IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM:

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

Tax Case Appeal No. 503 of 2023
and
C.M.P. No. 22325 of 2023

Mohanasundaram Saravanan ... Appellant

Versus

1.The Principal Commissioner of Income Tax,
Chennai – 4,
Room No. 301, Wanaparthy Block,
III Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Income Tax Officer,
Non-corporate Ward 8(5)
Room No. 715, Wanaparthy Block,
VII Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondents

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai dated 17.05.2023 in I.T.A. No. 1059/CHNY/2022.

For Appellant : Mr. P. Gnanasekaran

For Respondents : Mrs. V.Pushpa for Mr.Anu Ganesan, Standing Counsel

JUDGMENT

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

This Appeal has been filed against the order dated 17.05.2023 passed by the Income Tax Appellate Tribunal "B" Bench, Chennai in I.T.A. No. 1059/CHNY/2022, relating to the assessment year 2017-18.

2. The brief facts of the case are as follows :

(i) The appellant / assessee is an individual deriving income from house property, sale of construction and building materials and other sources. During the previous year relevant to the assessment year 2017-18, he had sold a residential house and had derived capital gains. For the assessment year 2017-18, he could not file return of income within the time allowed under Section 139 (1) or (4) of the Income Tax Act, 1961 (in short, "the Act"). While so, he received a notice dated 05.08.2019 issued under Section 142(1) of the Act, whereby he was called upon to disclose the details of the cash deposit made by him during demonetization period. The appellant sent a detailed reply dated 09.09.2019 explaining the source for the cash deposit as sale proceeds of the property which was deposited in his bank accounts. It is stated by the appellant that the 2nd respondent had accepted his explanation.

(ii) Subsequently, the appellant had filed his return of income on 10.12.2019 in which, he admitted an income of Rs.73,00,200/- which included capital gains of Rs.58,03,763/- on the sale of residential property. However, the Assessing Officer *vide* assessment order dated 28.12.2019 recomputed the capital gains and determined it as Rs.1,81,70,256/- as against Rs.58,03,763/- claimed by the appellant. It is stated that the reason for difference in the amount computed was that the respondent disallowed the following two expenditures incurred by the appellant:

(a)An amount of Rs. 27,00,000/- was paid through cheque by the appellant to one Mrs. Jambukeswari who is the appellant's father's sister for compromise of a suit initiated by her against the appellant and others claiming title over the property which was sold by the appellant. This expenditure was incurred for removal of encumbrance and is for the purpose of transfer of property which is an admissible deduction. However, the Assessing Officer disallowed the claim on the ground that there was no satisfactory evidence filed to substantiate the same.

(b)An amount of Rs. 96,66,493/- was incurred towards cost of building constructed by the appellant in the lands sold by him, which is an admissible deduction. However, the same was disallowed on the ground that the vouchers did not contain the signature of the receiver and were treated to be self made vouchers.

(iii) Thereafter, the appellant was issued with notice under Section 263 of the Act by the 1st respondent for revising the assessment order dated 28.12.2019 on the ground that the same is detrimental to the interest of revenue as the Assessing Officer had permitted exemption under Section 54 of the Act, while exemption could have been permitted only under Section 54F of the Act as only land without building was sold. After hearing the appellant and upon considering the materials available, the first respondent by order dated 18.03.2022, set aside the order passed by the Assessing Officer with a direction to him to revise the assessment, after hearing the appellant. Aggrieved by the order passed by the first respondent, the appellant preferred an appeal in ITA No. 1059/Chny/2022 before the Income Tax Appellate Tribunal, Chennai. However, the Tribunal upheld the order passed by the first respondent, by the order impugned herein. Therefore, this tax case appeal came to be filed at the instance of the appellant / assessee.

3.The following substantial questions of law have been raised in this appeal:

> *(i)Whether the Income Tax Appellate Tribunal is perverse in not considering the facts and circumstances placed which clearly prove the transactions were genuine, bonafide and proper explanations were presented to the Assessing Officer by way of documentary evidence?*
>
> *(ii)Whether the order of the Income Tax Appellate Tribunal in ignoring the basic facts which were available before both the Principal Commissioner of Income Tax as well as the Assessing Officer tantamount to Ex-facie perversity?*
>
> *(iii)Whether the impugned order or the Hon'ble Tribunal in having failed to note that the invoking of provisions of section 263 of the I.T.Act, 1961 by the first respondent is bad in law and that the Hon'ble Tribunal ought not to have set aside the order of the first respondent on this sole ground?*
>
> *(iv)Whether the impugned order of the Tribunal is correct and sustainable in view of the fact that the assessment order of the Assessing Officer, involving the very same issue viz., computation of capital gains is subject matter of appeal before the Commissioner of Appeals (Faceless) and*

therefore, the Principal Commissioner of Income Tax is not justified in invoking the provisions of section 263 of the Income Tax Act?

