IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE P.VELMURUGAN

Review Application No.89 of 2022

M/s.Silver Shoes Pvt. Ltd.,
T-62, Anna Nagar,
Chennai - 600 040. ... Applicant

Vs.

1.The Principal Commissioner of Income Tax-6,
Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Income-tax Officer,
Corporate Ward-6(3),
Room No.706, 7th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai - 600 034.

3.K.Inbasagaran ... Respondents

Review Application filed under Order 47 Rule 1 r/w Section 114 of C.P.C. to review the order dated 03.02.2020 made in W.A.No.1183 of 2018.

For Petitioner : Mrs.R.Maheswari

For Respondents : Mr.A.N.R.Prathap
Senior Standing Counsel

ORDER

(Order of the Court was made by R.Mahadevan, J.)

According to the review applicant / 2nd respondent in WA.No.1183 of 2018, during the search conducted in the premises of the third respondent on 13.09.1993, some incriminating materials and cash about Rs.30,18,650/-, US Dollars, Gold Biscuits, Fixed Deposits, etc., were recovered. Pursuant to the same, the department registered a case in Spl.CC No.16 of 1997 on the file of the Special Judge I, (XI Additional Judge, City Civil Court) Chennai, which ended in conviction. But on appeal, the third respondent was acquitted from the charges and the appeal filed by the Department before the Hon'ble Supreme Court as against the same, ended in dismissal. Thereafter, the department passed an order dated 30.06.2016 for refund of Rs.17,14,640/- in favour of the third respondent herein. Stating that the refund has to be given only to the review applicant as the seized assets were assessed in their hands, the third respondent filed a writ petition in WP No. 35234 of 2016 to quash the said order dated 30.06.2016 and seek consequential direction to the department to reissue the refund order as per law. The learned Judge, by order dated 13.07.2017, disposed of the said writ petition, directing the department to reissue the refund order in favour of the review applicant herein. Aggrieved by the same, the department preferred an appeal in WA No.1183 of 2018, which by judgment dated 03.02.2020, was partly allowed in the following terms:

> *"10. In fine, however, the learned Single Judge failed to consider the above and directed the appellants to pass refund*

> *order in favour of the second respondent, which warrants interference of this Bench. It is not proved that all the seized properties were assessed in the name of the second respondent. Therefore, the order passed by the Single Judge is set aside to that extent alone. Hence the second appellant is directed to verify as to whether the seized assets have been shown in the returns filed by the wife of the first respondent at any point of time. If it is so, the second appellant is directed to pass orders in accordance with law, after verifying the returns filed by the wife of the first respondent, if not, the appellants are directed to take action against the wife of the first respondent in accordance with law for not showing assets in her returns and not paying the income tax. Further the Department of Commercial Tax and the Department of Wealth Tax, are directed to take action against the wife of the first respondent for selling the products without any bill and amassing wealth."*

Seeking to review the aforesaid judgment, the review applicant, which is the second respondent in the writ appeal, is before this court with the present review application stating *inter alia* that the writ appeal was filed by the department only for the limited question of law relating to applicability of section 132 B(3) of the Income Tax Act. However, without considering the fact that the wife of the third respondent has already been subjected to the long process of proceedings in the matter of the seized assets, the Division Bench had traversed beyond the limited question of law, on the wrong premise that the wife of the third respondent was not subjected to the income tax proceedings and passed the impugned judgment against her, who was not at all a party to the writ proceedings.

2.Though the learned counsel for the applicant reiterated the grounds made in this review application, she ultimately submitted that it would suffice, if the review applicant is permitted to go before the authority concerned as directed by the Division Bench in its judgment dated 03.02.2020 passed in W.A.No.1183 of 2018, more particularly, in paragraph No.10, and produce all the required documents relating to the disputed assessment years, to substantiate their claim. It is also reported by the learned counsel that the wife of the third respondent viz., Vijaya Inbasagaran, died on 15.10.2022 and hence, her legal heirs may be permitted to approach the authority concerned for refund of claim, if any.

3.The learned senior standing counsel appearing for the respondents / Income Tax Department, has no serious objection for granting such relief to the review applicant.

4.In view of the above, liberty is granted and this review application stands disposed of accordingly. No costs.

[R.M.D, J.]   [P.V, J.]
03.08.2023

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

To

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