IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2024

CORAM

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

Tax Case Appeal No. 28 of 2024

Duraisamy Chettiar Balasubramanian
159-C Kamarajar Salai
Madurai 625 009
PAN : AHDPB3779M .. Appellant

Versus

The Principal Commissioner of Income Tax
Madurai-1
CR Building, 2, V P Rathinasamy Nadar Road
Viswanathapuram
Madurai 625 002 .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 13.09.2023 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai, in I.T.A.No.352/Chny/2022.

For Appellant : Mr.G.Tarun
for Mr.S.Sridhar

For Respondent : Mr.J.Narayanaswamy
Senior Standing
Counsel

JUDGMENT

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

This Tax Case Appeal arises from the order dated 13.09.2023 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai, in I.T.A.No. 352/Chny/2022, relating to the assessment year 2017-18, by raising the following substantial questions of law:

> *“1.Whether the Appellate Tribunal is correct in confirming the revision order passed under Section 263 of the Act by the PCIT, Madurai-1/ respondent in view of narrow scope of such proceedings envisaged under the Act ?*
>
> *2.Whether the Appellate Tribunal is correct in confirming the revision order passed by the PCIT, Madurai-1/respondent despite the exhaustive consideration and examination of the issues proposed in the show cause notice dated 05.01.2022 in the original assessment order dated 05.12.2019 by the jurisdictional Assessing Officer, establishing the clear attempt on the part of the respondent in reviewing the limited scrutiny assessment ?*
>
> *3.Whether the Appellate Tribunal is correct in confirming the revision order passed under section 263 of the Act despite the non satisfaction of both the conditions envisaged in Section 263 of the Act, namely error in the assessment order and the said error causing prejudice to the interest of the revenue concurrently ?*
>
> *4.Whether the power of revision can be extended for interfering with the conclusions reached in the assessment orders on the issues for which the selection of returns of income for limited scrutiny within the scope of Section 263 of the Act and the acceptance of such issues in favour of the appellant by the JAO ?*
>
> *5.Whether the Respondent is empowered to revisit the issue considered and accepted in the assessment order by*

stretching the power of revision to the power of review ?

6.Whether the Appellate Tribunal is justified in going into the factual aspects, namely the production of cash flow statement by overlooking the limited issue of validity of jurisdiction assumed by the respondent for passing the revision order under Section 263 of the Act ?

7.Whether the power of revision under Section 263 of the Act can be stretched into the power of appellate jurisdiction by recoding perverse findings of facts without calling for/without examining the assessment records physically ?"

2. The appellant/assessee has submitted his return of income on 04.08.2017, for the assessment year 2017-2018, declaring a taxable total income of Rs.2,88,730/-. The Assessing Officer, on scrutiny of the Return of Income, issued a notice under Section 143 (2) dated 17.08.2018 and called for details pertaining to the genuineness and source of cash deposits made during the demonetisation period namely 2016-2017. In response, the appellant submitted his explanation on 05.12.2019. The Assessing Officer completed the assessment under Section 143 (2) of the Income Tax Act by passing an order on 05.12.2019 thereby making an addition of Rs.2,64,242/- towards short term capital gains in consequence of the sale of land at Rs.3,00,241/- and thus assessed the total taxable income at Rs.5,52,972/- .

3. While so, three years after completion of the assessment on 05.12.2019, the respondent issued the notice dated 05.01.2022 proposing to set

aside the original assessment order, as contemplated under Section 263 of the Act, on the ground that it is erroneous and prejudicial to the interest of the revenue. The appellant submitted his detailed explanation and requested to drop all further proceedings under Section 263 of the Act. However, the respondent, without considering the detailed explanation offered by the appellant, passed the revised order dated 19.03.2022 under Section 263 of the Act, by setting aside the order of assessment dated 05.12.2019 of the assessing officer. Aggrieved by the order dated 19.03.2022, the appellant preferred an appeal before the Income Tax Appellate Tribunal, "C" Bench, Chennai. The Tribunal dismissed the appeal by order dated 13.09.2023. Aggrieved by the same, the present Tax Case Appeal is filed by the appellant.

