IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2025

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

TCA Nos. 220 and 223 of 2010

K.R. Appavoo
40/4, CHB Colony West,
Velur Road, Tiruchengode.

..Appellant in both TCA'S

Vs

Commissioner of Income-tax,
Salem.

..Respondent in both
TCA'S

Common Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 23.02.2007 in ITA.Nos.2210/Mds/2003 and 88/Mds/2004 for the assessment year 1999-2000.

In both TCA's

For Appellant(s): T. Vasudevan

For Respondent(s): P.E.R.Mangala Suvigaran
Junior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

We have heard the submissions of Mr.T.Vasudevan, learned counsel for the appellant/assessee and Mr.P.E.R.Mangala Suvigaran, learned Junior Standing Counsel for the respondent/department.

2. The substantial questions of law framed on 08.03.2010 are as follows:

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the reopening of assessment by issue of notice u's.l48 during the pendency of regular assessment proceedings, when there cannot be any income escaping assessment and hence the notice and the consequent assessment are untenable in law?

2. Whether the Tribunal was correct in law in upholding the reopening of assessment when the officer has not traveled beyond the original return and documents filed by the assessee and hence constitutes only a change of opinion not warranting the issue of notice for reopening the assessment?

3. Whether the Tribunal was justified in upholding the order of reassessment u/s.l47 considering other issues on which no reason have been recorded as income escaping assessment and hence the entire order of reassessment stands vitiated and needs to be annulled?

4. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in reversing the order of the CIT(A) and holding that the assessee is not entitled to set off the share of loss from AOP in the individual assessment?

5. Whether in view of the specific provisions of sections 66,67A and 86 of the Act, the claim of the assessee for set off of share of loss from AOP needs to be allowed as in accordance with law?

6. Whether the Tribunal ought to have followed the Madras High Court decision in 109 ITR 258 as applicable even after the amendment to the provisions of the Act

7. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in denying the exemption u/s.54B of the Act?

3. The issue in question No.1 above relating to issuance of notice under Section 148 of the Income Tax Act, 1961 (in short 'Act'), even pending assessment proceedings, and prior to the expiry of time for issuance of notice under Section 143(2) would go to the root of the matter, is taken up first.

4. Both learned counsel would accede to the position that the above question is no longer res integra having been considered by a series of decisions of this Court in *CIT V. KM Pachayappan*[1], *CIT V. Qatalys Software Technologies Ltd.*[2], *Commissioner of Income Tax V. M/s.Super Spinning Mills Ltd.*[3] and *IDFC Limited V. Deputy Commissioner of Income Tax*[4].

5. In light of the aforesaid decisions, it is clear that no notice under Section 148 may be issued pending assessment proceedings, at a time when the statutory period for issuance of notice under Section 143(2) is still available to the Assessing Officer.

[1] 304 ITR 264

[2] 308 ITR 249

[3] T.C.(A) No.865 of 2010 dated 08.11.2024

[4] W.P. Nos.23284 & 22737 of 2022 dated 15.09.2023

6. In the present case, the assessment year is AY 1999-2000, when the time available for issuance of notice u/s 143(2) of the Act was 12 months from the end of the month when the return was filed. Hence, time available to the Assessing Officer for issuing notice u/s 143(2) in this case was upto 30.08.2000, whereas the notice under Section 148 has been issued on 13.12.1999 on the heels of the filing of return on 31.08.1999. No notice under Section 143(2) was issued. This question is hence answered in favour of the assessee.

7. In view of our decision on the aspect of assumption of jurisdiction, there is no necessity to answer other questions which touch upon the merits of the case and those questions are returned as unanswered.

8. These Tax Case (appeals) are disposed in terms of this order. No costs.

(A.S.M.,J.) **(M.S.K.,J.)**

04-12-2025

Index: Yes
Speaking order
Neutral Citation: Yes
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To
Commissioner Of Income Tax
Salem.

DR.ANITA SUMANTH J.

AND

MUMMINENI SUDHEER KUMAR J.

sl

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