IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM :

THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

Review Application Nos.92 to 94 of 2024

S. Duraisamy .. Applicant in all applications

v

The Deputy Commissioner of Income Tax
Business Circle I
Chennai .. Respondent in all applications

Applications filed under Section 114 and Order 47 Rules 1 & 2 of the Civil Procedure Code seeking to review the common judgment dated 17.11.2023 in T.C.A. Nos.365 to 367 of 2011.

For applicant in all applications	Mr. A.S. Sriraman
For respondent in all applications	Mr. T. Ravikumar Sr. Central Govt.Standing Counsel

<u>COMMON ORDER</u>

These Review Applications have been filed to review the judgment dated 17.11.2023 passed by this court in TCA Nos.365 to 367 of 2011.

2. The Review applicant filed the aforesaid Tax Case Appeals challenging the common order dated 18.03.2011 passed by the Income Tax Appellate Tribunal, Chennai Bench, Chennai, in I.T.A. Nos.942 to 944/CHNY/2010 for the assessment years 2003-2004, 2004-2005 and 2005-2006, respectively, by raising the following substantial questions of law:

> *"1.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s 271(1)(c) of the Act with reference to the facts of the present case without providing an opportunity of hearing to the appellant herein/ respondent before them?*
>
> *2.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s 271(1)(c) of the Act with reference to the facts of the present case in spite of the decision of this Hon'ble Court rendered in T.C.Appeal No.52/2010 dated 5.7.2010 considering identical facts while involving the survey operations conducted in the hands of M/s.Apollo Hospitals Ltd and further in spite of the decision of the Co-ordinate Bench rendered in the case of Dr.Madanmohan Reddy on 2.7.2010 under identical circumstances?*
>
> *3.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s 271(1)(c) of the Act with reference to the facts of the present case even though the revised return filed on 15.3.2006 incorporating the income from the source of M/s Apollo Hospitals Ltd much before the date of the issuance of summons u/s 131 of the Act dated 7.7.2006 and much before the date of reopening notice dated 19.3.2008 u/s 148 of the Act?*

4.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s 271(1)(c) of the Act with reference to the facts of the present case even though the revised return filed on 15.3.2006 was regularised and accepted on the initiation and completion of the re-assessment proceedings u/s 148 r/w section 147 of the Act without any variation in the income declared therein?"

This Court, *vide* common judgment dated 17.11.2023, dismissed the above tax case appeals, on the ground that this is a case of omission in the first return and further, the second return filed by the applicant is not a voluntary one. Seeking to review the said common judgment, the applicant is before this court with the present applications.

3. The learned counsel for the Review Applicant submitted that there was no notice issued by the Department after the search was conducted in the premises of M/s.Apollo Hospitals prior to the filing of the revised return of income by the Review Applicant. That apart, there is nothing placed on record to demonstrate that the documents / materials seized from the premises of M/s.Apollo Hospitals were made available prior to the applicant furnishing the revised return of income. However, without considering all these aspects and without providing any opportunity to the Review Applicant, the Tribunal reversed the appellate order relating to deletion of penalty. Adding further, the learned counsel submitted that the Review Applicant filed his revised return of income on 15.03.2006 but notice under section 148 was issued by the department

only on 19.03.2008 i.e., after a lapse of two years, which would demonstrate the *bona fides* of the applicant in filing the revised return of income voluntarily before the proceedings were initiated against him. Furthermore, the Tribunal had not considered the order dated 18.08.2010 of its co-ordinate bench passed in the case of Dr. R. Gopalakrishnan in I.T.A. Nos.853 to 856/Mds/2010 involving identical set of facts for the assessment years 2001-2002, 2002-2003, 2003-2004 and 2004-2005, dismissing the appeals filed by the Revenue and the said order has attained finality, inasmuch as, the Revenue had not taken the matter on appeal. Besides, in respect of the very same assessee, viz., Dr.R.Gopalakrishnan, even as regards the assessment year 2005-2006 in *Commissioner of Income Tax vs Dr.R.Gopalakrishnan [2011] 239 CTR 558*, a Division Bench of this Court had dismissed the appeal preferred by the Revenue. Hence, the applicant in these Review Applications also deserves the same relief. However, the facts of the cases pertaining to Dr.R.Gopalakrishnan, both before the Tribunal and the Division Bench of this Court, which are akin to the present case, were not properly appraised at the time of disposal of the Tax Case Appeals. It is also brought to the notice of this court that by Circular No.17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes, it is stipulated that appeal shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore) and as such, the Review applicant who is a doctor by profession and had already paid the tax amount for the assessment years in question, will be put to serious mental agony and his professional career will be affected in the event of penalty being levied on him. Submitting so, the learned counsel prayed for appropriate orders in these review applications.

