IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

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

T.C.A.No.383 of 2019

Principal Commissioner of Income Tax
Central 1
No.108, Nungambakkam High Road
Chennai 600 034 .. Appellant

Versus

M/s.Lalitha Jewellery Mart P Ltd
No.123, Usman Road
T.Nagar, Chennai 600 017
PAN : AAACL1523A .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 21.08.2018 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in I.T.A.No.2290/Chny/2015, relating to the AY 2008-2009.

For Appellant	:	Mr. Karthick Ranganathan Senior Standing Counsel
For Respondent	:	Mr. N.Muralikumaran, Senior Advocate for M/s. McGan Law Firm

JUDGMENT

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

This tax case appeal is filed by the appellant/Revenue, challenging the order dated 21.08.2018 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in I.T.A. No. 2290/Chny/2015, relating to the assessment year 2007-2008.

2. By order dated 20.06.2019, the appeal was admitted on the following substantial questions of law:

> *"(i) Whether the Tribunal was right in law in remitting back to the Assessing Officer the issue of levy of penalty under Section 271(1)(c) of the Income Tax Act for consideration afresh ? and*
>
> *(ii) Whether on the facts and circumstances of the case and in law, the Tribunal was legally justified in not considering the provisions of Section 251(b) of the Income Tax Act ?"*

3. The main contention of the learned Senior Standing Counsel for the appellant is that Tribunal has power only to confirm or cancel the order of penalty and it cannot remand the penalty issue to the lower authorities. Whereas, in the present case, the Tribunal while setting aside the orders of the lower authorities, has erred in remanding the matter to the Assessing Officer for consideration the penalty issue afresh in accordance with law. However, he

fairly submitted that this court vide judgment dated 11.08.2017 in TCA Nos.435 and 436 of 2013, allowed the quantum appeals filed by the assessee, by deleting addition on the share capital / premium issue and hence, the penalty proceedings initiated by the Revenue against the said assessment, are not maintainable.

4. We have heard the learned counsel for the respondent/ assessee, who also submitted that the appeals filed by the assessee against the assessment orders got allowed by this court and therefore, no penalty would lie in respect of the said assessment proceedings.

5. Considering the facts and circumstances of the case, more particularly that the quantum appeals filed by the assessee were allowed by this court *vide* judgment dated 11.08.2017, this court is of the opinion that the question of levy of penalty in respect of the same assessment does not arise and hence, there is no requirement to remand the matter to the Assessing Officer to revisit the issue of penalty levied under section 271(1)(c) of the Income Tax Act. In such view of the matter, the order of the Tribunal is set aside to that extent alone. The Tax Case Appeal filed by the Revenue is accordingly, disposed of. However, the substantial questions of law raised herein are left open to be adjudicated in an appropriate case. No costs.

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

30.04.2024

Neutral Citation : Yes/No
gya

To

1.The Income Tax Appellate Tribunal
'B' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-8, Chennai.

3.The Principal Commissioner of Income Tax,
Central 1, No.108, Nungambakkam High Road
Chennai 600 034

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

gya

T.C.A.No.383 of 2019

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