interfering with the impugned order. Therefore, we are inclined to allow the appeal and set aside the order of the Tribunal.

6. In the result, the Tax Case Appeal is allowed. The impugned order is set aside and the appeal is restored to the file of the Tribunal to be heard and decided on merits in accordance with law. Consequently, the substantial questions of law raised are left open. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

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

2. The Commissioner of Income Tax Appeals-10,
   Chennai 14.

3. The Income Tax Officer,
   Non Corporate Ward - 9(5),
   Chennai.

TCA.No.497 of 2020

SSN(CO)
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