4. The learned senior standing counsel appearing for the respondent, on the other hand, submitted that the issues involved in the present case and in the case of Dr.R.Gopalakrishnan are not one and the same and therefore, prayed for dismissal of these review applications.

5. Heard both sides and perused the records.

6. At the outset, it is to be noted that the jurisdiction and scope of review is not that of an appeal and it can be entertained only under the three grounds viz., (i)discovery of new and important matter or evidence which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed; (ii)mistake or error apparent on the face of record; and (iii)for any other sufficient reason. Hence, a Review application has to be strictly confined within the scope and ambit of Order XLVII Rule 1 of CPC.

7. According to the Review Applicant, he had filed the revised return voluntarily before the Department on 15.03.2006 and only thereafter, summons under Section 131 of the Act was issued by the department on 07.07.2006 and notice under Section 148 of the Act came to be issued on 19.03.2008. It is further submitted that the case of Dr.R.Gopalakrishnan arising from the very same search conducted in the premises of M/s.Apollo Hospitals, was considered and the appellate order of deletion of penalty passed in his favour, was confirmed by the co-ordinate bench of the Tribunal. However, the Tribunal set aside the appellate order of deletion of penalty passed in favour of the applicant, on appeal by the Revenue. It is also submitted that the decisions relied upon by the department which were referred to in the judgment sought to be reviewed herein, were rendered in different factual scenarios, wherein the issue involved related to voluntary surrender after search / during the course of consequential assessment made in the hands of the searched person himself, as opposed to the facts obtaining in the present cases. Thus, the Review applicant submitted that the above said facts have been omitted to be considered by this court at the time when the judgment under Review was passed.

8. It is not in dispute that before issuance of section 148 notice, the Review applicant had filed his revised return of income voluntarily, which was also accepted by the Department. What is disputed is the

imposition of penalty, especially, when the Review applicant had already paid the entire tax amount for the assessment years in question.

9. The pleadings projected before us, would make it evident that the Review applicant has not filed these review applications based on new facts. Further, it is discernible from the records that the materials collected during the search were never put to the Review applicant prior to his filing of the voluntary revised returns of income and there is no material to show that he was aware of the documents collected in the premises of M/s.Apollo Hospitals. In such circumstances, it can be reasonably presumed that there is no deliberate or wilful omission on the part of the Review applicant.

10. In the case of similarly placed person viz., *Dr.R.Gopalakrishnan,* while dismissing the appeal filed by the Revenue, it was held by the Division Bench as follows:

> *"5.It is seen from the records that the assessee was never put on notice and there is nothing to suggest that he was aware of the documents obtained from M/s.Apollo Hospitals. In order to fasten the penalty on the assessee, there should be a specific finding that there is deliberate and wilful suppression on the part of the assessee. In other words, the revised return will have be treated as voluntary one until the contrary is proved."*

Though the learned senior standing counsel appearing for the Revenue contended that the case of *Dr.R.Gopalakrishnan* (supra) is of no relevance as it is factually distinguishable, no materials, more particularly, the copies of the revised returns filed by Dr.R.Gopalakrishnan, despite several opportunities granted by us, were produced to substantiate the same. Therefore, we are of the opinion that the review applicant is on the same footing as that of Dr.R.Gopalakrishnan and he also is entitled to the same relief as Dr.R.Gopalakrishnan was entitled to.

11. Superadded, from the facts obtaining in this case, this Court has no incertitude in holding that the plea of the learned counsel for the Review applicant that the Review applicant is a professional doctor and he has rendered service to thousands of downtrodden people and hence, levying penalty on him would affect his mental status as well as professional career, appears to be *bona fide* and quite reasonable and hence, merits acceptance.

12. In view of the foregoing reasons, the judgment dated 17.11.2023 passed by this court in TCA Nos.365 to 367 of 2011 is recalled and the Tax Case Appeals are disposed of by setting aside the order dated 18.03.2011 passed by the Tribunal in ITA Nos.942 to 944/CHNY/2010.

13. In fine, all these review applications stand allowed as prayed for. No costs.

(R.M.D., A.C.J.) (M.S.Q., J.)
16.07.2024

Index : Yes/No
NC : Yes/No

To

The Deputy Commissioner of Income Tax
Business Circle I
Chennai

THE HON'BLE ACTING CHIEF JUSTICE

and

MOHAMMED SHAFFIQ, J.

cad

Common order in
Review Application Nos.92 to 94 of 2024

16.07.2024