

In the High Court of Judicature at Madras

Dated : 30.3.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal Nos.770 & 771 of 2018
& CMP.No.18581 of 2018

Principal Commissioner of Income
Tax 1, Coimbatore ...Appellant in both Cases

Vs

Shri.R.Elangovan ...Respondent in both cases

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 05.4.2018 made respectively in ITA.No.1199/ Chny/2017 and C.O.No.75/Chny/2017 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2013-14 and against the order of the Commissioner of Income Tax (Appeals) 18, Chennai-34, dated 23.01.2017, made in I.T.A.No.1125/15-16, and against the order of the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore-18, dated 03.02.2016 made in AADPE1841Q/CC-1/CBE/2015-16, and against the order of the Deputy Commissioner of Income Tax, Central Circle-1 Coimbatore, dated 13.08.2014 made in PAN/GIR No.AADPE1841Q.

For Appellant : Mr.T.R.Senthilkumar, SSC
assisted by Ms.K.G.Usharani, JSC

For Respondent : Mr.N.V.Narayanan for
Mr.N.V.Balaji

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant - Revenue and Mr.N.V.Narayanan, learned counsel appearing for the respondent.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 05.4.2018 made respectively in ITA.No.1199/ Chny/2017 and C.O.No.75/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench (for brevity, the Tribunal) for the assessment year 2013-14.

3. The Revenue has filed these appeals by raising the following substantial questions of law :

"i. Whether the Tribunal was right by holding the notice under Section 274 read with Section 271AAB as not valid when the assessee himself has comprehended the contents of the notice and filed replies to the said notice ?

ii. Whether the Appellate Tribunal was correct in holding that the notice under Section 274 read with Section 271AAB of the Act was not valid by quoting case laws related to Section 271(1)(c) of the IT Act, by ignoring the fact that no ambiguous provisions are present in Section 271AAB as available in Section 271(1)(c)?

iii. Whether the Tribunal erred in not applying the provisions of Section 292BB to the penalty levied when the contents of the governing section namely Section 271AAB and the assessment order passed under Section 153A read with Section 143(3) discuss only undisclosed income of the assessee ?

iv. Whether the Tribunal is right in ruling that the case of Manjunatha Cotton and Ginning Factory (KAR) to the facts of the case of the assessee, which are not identical? and

v. Whether, on the facts and circumstances and in law, the Tribunal has erred in not applying the ruling in the case of PCIT Vs. Sandeep Chandak [(2018) 93 Taxmann.com 405 (All.)] which is more identical to the issues of the assessee's case, which on assessee's SLP, the Hon'ble Apex Court has dismissed is reported in (2018) 93 Taxmann.com 406 (SC)?"

4. The short issue, which falls for consideration in these appeals, is as to whether the Tribunal was right in vacating the penalty imposed on the assessee under Section 271AAB of the Act.

5. Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the Revenue has elaborately referred to the dates and events and pointed out that the due date for the assessee to file the return of income for the assessment year under consideration namely 2013-14, the year, during which, the search and seizure operations were conducted, was 30.9.2013. Since no return was filed by the assessee on or before the due date, the Assessing Officer issued the notice under Section 142(1) of the Act on 09.12.2013. However, the assessee did not file the return of income beyond the specified date, which means due date of furnishing of return of income under Sub-Section (1) of Section 139 of the Act or the date, on which, the period specified in the notice issued under Section 153A of the Act for furnishing the return of income expires, as the case may be.

6. It is not clear as to on what date, the notice was received by the assessee and as to what was the time granted to the assessee by the Assessing Officer to file his return of income pursuant to the notice dated 09.12.2013.

7. Be that as it may, the regular assessment under Section 143(3) of the Act was completed on 13.8.2014, in which, it has been mentioned that penalty proceedings under Section 271AAB of the Act would be initiated separately. Pursuant to that, a notice was issued to the assessee, for which, the assessee filed his objections. The first and foremost objection was that the notice was vague and that it did not specify as to under which limb of the said provision, the Assessing Officer proposed to take action. The assessee also touched upon the merits of the case and sought to demonstrate as to how the penalty was not leviable.

8. The Assessing Officer did not agree with the stand taken by the assessee and held that the notice was clear since, in the notice, it had been stated that it was issued under Section 274 read with Section 271AAB of the Act and that there was nothing vague in it. With regard to the merits of the case, the Assessing Officer did not agree with the same and referred to certain portions of the assessment order and ultimately imposed penalty at 30% in terms of Clause (c) to Sub-Section (1) of Section 271AAB of the Act vide order dated 03.2.2016.

9. Aggrieved by that, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-18, Chennai-34 [for short, the CIT(A)]. The first ground raised by the assessee before the CIT(A) was that the penalty proceedings themselves were without jurisdiction since there were gross infirmities in the notice while initiating penalty proceedings and that this would vitiate the entire order. The assessee also made submissions on the merits of the case. The CIT(A) chose to proceed further on the

merits of the case and found that the Assessing Officer ought not to have imposed penalty at 30% and ought to have restricted to 10%.

