IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal Nos.1383 and 1384 of 2010

Commissioner of Income Tax - I,
Tiruchirapalli. ... Appellant in both TCAs

Versus

The Lakshmi Vilas Bank Ltd.,
Salem Road, Kathaparai,
Karur. ... Respondent in both TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order dated 21.05.2010 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai, in MP.Nos.65 and 66/Mds/2010 in I.T.A.Nos.552 and 553/Mds/2009.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel in both TCAs

For Respondent : Mr.Vijayaraghavan

for M/s Subbaraya Aiyar in both TCAs

COMMON JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

These tax case appeals have been filed by the appellant/Revenue, challenging the common order dated 21.05.2010 passed by the Income Tax Appellate Tribunal, relating to the assessment years 2001-2002 and 2002-2003.

2. By order dated 14.02.2011, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

> "*(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in recalling its Appellate orders for the assessment years 2001-02 and 2002-03 to consider the ground of appeal raised by the assessee before it regarding the additions of Rs.4.45crores and Rs.5.87 crores respectively?*
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> *(ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the additions in question were deleted by the Commissioner of Income Tax (Appeals) in the appeals against the original assessment orders under section 143 (3) and therefore the Commissioner of Income Tax could consider the said issue in the orders under section 263 of the Act in respect of the reassessment orders under section 147 dated 31.12.2007 wherein the Assessing Officer has wrongly allowed the above deductions?"*

3. Insofar as the second substantial question of law is concerned, the learned senior standing counsel appearing for the appellant fairly submitted that this court by judgment dated 13.06.2022 in T.C.A. Nos.923 to 925 of 2010 in respect of the assessee's own case, decided the identical question of law against the Revenue in the light of the *decision of the Hon'ble Supreme Court in the case of* ***CIT v. Alagendran Finance Ltd. [(2007) 293 ITR 1 (SC)]***. The relevant passage of the said judgment can profitably be extracted below:

> "*The assessee company is a banking company, which filed its Return of Income for the assessment years 1999-2000, 2001-2002 and 2002-2003 on 28.03.2002, 29.10.2001 and 28.01.2002 respectively. The case was selected for scrutiny and notice under Section 143(2) of the Act came to be issued for the assessment years in question. Thereafter, assessment was completed under Section 143(3) read with Section 147 for the assessment years in question on 28.03.2002, 30.03.2004 and 27.08.2004 respectively. Subsequently, the Assessing Officer reopened the assessment for the years 1999-2000, 2001-2002 and 2002-2003 and passed orders under Section 143 (3) read with 147 of the Act on 26.12.2006, 31.12.2007 and 31.12.2007 respectively.*
>
> *3. Thereafter, the Commissioner of Income Tax issued show cause notices under Section 263 of the Act and passed orders by setting aside the 2nd assessment orders for the assessment years 1999-2000, 2001-2002 and 2002-2003 on 27.03.2009, 27.03.2009 and 27.03.2009 respectively.*
>
> *4. Challenging the aforesaid orders passed under section 263 of the Act, the assessee carried the matter by way of appeals to the Income Tax Appellate Tribunal, wherein, the question of limitation was raised as a preliminary issue on the premise that the principle of merger of original assessment with the reassessment order, does not apply, when the issues settled in the original assessment order remain untouched in the reassessment order. Consequently, the limitation to invoke jurisdiction under Section 263 of the Act in respect of the issues that stood resolved in the*

original assessment, ought to be reckoned from the date of original assessment. Agreeing with the said submission, the Tribunal allowed the appeals, holding that the assessments are barred by limitation by placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***CIT v. Alagendran Finance Ltd. [(2007) 293 ITR 1 (SC)]*** *wherein it was held as under:*

> *"25....We therefore, are clearly of the opinion that keeping in view of the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising his revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity"*

Aggrieved against the order of the Tribunal dated 18.12.2009, the appellant / Revenue preferred these tax case appeals.

5. We find that the order of the Tribunal holding that the exercise of power under Section 263 of the Act by the Commissioner of Income Tax is barred by limitation in terms of the judgment of the Hon'ble Supreme Court in the case of Alagendran Finance Ltd. (supra), does not warrant any interference."

4. In view of the above, the second substantial question of law is answered against the Revenue. Consequently, the first question of law is also decided against Revenue. Accordingly, these tax case appeals stand dismissed. No costs.

(R.M.D., J.)   (M.S.Q., J.)
04.07.2022

Internet : Yes
Index : Yes / No
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To

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

2. The Commissioner of Income Tax - I,
   Tiruchirapalli.

3. The Assistant Commissioner of Income Tax,
   Company Circle - I, Tiruchirapalli.

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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