In the High Court of Judicature at Madras

Dated : 30.01.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.102 of 2019

The Principal Commissioner of
Income Tax Central 1, Chennai. ...Appellant

Vs

M/s.J Jay TV Pvt. Ltd.,
Chennai-18. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.1.2017 made in ITA.No.519/Mds/2008 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 1995-96.

For Appellant : Mr.T.R.Senthil Kumar & Ms.K.G.Usha Rani

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act) is directed against the order dated 20.1.2017 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench (for short, the Tribunal) in ITA.No.519/Mds/2008 for the assessment year 1995-96.

2. The Revenue has filed this appeal by raising the following substantial questions of law :

> *"i. Whether the Appellate Tribunal is correct in law in remitting the case to the file of the Commissioner of Income Tax (Appeals) with a direction to consider the additional ground raised by the assessee with regard to non issue of notice under Section 143(2) by the Assessing Officer before completion of assessment without considering the circumstantial evidence, under which, the Assessing Officer could not issue notice under Section 143(2) of the Income Tax Act ?*
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> *ii. Whether the Appellate Tribunal is correct in law in admitting the additional ground raised by the assessee with regard to non issue of notice under Section 143(2) before completion of assessment, by ignoring the fact that no such additional ground validly emanates from the facts of the case ? And*
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> *iii. Whether the Appellate Tribunal is correct in law in admitting the additional ground and thereby allowing the assessee to take advantage of his own non compliance to the various provisions of the Income Tax Act, 1961, which is contrary to the adage that the seekers of justice should come with clean hands ?"*

3. We have elaborately heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel for the Revenue.

4. The Tribunal, though has written a 36 page order, the operative portion of the directions issued by the Tribunal, is contained in paragraph 10.7, which reads as follows :

> *"Admittedly, the issue relating to non issue of notice under Section 143(2) of the Act was first time raised before the Tribunal and the CIT(A) has no occasion to consider this ground. In our opinion, it is appropriate to remit this ground for the decision of CIT(A) and thereafter to decide the other issue raised by the assessee afresh, if required. Accordingly, placing reliance on the judgment of Supreme Court in the case of National Thermal Power Company Limited Vs. CIT [reported in (1998) 229 ITR 383], we admit the additional ground and remit the same to the file of the CIT(A) for his consideration. At this stage, we refrain from going into other grounds raised by the assessee before us at this level."*

5. The Tribunal remanded the matter to the Commissioner of Income Tax (Appeals)-I, Chennai [for short, the CIT(A)] to consider the plea raised by the assessee relating to non issue of notice under Section 143(2) of the Act. The Tribunal noted that this point, which has been raised for the first time, was not raised by the assessee before the CIT(A). The Tribunal, relying upon the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. Vs. CIT [reported in (1998) 229 ITR 383],*** held that the additional ground could be admitted.

6. It is no doubt true that the non issuance of notice can result in a jurisdictional issue. Therefore, we do not fault the Tribunal for having entertained the additional ground canvassed by the assessee. However, after hearing the arguments of the learned Senior Standing Counsel, we find that the Revenue did not have sufficient opportunity to meet this point.

7. We have carefully perused the assessment order and we find that there has not been a transparent approach by the Department while completing the assessment. We say so because of the following facts :

Admittedly, the assessee, which is a private limited company, did not file their return of income for the year under consideration namely 1995-96. The return should have been filed on or before 31.10.1995 and the last date for completing the assessment is 31.3.1998. The Assessing Officer issued the notice dated 08.1.1996 under Section 142(1) of the Act. As could be seen from the assessment order dated 30.3.1998 under Section 144 of the Act, though the said notice was stated to have directed the assessee to file their return of income on or before 24.1.1996, the Assessing Officer stated in the assessment order that the said notice dated 08.1.1996 was served on the assessee on 24.1.1996. There has been no explanation as to why the said notice was not served on the assessee earlier.

8. This issue is sought to be explained by the learned Senior Standing Counsel by contending that the said notice could not be served because the address for service is that of the chartered accountant of the assessee and

that there is an attempt to evade service.

9. We have seen the order passed by the Tribunal and more particularly, the cause title and we find that the assessee's address for service is that of the chartered accountant. In our considered view, the cause title should reflect the address of the registered office of the company and in the body of the order passed by the Tribunal, the Tribunal may note the authorized representative of the assessee, who may be a chartered accountant or an advocate. We remember to have pointed out this a couple of years back since, on many occasions, when the address for service is that of a chartered accountant, there are instances where the chartered accountant will report no instructions or will refuse to receive the notices. Therefore, even if the Assessing Officer or the CIT(A) or the Tribunal issues notices to the authorized representative/chartered accountant/advocate, the notices will have to be issued to the assessee to their registered office.