10. Aggrieved by the order passed by the CIT(A) dated 23.1.2017, the Revenue filed an appeal before the Tribunal. The assessee filed a cross objection reiterating their stand that the notice was vague and consequently, the entire proceedings stood vitiated. The Revenue sought to sustain the order dated 03.2.2016 passed by the Assessing Officer. Ultimately, the Tribunal, by the impugned order, dismissed the appeal filed by the Revenue and allowed the cross objection filed by the assessee. Thus, the Revenue is before us by way of these appeals.

11. The argument of Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the Revenue is that the notice issued by the Assessing Officer while imposing penalty clearly stated that it was a notice issued under Section 274 read with Section 271AAB of the Act. Therefore, the assessee was aware that he had to face penalty proceedings initiated under Section 271AAB of the Act. That apart, the assessee submitted two replies and was also heard in person and thereafter penalty was imposed. Hence, it is submitted that the order passed by the Tribunal setting aside the penalty in its entirety is not sustainable. The learned Senior Standing Counsel has also referred to Sections 274 and 275 of the Act.

12. In support of his contention, the learned Senior Standing Counsel has placed reliance on the decision of the Allahabad High Court in the case of PCIT Vs. Sandeep Chandak [reported in (2018) 93 Taxmann.com 405].

13. Per contra, Mr.N.V.Narayanan, learned counsel appearing for the respondent - assessee would submit that the notice issued prior to initiation of penalty proceedings did not specify as to under which limb of Section 271AAB of the Act, the Assessing Officer proposed to levy penalty, that this defect goes to the root of the matter and vitiates the entire proceedings and that the Tribunal was right in allowing the assessee's cross objection. In support of his contention, the learned counsel for the assessee has placed reliance on the decisions of the Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory [reported in (2013) 359 ITR 565] and in the case of CIT Vs. SSA's Emerald Meadows [(2016) 73 Taxmann. Com 241] and also the decision of this Court, to which, one of us (TSSJ) was a party, in the case of Babuji Jacob Vs. ITO, Non Corporate Ward 1(2), Chennai [reported in (2021) 124 Taxmann.com 363].

14. In our considered view, the Tribunal is fully right in vacating the penalty on the ground that the notice was defective. The provisions of the Act have clearly laid down the procedure to be followed and adhered to while imposing the penalty. The proposal for such penalty proceedings was separately initiated upon completion of assessment and there may be cases where the assessee would not even contest the order of assessment. But, that would not preclude the assessee from challenging the penalty proceedings, as penalty proceedings are independent and the procedure required to be followed cannot be dispensed with.

15. As rightly pointed out by the learned counsel appearing for the assessee, Section 271AAB of the Act, which deals with penalty consists of three contingencies. Therefore, the Assessing Officer should point out to the assessee as to under which of the three clauses, he chooses to proceed against the assessee so as to enable the assessee to give an effective reply. Since the same has not been mentioned, the assessee has been denied reasonable opportunity to put forth their submissions. The Tribunal, in paragraph 5 of the impugned order, has verbatim reproduced the penalty notice and we find that the notice is absolutely vague and none of the irrelevant portions had been struck off nor the relevant portions had been marked or indicated. Hence, the Tribunal is right in observing that the penalty could not have been levied based on such defective notice and more particularly, when the assessee has been strenuously canvassing the jurisdictional issue from the inception.

16. In so far as the decision of the Allahabad High Court in the case of Sandeep Chandak is concerned, the factual position is slightly different. This decision is for the principle that where the assessee, in the course of search, makes a statement, in which, he admits the undisclosed income and specifies the manner, in which, such income has been derived, then the provisions of Section 271AAB of the Act would automatically get attracted. There can be no quarrel over this proposition. But, once the provisions get attracted, it is incumbent on the part of the Assessing Officer to specify as to under which clause in Section 271AAB(1) of the Act, he intends to proceed against the assessee. In the instant case, in the absence of such material in the penalty notice, it has to be held that the notice is defective.

17. The decisions of the Karnataka High Court in the cases of Manjunatha Cotton and Ginning Factory and SSA's Emerald Meadows and the decision of this Court in the case of Babuji Jacob clearly support our above conclusion. For all the above reasons,

we find no grounds to interfere with the common order passed by the Tribunal.

18. Accordingly, the above tax case appeals are dismissed confirming the common impugned order passed by the Tribunal. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

RS

To

- 1.The Income Tax Appellate Tribunal,
Chennai 'A' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals) 18,
Chennai-18.
3. The Assistant Commissioner of Income Tax,
Central Circle-I, Coimbatore-18.
4. The Deputy Commissioner of Income Tax,
Central Circle -I, Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.20958

+1cc to Mr.N.V.Balaji, Advocate SR.No.21536

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