IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.06.2023

CORAM

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

T.C.A.No.286 of 2023

Sengoda Gounder Natarajan .. Appellant

Vs.

The Income Tax Officer
Ward 2, Income Tax Department
Namakkal .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 12.05.2023 in M.A.No.68/CHNY/2023 (ITA No.1013/CHNY/2022) on the file of the Income Tax Appellate Tribunal, “C” Bench, Chennai and to set aside the same.

For Appellant : Mr.S.Sridhar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel

JUDGMENT

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

Challenging the order dated 12.05.2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai, in M.A.No.68/CHNY/2023 (ITA No.1013/CHNY/2022) for the assessment year 2017-2018, the appellant / assessee has filed the present appeal.

2. The brief facts of the case would run thus:

2.1. For the assessment year 2017-2018, the Assessing Officer completed the assessment under Section 144 of the Income Tax Act, 1961 (for brevity "the Act") on 17.10.2019 determining the taxable total income at Rs.20,48,640/- by making an addition of Rs.11,56,900/- in treating the cash deposits as unexplained money in terms of Section 69-A of the Act and further making an addition of Rs.8,91,740/- as business income of the appellant by estimating the profit at 8% of the total turnover of the business at Rs.1,11,46,758/- by invoking the provisions of Section 44AD of the Act.

2.2. Challenging the order passed by the Assessing Officer, the appellant preferred an appeal in terms of Section 246-A of the Act, and the

First Appellate Authority, by order dated 07.11.2022, dismissed the appeal *ex parte*.

2.3. Aggrieved by the order passed by the First Appellate Authority, the appellant went on further appeal before the Income Tax Appellate Tribunal and the same was also dismissed *ex parte* by order dated 24.01.2023, the relevant portion of which reads as under:

> *"3. On being aggrieved, the assessee is in appeal before the Tribunal. When the appeal was taken up for hearing, none appeared on behalf of the assessee or any adjournment petition filed. Hence, we proceed to decide the appeal on merits after hearing the ld. DR.*
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> *4. We have heard the ld. DR, perused the materials available on record and gone through the orders of authorities below. Against the assessment order under Section 144 of the Act, the assessee preferred an appeal before the ld. CIT(A). Since the assessee had not filed any details in support of the grounds of appeal, the ld. CIT(A) dismissed the appeal by observing as under:*
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>> *"3.Notice u/s 250 of the I.T. Act was issued to the appellant on 05.03.2022 asking the appellant to file details in support of the grounds of appeal on or before 21.03.2022. However, the appellant did not reply to the notice issued. Accordingly, a 2nd notice u/s 250 of the I.T. Act was issued on to the appellant on 07.04.2022 asking the appellant to file details in support of the grounds of appeal on or before 22.04.2022. However, appellant again did not reply to the 2nd notice too till date. Thereafter, a 3rd notice u/s 250 of the I.T. Act was issued on to the appellant on 03.10.2022 asking the appellant to file details in support of the ground sof appeal on or before 18.10.2022. In this notice, the appellant was duly informed that this is the final opportunity granted. However, appellant again did not reply to the 3rd notice too till date. In absence of details in support of GOA filed, appeal cannot be decided. The non compliance to the 3 notices issued shows that the appellant is not interested in pursuing the appeal. The order of AO is upheld and the appeal stands DISMISSED."*

Since the assessee has not filed any details in support of the grounds of appeal filed by the assessee, we find no infirmity in the order passed by the ld. CIT(A). Thus, the appellate order passed by the ld. CIT(A) stands confirmed."

2.4. Thereafter, the appellant filed a Miscellaneous Petition in terms of Section 254(2) of the Act read with Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 (for brevity "the Rules") to recall the *ex parte* order, before the Income Tax Appellate Tribunal.

2.5. The Tribunal dismissed the aforesaid miscellaneous application, *vide* order dated 12.05.2023, which is impugned herein.

3. The learned counsel for the appellant submitted that without serving any notice of hearing to the appellant, the Tribunal has passed the original order on 24.01.2023 and the same has not been adjudicated, while passing the order dated 12.05.2023 impugned in this appeal, which is arbitrary, illegal and in violation of the principles of natural justice. Stating so, the learned counsel prayed for an opportunity to contest the case on merits.

4. On the other hand, the learned Senior Standing Counsel appearing for the respondent submitted that the appellant has neither

appeared before the First Appellate Authority nor before the Tribunal on the dates fixed for hearing and hence, there is no error apparent in the impugned orders of the Tribunal.

5. Considering the submissions made by the learned counsel on either side and taking note of the facts and circumstances of the case, more particularly, that the appellant has not at all made his submissions before either of the authorities, this court, in the interest of justice, is inclined to provide a last opportunity to the appellant to place his oral and written submissions to the Tribunal. As such, the order dated 12.05.2023 passed by the Tribunal in M.A.No.68/CHNY/2023 (ITA No.1013/CHNY/2022) is set aside and the matter is remanded to the Tribunal for fresh consideration, after providing an opportunity of hearing to the appellant by giving advance notice. In the event of the failure of the appellant to appear before the Tribunal on the date of hearing that will be fixed by the Tribunal, appropriate orders be passed, on merits and in accordance with law. Such an exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, this Tax Case appeal stands disposed of. No costs.

[R.M.D., J.] [M.S.Q., J.]
14.06.2023

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

To
1.The Income Tax Officer
Ward 2, Income Tax Department
Namakkal

2.The Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre, Delhi

3.The Judicial Member
The Income Tax Appellate Tribunal
"C" Bench, Chennai.

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

nsd

T.C.A.No.286 of 2023

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(1/2)