IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM :

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

Tax Case Appeal No. 54 of 2023

Commissioner of Income Tax
Central Circle – I
Trichy .. Appellant

Versus

Sri. R. Rajagopal Tondaiman
Old No. 4-D, New No.22
Collector Office Road
Trichy – 620 001 ... Respondent
PAN : AFBPR 0712 E

Appeal preferred under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "A" Bench, dated 12.10.2022 in I.TA.No.525/Chny/2020.

For Appellant : Mr. M. Swaminathan
Standing Counsel

J U D G M E N T

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

This tax case appeal has been filed by the appellant/Revenue, challenging the order dated 12.10.2022 passed by the Income Tax Appellate

Tribunal, Bench 'A', Chennai, in I.T.A. No. 525 /Chny/2020, relating to the assessment year 2010-11, by raising the following substantial questions of law:-

> *"1. Whether on the facts and in the circumstances of the case the ITAT was correct in law in not considering the fact that reopening of assessment on the basis of the factual error pointed out by the Revenue Audit Party is valid ?*
>
> *2. Whether on the facts and in the circumstances of the case the ITAT was correct in setting aside the order of the CIT (A) by holding that the reopening of notice was issued beyond four years and the assessment were made on the same set of fact with no failure on the part of the assessee to disclose material facts would tantamount to change of opinion ?"*

2. The Assessee is a hereditary of Raja of Pudukottai and he is assessed to payment of tax in the status of HUF and individual. One of the properties of the assessee at Cenatoph Road, Chennai was given to M/s. Doshi Housing Limited by entering into a Development Agreement on 30.01.2006 through a power of attorney. According to the assessee, the sale proceeds derived in this transaction have been invested in purchasing an apartment at No.302, Hiranandani Palace Gardens, Devon Phase 1, Senthamangalam Village, Chengalpet Taluk and evidencing such a transaction, documents have been produced by the assessee. On the basis of the above transaction, the assessee filed return of income for the assessment year 2010-2011 on 28.03.2011 admitting the total income of Rs.2,07,540/-. The return filed by the assessee was scrutinised under Section 143 (1) of the Income Tax Act (in

short 'the Act') and completed on 31.01.2013 assessing an income of Rs.2,82,540/-. Subsequently, the revenue audit pointed out that the deduction claimed by the assessee under Section 54F of the Act is not in order as the assessee had not deposited the sale consideration in notified Capital Gain Scheme before the due date of filing the return of income under Section 139 of the Act. Therefore, the Assessing Officer re-opened the assessment under Section 147 of the Act by issuing a notice dated 07.03.2016 under Section 148 of the Act. Thereafter, the Assessing Officer completed the re-assessment under Section 143 read with 147 of the Act on 29.12.2016 assessing the capital gain at Rs.74,13,095/- by disallowing the claim of deduction under Section 54F of the Act.

3. Challenging the order of re-assessment dated 29.12.2016, the assessee filed an appeal before the Tribunal by contending that the re-assessment notice dated 07.03.2016 was issued under Section 148 of the Act beyond four years from the end of the assessment year under consideration. It was further contended that the assessee had fully and truly furnished all the material particulars to complete the assessment and the assessing officer did not show that there is failure on the part of the assessee to disclose all the material particulars. While so, the re-assessment proceedings initiated by the

assessment officer, based on a mere change of opinion, is legally impermissible. In this context, on behalf of the assessee, reliance was placed on the decision of the Honourable Supreme Court in the case of **CIT vs. Kelvinator of India (2010) 320 ITR 561 (SC)** to contend that the action of the assessing officer in re-opening the assessment beyond the period prescribed in the Act is liable to be interfered with.

4. Accepting such submissions made on behalf of the Assessee, the Tribunal allowed the assessee's appeal on 12.10.2022 by holding that the assessment was re-opened beyond four years from the end of the relevant assessment year. The Appellate Authority also placed reliance on the various decisions in support of such conclusion, including the one rendered by this Court in **Fenner (India) Limited vs. DCIT** reported in **241 ITR 672** and concluded that mere escape of income is insufficient to justify the initiation of action under Section 147 of the Act, after expiry of four years from the end of the assessment year. Aggrieved by the same, the Revenue is before this Court with this appeal.

5. The learned Standing Counsel for the appellant would contend that the Tribunal failed to take note of the fact that on the basis of certain

factual errors pointed out by the audit party, the Assessing Officer is wholly justified in re-opening the assessment, as has been held by the Honourable Supreme Court in the case of **CIT vs. PVS Beedies Pvt Ltd**., reported in **237 ITR 13 (SC).** While so, the Tribunal erred in setting aside the order of the Assessing Officer by holding that the re-assessment notice was issued beyond the period of four years. The learned Standing Counsel therefore prayed for allowing this appeal by setting aside the order of the Tribunal.

6. We have heard the learned Standing counsel for the appellant and perused the materials placed on record, including the order passed by the Tribunal, which is impugned herein

7. Admittedly, the assessee filed return of income for the assessment year 2010-2011 on 28.03.2011. The assessment was completed on 31.01.2013. While so, based on certain errors pointed out by the revenue audit, the assessing officer issued notices dated 07.03.2016 and 16.06.2016 under Section 148 of the Act to re-open the assessment under Section 147 of the Act. Subsequently, the Assessing Officer completed the assessment under Section 143 read with 147 of the Act on 29.12.2016. Thus, it is abundantly clear that for whatever reasons, the re-assessment proceedings initiated by the

assessing officer beyond four years from the end of the relevant assessment year in question namely 2010-2011 is legally impermissible. The Tribunal, for arriving at such conclusion, placed reliance on several decisions and ultimately held that the delay in re-opening the assessment is not sanctioned by law. It was also concluded by the Tribunal that mere change of opinion on the part of the assessing officer is not a sufficient ground to re-open the assessment. We are in complete agreement with such a conclusion arrived at by the Tribunal. There is no justifiable reason assigned by the Assessing Officer for not initiating action to re-open the assessment before the period prescribed under the Act. While so, we find no error in the decision of the Tribunal.

8. The decision relied on by the learned Standing Counsel appearing for the appellant in the case of **CIT versus PVS Beedies P Limited** reported in **237 ITR 13 (SC)** cannot be made applicable to the facts of this case. In that case, the appellant, a charitable institution, submitted their return of income for the assessment year 1974-1975 and the assessment was completed by granting deduction under Section 80G of the Act on account of donation to a charitable Trust. Subsequently, the audit party noticed that the certificate of recognition granted to the assessee expired on 22.09.1972 itself and therefore, the assessee trust cannot be recognised as a charitable trust during the assessment year in

question and consequently the donation made to the trust will not qualify for deduction under Section 80G of the Act. It is in those circumstances, the assessing officer re-opened the assessment. The Honourable Supreme Court in that case, held that the audit party is entitled to point out a factual error or omission in the assessment. It was further held that reopening of the assessment in the light of factual errors pointed out by the audit party is permissible under law. In the present case, even though the assessment was re-opened on the basis of the error pointed out by the revenue audit, the same was done after the period prescribed under Section 147. Therefore, we are of the view that the Tribunal is right in allowing the appeal filed by the assessee. Accordingly, the questions of law raised in this appeal are answered against the revenue.

9. In the result, the tax case appeal fails and it is dismissed. No costs.

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

09.02.2022

Maya/rsh

Internet : Yes / No

Index : Yes / No

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

Maya/rsh

To

1. Commissioner of Income Tax
   Central Circle – I
   Trichy.

2. The Income Tax Appellate Tribunal
   Chennai, "A" Bench
   Chennai.

TCA No.54 of 2023

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