4. The learned counsel for the appellant/assessee submitted that the Tribunal erred in confirming the revision order dated 19.03.2022 passed by the respondent. According to the learned counsel, the Tribunal failed to appreciate the twin conditions prescribed for assuming jurisdiction under Section 263 of the Act and therefore, the order passed by the respondent is without jurisdiction. The distinction between the concept of review and the revision under the Act was completely overlooked and brushed aside by the respondent and it ought to have been interfered with by the Tribunal. It is

further submitted that there was no doubt on the part of the respondent as well as the Assessing Officer about the availability of cash flow statement for explaining the source of cash deposits, while so, the non-furnishing of cash flow statement by the appellant, as observed by the respondent as well as Tribunal, would not be fatal to the claim of the appellant/assessee. The source for the cash deposits was suspected by the respondent without any basis. It is needless to mention that suspicion, however strong, would not automatically justify the assumption of jurisdiction for the respondent to pass the revised order. The Tribunal also, in para No.6 of the order dated 13.09.2023, erroneously concluded that the assessment order is cryptic and unclear as to how the cash flow statement was verified by the Assessing Officer and therefore the assessment order is erroneous. The learned counsel for the appellant vehemently contended that without considering any of the points raised in the explanation dated 12.01.2022 submitted by the appellant, the respondent has passed the revised order, which was also confirmed by the Tribunal by the order impugned in this appeal. The learned counsel for the appellant therefore prayed for allowing this Tax Case Appeal and to restore the order of assessment passed by the Assessing Officer.

5. On the other hand, the learned Senior Standing Counsel for the

respondent submitted that the respondent is empowered to revise the assessment proceedings in exercise of the power conferred under Section 263 of the Act. The respondent clearly indicated that the order of assessment is detrimental to the interest of revenue and accordingly, issued a show cause notice to the appellant-assessee to submit as to why the order of assessment be not revised. The appellant/assessee also submitted his explanation on 12.01.2022 in detail. On scrutiny of the explanation offered by the appellant/assessee, the respondent passed the revised order dated 19.03.2022. In the revised order, the respondent had specifically concluded that the Assessing Officer has omitted to verify the source for the cash deposit of Rs.44,60,000/- made by the appellant/assessee. The respondent also noted that out of the total deposit of Rs.54,60,000/- agricultural income constitutes Rs.10,00,000/- and the source for remaining cash deposit of Rs.44,60,000/- remains unexplained. Therefore, it was concluded that the order of assessment passed by the Assessing Officer is prejudicial to the interest of the revenue. Even in this appeal, the appellant-assessee has not justified the source for the remaining cash deposit of Rs.44,60,000/- but assailed the order of the respondent as well as the Tribunal on technicalities. Thus, the finding rendered by the respondent, on verification of the records, was also rightly rejected by the Tribunal.

6. The learned Senior Standing Counsel for the respondent also submitted that it is well settled that the powers under Section 263 of the Income Tax Act can be exercised by the Principal Commissioner or Commissioner where the order passed by the Assessing Officer is by incorrect application of law or with incorrect assumption of facts or without any inquiry into the matter or without application of mind. When the Assessing Officer accepted the assessee's claim without making proper enquiries, then it can be rectified or interfered with by the Commissioner acting under Section 263. In this context, in the order dated 19.03.2022, the respondent also placed reliance on the decision of this Court in *Jai Bharat Tanners (264 ITR 673)* wherein it was held that when the Assessing Officer was required to examine the claim of the assessee, but has failed to do so, the order passed by him was not only erroneous, but also prejudicial to the interest of the revenue. The said decision squarely applies to the facts of this case, where, the order of assessment has been passed by erroneous application of facts and is prejudicial to the interest of revenue. Therefore, the respondent is wholly justified in passing the revised order and it was rightly confirmed by the Tribunal. Accordingly, the learned Senior Standing Counsel for the respondent prayed for dismissal of the Tax Case Appeal.

7. We have heard the counsel for the appellant as well as the learned Senior Standing Counsel appearing for the respondent and perused the materials placed on record.

8. It appears that the appellant / assessee filed his return of income for the assessment year 2017-2018 on 04.08.2017 admitting a total income of Rs.2,88,730/- and agricultural income of Rs.10,00,000/-. Subsequently when the case was selected for scrutiny, the assessee was called upon to produce documents to show the cash deposits made during the assessment year as well as the cash deposits made during the demonetisation period. After affording opportunity to the appellant-assessee, the Assessing Officer wrapped up the assessment proceedings on 05.12.2019 by making an addition of Rs.2,64,242/- towards income from short term capital gains, thereby, determining the assessed income at Rs.5,52,972/-.

