IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.352 of 2023

The Principal Commissioner of
Income Tax, Trichy. ... Appellant

Versus

M/s.Raja Transports,
No.34, Trichy Main Road,
Ariyalur - 621 704 ... Respondent
(PAN No.AAEFR4385H)

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 22.02.2023 in ITA No.722/Chny/2020.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel assisted by
Mrs.S.Premalatha,
Junior Standing Counsel

For Respondent : Mr.S.Sridhar

JUDGMENT

(Judgment was delivered by **R.MAHADEVAN, J.**)

Heard the learned counsel on either side and perused the materials available on record. By consent, this tax case appeal is taken up for final disposal at the stage of admission itself.

2. This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 22.02.2023 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in ITA No.722/Chny/2020, relating to the assessment year 2014-15, raising the following substantial questions of law:-

> *"1. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that reopening of assessment under Section 147 is only change of opinion and hence bad in law?*
>
> *2. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the reopening of assessment under Section 147 is only change of opinion on the basis of factual error pointed out by the Internal Party is not valid?"*

3. The issue on hand pertains to reopening of assessment for the Assessment Year 2014-2015. The Assessing Officer initiated reopening proceedings under Section 147 by issuing a notice under Section 148, alleging that the assessee firm had not deducted TDS as required under Section 194(C) on the entire hire charges of Rs.14,78,95,505/-. The Assessing Officer disallowed 30% of the charges, amounting to Rs. 4,43,68,652/- under Section 40(a)(ia) and has completed the reopened assessment on 30.12.2019.

4. The assessee, being aggrieved by the reopening of assessment order, preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Trichy [CIT(A)]. The CIT(A) allowed the appeal of the assessee and annulled the assessment holding that reopening of the assessment did not meet the basic requirements set out in Sections 148 to 151 of the Income Tax Act. While so, the CIT(A) opined that the Assessing Officer's action to reopen the assessment merely to verify certain details, could not be considered as valid ground for reopening the assessment.

5. Being dissatisfied with the order of the Commissioner of Income Tax (Appeals)-I, Trichy, the Revenue filed an appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT, by order dated 22.02.2023, dismissed the appeal of the revenue holding that reopening of the assessment was purely based on a change of opinion. Therefore, this appeal by the Revenue.

6. The main contention of the learned senior standing counsel for the appellant is that the ITAT erred in considering the reopening of the assessment under Section 147 as a mere change of opinion, relying on the judgment of the Supreme Court in ***CIT v. Kelvinator India Limited*** *[320 ITR 561 (SC)]* and that, the ITAT failed to appreciate the validity of reopening the assessment based on a factual error pointed out by the internal audit.

7. It is seen that the assessee in this case is engaged in the transport contract business and claimed expenses amounting to Rs.14,78,95,505/- in the returns filed. The Assessing Officer sought an explanation from the assessee regarding the substantial expenses claimed under the category "other expenses" in the Profit and Loss account. In response, the assessee's authorized representative submitted a letter stating that the expenses were related to transport contracts for transporting gypsum and cement to the companies. It was further explained that the expenses were included under the head "other expenses" due to the absence of a separate column for such expenditures in the returns. Upon careful examination of the documents and details provided by the assessee along with the IT statement, the Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act on 26.10.2016. The assessment order explicitly stated that the Assessing Officer had examined all the documents and details submitted by the assessee and accepted the income returned. Thus, it is evident from the assessment order that the Assessing Officer had already scrutinized the expenses claimed by the assessee during the original assessment. While so, reopening the assessment solely on the basis of an audit objection amounts to a clear case of change of opinion, as observed by the Tribunal.

8. It is settled law that the Assessing Officer must have valid reasons to believe that the income has escaped assessment due to the assessee's failure to

disclose material facts necessary for assessment. In the present case, reopening the assessment by the Assessing Officer without any substantive basis or new material would only tantamount to a change of opinion and it is not at all a valid ground for reopening. Therefore, the Tribunal has rightly held that reopening the assessment under Section 147 is indeed a change of opinion, which is not permissible under law, in the light of the judgment of the Apex court in ***CIT V. Kelvinator India Ltd.*** *(cited supra).* Thus, this court finds no infirmity in the order impugned herein, warranting interference.

9. Accordingly, this tax case appeal is dismissed. No costs.

(R.M.D., J.) (M.S.Q., J.)
06.07.2023

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

To
1. The Income Tax Appellate Tribunal, 'A' Bench,
   Chennai.

2. The Principal Commissioner of
   Income Tax, Trichy.

3.The Deputy Commissioner of Income Tax,
   Circle 1(1), Trichy.

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

r n s

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