10. The Civil Procedure Code, 1908 (CPC) prescribes a procedure for filing suits by or against the Corporation and in this regard, it is relevant to take note of Order XXIX and Order XXX of the CPC. In terms of Order XXIX Rule 1 of the CPC, in a suit by or against the corporation, any pleadings may be signed and verified on behalf of the Corporation by the Secretary or by any Director or by Principal Officer of the Corporation, who is able to depose the facts of the case.

11. A stand may be taken that the CPC may not be applicable to such proceedings before the Tribunal. However, the underlying principles laid down by the Court should not be ignored. Be that as it may, the Assessing Officer has not stated as to why the said notice dated 08.1.1996 was served on the assessee on 24.1.1996, when the said notice stated that the return of income should be filed on or before 24.1.1996.

12. It is not clear as to where the delay had occurred and as to why the delay had occurred. The chartered accountant filed a letter dated 27.1.1996 stating that he had been asked to represent the assessee company and requested one month's time to file full and correct return of income. The Assessing Officer noted in the assessment order that the assessee did not keep up to this commitment. However, the Assessing Officer did not do anything to complete the assessment on best of judgment basis and probably was waiting for further response from the assessee. We say so because another letter dated 01.10.1997 was issued by the Assessing Officer to the assessee. We are informed by the learned Senior Standing Counsel that along with the this letter/notice, the draft assessment order was enclosed. The assessment order states by the said letter that the assessee was asked to file balance sheet and profit and loss account for the period ended 31.3.1995 and produce books of accounts, vouchers, etc., in respect of the previous year relevant to the assessment year 1995-96. This notice/ letter dated 01.10.1997 was served on the assessee on 04.10.1997.

13. In our considered view, if the assessee, that too a company registered under the Companies Act, has failed to adhere to the commitment made through their chartered accountant vide letter dated 27.1.1996, there is no reason as to why the Assessing Officer should wait for more than 20 months and issue another letter to the assessee as if an invitation to attend his office and file the return of income along with books of accounts, vouchers, etc. The reason for not taking any action since February 1996 till October 1997 remains unexplained. Even after the expiry of peremptory time limit fixed in the letter dated 01.10.1997 i.e. upto 13.10.1997, the Assessing Officer did not take any action immediately, but once again waited probably with the fond hope that the assessee would file their return of income.

14. We say so because the Assessing Officer is bound to know that the assessment will get time barred on 31.3.1998. The Assessing Officer did nothing after 13.10.1997 and the assessee, on 24.3.1998, filed their return of income. On 30.3.1998, the assessment had been completed under Section 144 of the Act. The explanation now offered before this Court is that the issuance of notice under Section 143(2) of the Act was an impossibility to comply with because the assessment order was getting time barred.

15. As pointed out by us earlier, the assessee failed to respond after their letter given by the chartered accountant dated 27.1.1996. This letter stated that within one month's time, they would file full and correct return of income. So, even going by the said letter, there was no necessity for the

Assessing Officer to have waited beyond February 1996 to complete the assessment on best of judgment assessment. We do not wish to make any further observations in this regard. We find that there is no explanation given in the assessment order for such an indulgence shown to the assessee.

16. As pointed out by us earlier, the Tribunal, after admitting the additional ground, has not adverted to any of the contentions advanced by the Revenue and it is pleaded before us that the Revenue had not been given sufficient time to meet the point. In any event, the Tribunal, having admitted the additional ground, should have considered the contentions advanced by the Revenue by giving reasonable time and recorded its satisfaction as to why the matter should be remanded to the CIT(A). The matter has again gone back to the CIT(A) and we are of the considered view that the Revenue should be given full opportunity by the CIT(A) to canvass all the grounds raised before us.

17. Mr.T.R.Senthilkumar, learned Senior Standing Counsel has referred to the decision of this Court in the case of ***CIT Vs. T.Rangroop Chand Chordia [reported in (2016) 69 Taxmann.com 202].*** By relying upon this decision, it is submitted that a situation has been created by the assessee for the Assessing Officer whereby the default on the part of the assessee was to be taken advantage by them and the peculiar circumstances have to be borne in mind while considering as to whether there is a possibility of compliance of issuance of notice in terms of Section 143(2) of

the Act. We give liberty to the Revenue to place this decision before the CIT(A), who shall consider all the grounds raised by the Revenue, hear the assessee and take a decision in accordance with law.

18. With the above observations, the above tax case appeal is dismissed.

30.01.2019

Internet : Yes

To

The Income Tax Appellate Tribunal, Chennai 'D' Bench.

RS

T.S.SIVAGNANAM,J

AND

N.SATHISH KUMAR,J

RS

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