9. On perusal of the order of assessment, the respondent noticed that during the financial year 2016-2017, the appellant made a cash deposit of Rs.54,60,000/- in City Union Bank account but the assessing officer failed to call upon the appellant-assessee to furnish the records relating to the same or

to verify the source of income. Therefore, the respondent issued the notice dated 05.01.2022 and called upon the appellant-assessee to appear for an enquiry on 18.01.2022 in person or to submit the written version along with supporting documents. Accordingly, the appellant-assessee submitted his written version on 12.01.2022 along with supporting documents. On appreciation of the entire documentary evidence, the respondent concluded that there is a failure on the part of the Assessing Officer to examine the source for such cash deposits. In Para No.5 of the order dated 19.03.2022, it was observed by the respondent as follows:-

> "5. I have considered the submissions of the assessee, in the light of the facts of the case, the provisions of the law and the material information available on records. It is an admitted fact that the assessing officer not verified the source for cash deposit of Rs.44,60,000/- as evident from records. The assessee in his reply has stated that the assessing officer has made spot inspection and verified the claim of agricultural income which is the main reason for acceptance of cash deposit. It is true that the assessing officer has made an inquiry with regard to the agricultural income, however, it may be noted that out of the total deposit of Rs.54,60,000/-, agricultural income constitutes Rs.10,00,000/- only. As such the source for the remaining cash deposit of Rs.44,60,000/- (54,60,000 - 10,00,000) remains unexplained. The assessing officer has also failed to verify the source for the balance amount of Rs.44,60,000/- during the assessment proceedings. The assessee further contested that the assessing officer has scrutinized the cash-flow statement thoroughly and hence the present case cannot fall within the ambit of the two conditions namely erroneous and prejudicial as provided in Section 263 of the Act. In this regard, it is pertinent to note that in the show cause notice u/s. 263 dated 05.01.2022, it was clearly

mentioned that the Assessing Officer has not called for the details of the remaining cash deposit of Rs.44,60,000/- and failed to verify the source of income for the same and hence the source for the cash deposit of Rs.44,60,000/- remains unexplained. The contention of the assessee that the assessment order was passed after thorough examination is not acceptable as the assessing officer has not examined source for the balance amount of Rs.44,60,000/- during the assessment proceedings and failed to make necessary additions in the assessment order, the facts which are elaborately discussed in the foregoing paragraphs. Consequently, the assessment order passed u/s.143 (3) of the Act on 18.12.2019 became erroneous as well as prejudicial to the interests of the revenue. In the light of the above discussion, the contentions of the assessee is devoid of any merits, factually incorrect and hence deserves to be rejected. Moreover the case law quoted by the assessee is not applicable for this case. The assessing officer is therefore directed to collect the books of accounts, bank statement and relevant details and conduct necessary verification examine to source for the remaining cash deposit of Rs.44,60,000/-. In the event of the assessee failing to explain source for the cash deposit of Rs.44,60,000/- discussed above with substantial evidence, the same may be treated as assessee's unexplained cash credit and taxed accordingly."

10. Thus, it is evident from the order passed by the respondent that the appellant-assessee has not properly explained the source of income for the remaining cash deposit of Rs.44,60,000/-. Before the respondent, Tribunal as well as this Court, the appellant-assessee has not satisfactorily explained about the cash deposit of Rs.44,60,000/-. However, a futile contention was raised by the appellant-assessee that the Assessing Officer has thoroughly verified the records and passed the assessment order, which does not call for any

interference. This would only indicate that the appellant-assessee has not adequately explained about the source for cash deposit of Rs.44,60,000/-. In such view of the matter, we find no reason to interfere with the order passed by the respondent, which was also confirmed by the Tribunal. Consequently, the substantial questions of law are answered against the appellant/assessee and in favour of the respondent.

11. In the result, the order dated 13.09.2023 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai, in I.T.A.No.352/Chny/2022 is confirmed. The Tax Case Appeal is dismissed. No costs.

[**R.M.D,J**.] [**M.S.Q, J**.]
30.01.2024

Internet : Yes
Neutral Citation : Yes/No
gya/rsh

To

1.The Income Tax Appellate Tribunal 'C' Bench
Chennai

2.The Principal Commissioner of Income Tax
Madurai-1
CR Building, 2, V P Rathinasamy Nadar Road
Viswanathapuram
Madurai 625 002

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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TCA No. 28 of 2024

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