

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.730 of 2014

The Commissioner of Income Tax
Chennai.

.. Appellant

Vs.

Ramani Realtors (P) Ltd.
Old No.3, New No.5, II Street
Lakshmipuram, Royapettah
Chennai – 600 014.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 9.9.2010 made in I.T.A.No.1019/Mds/2010 for the assessment year 2005-2006.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

For Respondent : Mr.T.N.Seetharaman

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

The Revenue has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 9.9.2010 made in I.T.A.No.1019/Mds/2010 for the assessment year 2005-2006 and the same was admitted on the following question of law:

(2)

Whether on the facts and in the circumstances of the case the Tribunal was right in allowing the deduction especially when the assessee has not filed audit report in Form 10CCB along with the return nor before the date of completion of the assessment?

2. The learned counsel for the respondent entered appearance and pointed out that the question of law raised in this appeal has been considered by this Court in a catena of decisions and it was held that filing of of audit report in Form 10 CCB is not mandatory and only directory.

3. An identical issue was considered by this Court in *Commissioner of Income Tax v. AKS Alloys (P) Ltd.*, (2012) 18 Taxmann.com 25 (Mad), wherein this Court after referring to a number of judicial precedents held that filing of audit report along with the return was not mandatory, but directory, and that if the audit report was filed at any time before the framing of assessment, the requirement of the provisions of the Act should be held to have been met.

4. Similarly, in *Commissioner of Income Tax v. Jayant Patel*, (2001) 117 Taxman 707 (Mad.), wherein the audit report was produced only before the appellate authority, this Court, while holding that the filing of audit report along with the return is directory and not mandatory, observed that the appellate authority has also the powers of the original authority and it is open to the appellate authority to direct the Assessing Officer to receive the audit

report or to direct him to consider the audit report filed before the appellate authority on merits or to consider the report himself.

5. In yet another decision in *Commissioner of Income Tax v. Print Systems & Products*, (2006) 285 ITR 260 (Mad.), this Court held that filing of audit report along with the return, as contemplated under Section 32AB(5) of the Income Tax Act, is only directory and not mandatory. The relevant portion of the said decision reads as under:

“With regard to the interpretation of section 32AB as well as corresponding section 80J(6A) of the Act, it is a trite law that:

(i) since there is no stipulation as to the time when the audit report should be filed, except that it should be filed along with the return, all that the assessee is required to do is to delay the filing of the return until the audit report is made available. The ground relied on that the preparation of the audit report was beyond the control of the assessee and hence, the assessee could justifiably delay in filing the return itself so that it is accompanied by the audit report, should also be taken care of while construing the statute constitutionally valid. In such event, the Income-tax Officer could not deny the deduction merely because the report is not filed along with the return, otherwise, the very purpose of section 32AB(5) would be defeated. If that be so, section 32AB(5) cannot be construed to give such an incongruous result. Therefore, to make section 32AB(5) of the Act constitutionally valid, the only alternative or workable solution is that the audit report should be made

(4)

available before the assessment is made : (vide *K. P. Varghese v. ITO [1981] 131 ITR 597 (SC)* and followed in *CIT v. A. N. Arunachalam [1994] 208 ITR 481 (Mad)*);

(ii) a Full Bench of the Punjab and Haryana High Court in *CIT v. Punjab Financial Corporation [2002] 254 ITR 6*, interpreting section 32AB(5) itself, which is the subject matter in the present appeal, held that the submission of the audit report is directory, but not mandatory. According to the Full Bench, the assessee's claim for deduction under section 32AB does not depend on the submission of the audit report along with the return, but on deposit of the amount in the account maintained by him with the Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of income, whichever is earlier. Therefore, the requirement of filing the duly audited report along with the return cannot be treated as mandatory and the assessee cannot be deprived of the benefit of deduction if the same is filed before the finalisation of the assessment. It is, therefore, specifically held that sub-section (5) of section 32AB is not mandatory and the Assessing Officer has discretion to entertain the audit report, even though it has not been filed with the return and give benefit of the deduction to the assessee in terms of section 32AB(1). The Full Bench, while so holding that the filing of the audit report is not mandatory, has observed that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of

(5)

the Legislature must govern not only from the phraseology of the provision, but also by considering its nature, its design and the consequences, which should follow from construing it one way or the other ;

(iii) the Full Bench of the Punjab and Haryana Court in *Punjab Financial Corporation's case* [2002] 254 ITR 6 referred to supra, has thus arrived at the conclusion that filing of audit report is directory, but not mandatory, based on the rule of interpretation, with reference to the fiscal statute in the matter of imposing penalty, formulated by the apex court, in *State of U.P. v. Manbodhan Lal Srivastava*, AIR 1957 SC 912, wherein it has been held as under (page 13):

'All the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature.'

The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty, and not to those parts of the statute which contain machinery provisions.'

(emphasis supplied)

(iv) concededly, this court, interpreting the corresponding provision of section 80J(6A) in *CIT v. A. N. Arunachalam* [1994] 208 ITR 481, held that the requirement that the audit report should be filed along with the return is not

(6)

mandatory and the audit report could be filed even after submission of the return, but before framing of the assessment and the same could be construed as a sufficient compliance with the condition contemplated under section 80J(6A);

(v) again, in a recent decision of this court in *CIT v. Jayant Patel* [2001] 248 ITR 199, while interpreting the corresponding section, viz. 80J, which also requires the audit report to be filed along with the return, held that the requirement that the audit report should be furnished along with the return is only directory and not mandatory.

In view of the well-settled principles uniformly held in the decisions cited supra, we have no hesitation to hold that the filing of the audit report along with the return, as contemplated under section 32AB(5) of the Act, is only directory and not mandatory. Hence, finding no substantial question of law arising for consideration, the appeal is dismissed.”

6. This Court in *Commissioner of Income Tax v. SM Scrap Recycling Private Limited* (Order dated 15.7.2014 made in T.C.(A) No.875 of 2013), to which one of us – R.Sudhakar,J. was a party, following the decision in *Commissioner of Income Tax v. Print Systems & Products*, (2006) 285 ITR 260 (Mad.) answered the question of law in favour of the assessee and against the Revenue.

(7)

7. From the above, it is apparent that the consistent view of this High Court is that filing of audit report along with the return is only directory and not mandatory, which we respectfully agree.

In such view of the matter, this appeal is dismissed answering the question of law against the Revenue and in favour of the assessee. No costs.

(R.S.J.) (R.K.J.)
22.12.2014

Index : Yes
Internet : Yes
sasi

To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "C", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals) - V
Chennai
4. The Assistant Commissioner of Income Tax
Company Circle-V(3), Chennai.

(8)

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

T.C.(A).No.730 of 2014

22.12.2014