(v)Whether the order of the Tribunal is sustainable in having failed to note that the fact that the order of the Assessing Officer passed under section 263 is in gross violation of provisions of clause (c) of the explanation to section 263 of the Income Tax Act and is not therefore liable to be set aside?

(vi)Whether the impugned order of the Tribunal is sustainable in confirming the findings of the Principal Commissioner of Income Tax is holding that the appellant is entitled to claim exemption under section 54 F only and not under section 54 of the Act especially when the issue is subjudice before the appellate authority by way of statutory appeal?

(vii)Whether the impugned order is sustainable in view of the fact that the Tribunal had grossly erred in failing to note that both the Principal Commissioner of Income Tax as well as the Assessing Officer having erroneously passing the respective orders without complying with the mandatory provisions of the Income Tax in the sense that both have disregarded the mandatory directions in the nature of circulars and have committed an act of utter disregard to the mandatory guidelines?

(viii)Whether the order of the Tribunal is legally sustainable in the backdrop of the fact that the Tribunal in having remitted the matter back to the Assessing Officer to compute the capital gains afresh any useful purpose would be solved since the matter was considered at length after profound inquiry and all necessary documents were submitted by the assessee pertaining to the respective assessment years and no fresh material to be produced to arrive at a different conclusion?

(ix)Whether the order of the Hon'ble Tribunal is sustainable in view of the fact that when a statutory appeal had already been filed before the

Commissioner (Appeals) against the order of the Assessing Officer by exercising the statutory indefeasible right of assessee and the same is pending for adjudication, and in the event of the assessing succeeding in the appeal, what would be the consequences of the Assessment Ordere passed by the assessing officer and the orders of the Principal Commissioner of Income Tax?

(x)Whether the order of the Tribunal is correct and sustainable in view of the fact that in the event of an order passed by the statutory appellate in favour of the appellant / assessee, would not the chaotic circumstances and consequences flowing from such an order would result in multiple legal proceedings striking at the very root of Revenue Laws and jurisprudence?

(xi)Whether the order of the Hon'ble Tribunal is sustainable in view of the fact that the order had deprived the assessee of his indefeasible right of conducting statutory appeal as contemplated by the Income Tax Act 1961 and the provisions of Constitution of India?

4.Heard both sides and perused the records.

5.It appears that for the assessment year in question, there are two parellel proceedings against the same order of assessment passed by the Assessing Officer viz., (i)an appeal was filed by the appellant / assessee against the order of assessment passed under section 144 of the Act; and (ii) a revision proceedings was initiated by the Principal Commissioner of Income Tax, Chennai, under section 263 of the Act. The present tax case appeal arises out of the challenge to the order passed in the revisional proceedings initiated against the appellant / assessee and the Tribunal upheld the order dated 18.03.2022 passed by the Principal Commissioner of Income Tax, in directing the Assessing Officer to recompute the taxable capital gain under section 54F and pass revised assessment order, after providing opportunity to the assessee. It is submitted on the side of the appellant / assessee that the appeal filed against the order of assessment passed by the Assessing Officer is pending adjudication before the appellate authority. In such circumstances, this court is of the view that the parties need not agitate the factual matrix in this appeal and it would be appropriate to raise all the grounds raised herein before the appellate authority, with whom the appeal is pending, in order to avoid multiplicity of proceedings.

6.In such view of the matter, the substantial questions of law involved herein are left open to be decided by the appellate authority with whom the appeal against the assessment order passed under section 144 of the Act, is pending. Accordingly, the appellate authority shall consider the same along with the grounds raised in the appeal and pass appropriate orders, on merits and in accordance with law, after providing due opportunity of personal hearing to the appellant / assessee, without being influenced by any of the observations made by the Tribunal, within a period of twelve (12) weeks from the date of receipt of a copy of this judgment. The appellant / assessee is at liberty to raise all the grounds before the appellate authority with supportive materials, at the time of personal hearing.

7.This tax case appeal stands disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

(R.M.D.,J) (M.S.Q.,J)
06.11.2023

ay
Index:Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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