IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.398 of 2023

The Commissioner of Income Tax,
Chennai. .. Appellant

Vs.

A.S.Thillainayagam,
Old No.2, New No.3, 7th Street,
Gopalapuram, Chennai – 600 086. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 17.08.2022 passed in I.T.A.No.102/CHNY/2022 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai.

For Appellant : Mr.J.Narayanaswamy

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

Heard the learned counsel for the appellant and perused the materials placed before this court.

2.This tax case appeal has been filed by the appellant challenging the order dated 17.08.2022 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.102/CHNY/2022 relating to the assessment year 2017-18, raising the following substantial question of law:

> *(i)Whether on the facts and circumstances of the case and in law, the Tribunal was right in setting aside the assessment assessing unexplained credit u/s 68 r/w section 115 BEE to the file of the assessing officer after giving a clear finding that the assessee failed to substantiate the receipts arising out of sale of land and further the credit worthiness of the alleged buyer was not proved and the burden of proof as required under law was not discharged by the assessee.*
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> *(ii)Whether on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that the assessee failure to discharge its onus of proving the credit worthiness of the creditor and genuineness of transaction will deem the credits as the assessee income for the purpose of the assessment of unexplained credit u/s 68 r/w section 115 BEE.*
>
> *(iii)Whether on the facts and circumstances of the case and in law, the Tribunal was right in setting aside the assessment to the file of the assessing officer without giving any finding that sufficient opportunity was not given to the assessee by the Assessing Officer and when there is a clear finding that the genuineness of the transaction were not proved by the assessee.*

3.According to the appellant / Revenue, for the assessment year 2017-18, the assessee / respondent made cash deposit of Rs.32.88 lakhs and cash withdrawal of Rs.165.03 lakhs from two bank accounts maintained by him. During the assessment proceedings, the assessee submitted that cash withdrawal was out of advance received on sale of land and he holds an average of Rs.1 crore as cash in hand. However, he did not produce any evidence, except one unregistered sale agreement dated 08.07.2016 executed in favour of one K.B.Kumar. Upon examining the documents and statement made by the assessee, the assessing officer observed that even after a lapse of 3 ½ years, the agreement did not fructify into sale and that, the buyer's financial capacity to pay the advance, does not support the genuineness of the transaction and he did not appear against the summons issued under section 131 and therefore, the transaction was held to be not genuine and used as a colourable device to route the assessee's unaccounted income. Ultimately, the assessing officer passed the assessment order on 26.12.2019 determining the taxable income at Rs.2,58,64,490/- as against the returned income of Rs.8,64,490/- by holding the amount of Rs.2.50 crores received towards advance for sale of land as unexplained cash credit under section 68, which would be taxable as per section 115BBE. The order of the assessing officer was confirmed by the CIT(A) by order dated 22.12.2021. Challenging the same, the respondent went on further appeal before the ITAT, Chennai, which, inturn, allowed the appeal by remanding the matter to the Assessing Officer for denovo adjudication after affording reasonable opportunity of hearing to the respondent. Therefore, the appellant is before this Court with the present appeal.

4.It is the specific contention of the learned counsel for the appellant that the Tribunal, while agreeing with the observations of the lower authorities, raising doubt about the genuineness of the transactions entered into by the assessee, erred in remitting the matter back to the assessing officer for denovo consideration by the order impugned herein, which is perverse and against the law and hence, the same will have to be set aside.

5.It is seen from the order impugned herein that taking note of the facts and circumstances of the case that the advances have been received through banking channels and the assessee has produced payment receipts in the subsequent years, the Tribunal, in order to provide an opportunity to the assessee to prove the source of deposits and to demonstrate the application of funds, has set aside the orders of the lower authorities and remanded the matter to the assessing officer for denovo consideration. This court is of the view that in the event of providing an opportunity to the assessee, there may be a chance to substantiate his claim by producing material evidence, which cannot be taken away, without any valid ground raised on the side of the appellant. Therefore, the order so passed by the Tribunal does not require any interference.

6.In such perspective of the matter, the Tax Case Appeal filed by the Revenue deserves to be dismissed and is accordingly, dismissed. No costs.

[R.M.D., J.] [M.S.Q., J.]
25.07.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

To

1.The Vice President,
Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.The DCIT, Central Circle – 1(3),
Chennai.

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