IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

TCA.No.865 of 2010

The Commissioner of Income-tax-I,
Coimbatore. .. Appellant

vs

M/s.Super Spinning Mills Ltd.,
Elgi Towers, Green Fields, 737D, Puliakulam Road,
Coimbatore-641 045 (PAN AADCS0672G)
.. Respondent

PRAYER: APPEAL filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 12.03.2010 in I.T.A.No.977/Mds/2008 for the Assessment Year 2002-03.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman

JUDGMENT

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The substantial questions on which the Tax Case Appeal have been admitted are as follows:

> *'1)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that, notice under section 148 of the Income Tax Act cannot be issued before the time limit for issuance of notice under section 143(2) had expired?*
>
> *2)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the proceedings initiated by the assessing officer under section 147 of the Act for the assessment year 2002-03 while notice issued under section 148 was valid in law?'*

2.The assessment year (AY) in question is 2002-03. Return was filed on 30.10.2002 and an intimation under Section 143(1) was issued on 19.12.2003. A Revised return was filed on 23.03.2004. Admittedly, the assessing authority had time till 31.03.2005 to issue a notice under Section 143(2). Notice under Section 148 has however been issued on 09.07.2004. Learned Senior Standing Counsel would accede to the date of events as above.

3.Hence and as the petitioner rightly points out the issue in question is squarely covered by decisions of this Court in (i) *Commissioner of Income-tax v. K.M.Pachayappan* [(2008) 304 ITR 264]; (ii)*Commissioner of Income-tax v. Qatalys Software Technologies Ltd.* [(2009) 308 ITR 249] and (iii)*Commissioner of Income-tax v. Tcp Ltd.* [(2010) 323 ITR 346].

4.Learned Senior Standing Counsel would attempt to state, taking a cue from the judgment of the Supreme Court in *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited* [(2007) 291 ITR 500] that since Section 147 applies to both assessment and re-assessment, the action of the assessing authority in issuing notice under Section 148 will be saved.

5.We find this argument misconceived for the reason that the issuance of notice under Section 143(2) will apply only in the case of pending assessment. This is a case where the assessment is pending and instead of completing the same, the assessing authority has initiated proceedings for re-assessment. Hence, the submission of learned Senior Standing Counsel is seen to be devoid of merit and is rejected.

6.The substantial questions are answered in favour of the assessee and the Tax Case Appeal is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
08.11.2024

Index:Yes/No
Speaking order
Neutral Citation:Yes
vs

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

vs

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