IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

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

T.C.A.No.180 of 2022

K.Loganathan .. Appellant

Vs.

Income Tax Officer,
Business Ward IV(1),
Chennai – 600 034. .. Respondent

Tax Appeal filed under section 260A of the Income Tax Act, 1961, against the order dated 25.01.2017 passed in ITA.No.2280/Mds/2014 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai.

For Appellant : Ms.T.V.Muthu Abirami

For Respondent : Mr.Karthik Ranganathan
Standing Counsel

JUDGMENT

(Judgment of the court was delivered by R. Mahadevan, J.)

Challenging the order dated 25.01.2017 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in ITA.No.2280/Mds/2014, the appellant / assessee has filed the present tax case appeal, raising the following substantial questions of law:

(i)Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in dismissing the appeal in limine without going into the merits of the case?

(ii)Whether the Income Tax Appellate Tribunal was justified in exercising the power given under section 254 of the Income Tax Act, 1961 in dismissing the appeal in limine without appreciating the scope of the aforesaid provisions that the same should be disposed of on merits?

(iii)Whether the order of the Income Tax Appellate Tribunal is not in violation of the principles of natural justice when the Tribunal refused to grant adjournment sought by the appellant, for the only reason that the vakalath/ authorization was not on record?

2.According to the appellant, he is an individual in the business of real estate mediation, receiving commission on facilitating transactions in the immovable properties. When he submitted the Income Tax Returns for the assessment year 2007-08, the Assessing Officer, after scrutiny of the same, made some additions and raised a demand of Rs.11,83,250/-. On appeal, the Commissioner of Income Tax (Appeals) confirmed the additions made by the Assessing Officer. Aggrieved by the same, the appellant filed an appeal before the Income Tax Appellate Tribunal, Chennai and the same was dismissed for non-prosecution. Challenging the same, he has preferred the present appeal.

3.The learned counsel appearing for the appellant submitted that the Tribunal has erred in dismissing the appeal for non-prosecution rather it ought to have decided the appeal on merits, since the matter requires to be decided only after hearing the arguments on the side of the appellant in a detailed manner. The learned counsel further submitted that out of the demand amount Rs.11,83,250/-, the Department has recovered a sum of Rs.9,00,000/- from the appellant and this statement has been acceded to by the learned Standing Counsel appearing for the respondent.

4.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, more particularly, that out of the demanded amount, a sum of Rs.9,00,000/- has already been recovered by the Department from the appellant, we are inclined to remit the matter to the Tribunal for consideration. In such view of the matter, the impugned order passed by the Tribunal is set aside and the matter is remitted to the Tribunal to pass appropriate orders, on merits, after providing an opportunity of being heard to the appellant. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Accordingly, all the substantial questions of law raised herein are left open.

5.The Tax Case Appeal stands disposed of in the above terms. No costs.

(R.M.D., J.)　　(M.S.Q., J.)
28.11.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
nsd

To

1.The Accountant Member,
Income Tax Appellate Tribunal,
Madras 'B' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals-VIII),
Chennai.

3.The Income Tax Officer,
Business Ward IV(1),
Chennai – 600 034.

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

nsd

T.C.A.No.180 of 2022

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