IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.169 of 2024

The Principal Commissioner of Income Tax Ward-2(2),
Chennai - 600 034. ... Appellant

-Vs-

Muthusamy Shanmugam,
C/o.Ramesh & Ramachandran, CAs ... Respondent

PRAYER : Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 30.11.2023 in I.T.A.No.362/Chny/2023 for the assessment year 2013-14.

For Appellant : Mr.R.Karthick

J U D G M E N T

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

The appellant is before this Court aggrieved by the impugned order dated 30.11.2023 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.362/Chny/2023 for the assessment year 2013-14.

2. By the impugned order, the Tribunal has allowed the assessee's appeal with the following observations:

" .....

9. We observe that the aforesaid information as was placed before the Commissioner of Income Tax (International Taxation), Chennai was incorrect and misleading. We observe that the return of income as was filed by the assessee for the AY 2013-14 on 11.09.2013 was assessed by the Id. AO u/s.143(3) of the Act. The Id. AO after consideration of the details submitted by the assessee had disallowed the claim for deduction of amount as was paid as Securities Transaction Tax. The Id. AO vide assessment u/s.143(3) of the Act had recomputed the loss from short term capital gain at Rs.6,81,26,133/- instead of Rs.6,90,56,034/- and finally recomputed the income from long term capital gains at Rs.47,24,45,389/- vide order dated 30.0302016.

10. In view of the obtention of approval for reopening the assessment dated 30.03.2016 by stating incorrect / misleading information in the proposal for approval by the Income Tax Officer and reopening the assessment cannot be upheld legally. It was not a fact that the return of income filed by the assessee on 11.09.2013 was not *assessed u/s.143(3) of the Act. The said return of income was assessed u/s.143(3) of the Act by the Id. AO after considering the details as was submitted by the assessee and completed the assessment vide order dated 30.03.2016.*

11. As the approval for re-assessment was obtained by placing misleading and incorrect information from the concerned authority by the Income Tax Officer, we decide the appeal in favour of the assessee and set aside the reassessment order passed by the Id. AO dated 25.01.2023 and restore the original assessment order dated 30.03.2016.

12. In the result, the appeal of the assessee is allowed."

3. The case of the appellant is that the Tribunal has committed grave error in allowing the assessee's appeal despite the contrary directions issued by the Dispute Resolution Panel under Section 144(C)(5) of the Income Tax Act, 1961 on 19.12.2022. It is submitted that although the amount involved is below the tax effect, the circular dated 16.09.2019 in F.No.279/Misc/M-93/2018-ITJ(pt.) stipulates that the Department can pursue the appeal wherever the bogus claim is made. It is further submitted that the assessee has wrongly claimed short term capital loss / long term capital gains and therefore, the impugned order of the Tribunal is liable to be interfered with.

4. We have heard the learned counsel appearing for the appellant and have perused the impugned order of the Tribunal.

5. In our considered view, no substantial question of law had arisen for consideration. What was argued by the learned counsel for the appellant are purely a questions of fact and not questions of law. It is the case of the Department that the Tribunal has come to a wrong conclusion based on the erroneous appreciation of the facts. If that be so, it is for the appellant Income Tax Department to move suitable application for rectification of the order.

6. Under these circumstances, we are inclined to dismiss the appeal and accordingly, it is dismissed with a liberty to the appellant to move suitable application, if any, for rectification of the impugned order of the Income Tax Appellate Tribunal. There shall be however no order as to costs.

(R.S.K., J.) **(C.S.N., J.)**

19.08.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Commissioner of Income Tax Ward-2(2),
   Chennai - 600 034.

2. The Income Tax Appellate Tribunal 'b' Bench,
   Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

vji

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