IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2014

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Tax Case (Appeal) No.766 of 2014

N.Ahamed Ali
Legal heir of Shri S.Naina Mohammed (deceased) .. Appellant

-vs-

The Income Tax Officer
Ward II(2)
Erode .. Respondent

Memorandum of Grounds of Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench dated 1.5.2014 made in I.T.A.No.1600/Mds/2005 for the assessment year 1999-2000.

For Appellant	:	Mrs.Pushya Sitharaman Senior Counsel for Ms.Srividhya
For Respondent	:	Mr.J.Narayanasamy

JUDGMENT
(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The present tax case appeal, at the instance of the assessee, raises the following substantial questions of law for consideration:-

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment is valid even though no notice under Section 143(2) was issued, contrary to the decision of

the Apex Court in the case of CIT v. Hotel Bluemoon (321 ITR 362), wherein it was held that issuance of notice under Section 143(2) is mandatory?

(2) Whether on the facts and in circumstances of the case, the issuance of notice under Section 143(2) of the Income Tax Act, 1961 within the prescribed time limit for the purpose of making the assessment under Section 143(3) of the Income Tax Act, 1961 is mandatory?

(3) Whether the Tribunal was right in law in upholding additions, where the discrepancy arose because the quantum of income and assets shown in the return of income were more than the figures in the books of accounts?"

2. It is a case of assessment under Section 143(3) read with Section 253 without the issuance of the mandatory notice under Section 143(2) of the Income Tax Act, 1961. When the assessee preferred an appeal against the order of the assessing officer on the ground that no notice was issued under Section 143(2), the Commissioner of Income Tax (Appeals) held in favour of the assessee. On a challenge to the said order by the department before the Tribunal, placing reliance upon the decision of this Court in **M/s Areva T & D India Ltd., v. Assistant Commissioner of Income Tax, (2007) 294 ITR 0233**, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and remanded the matter to the assessing officer. The said order of the Tribunal was challenged before this Court in W.P.No.4885 of 2009 and the writ petition was allowed directing the writ petitioner to take steps to bring the legal representatives of the deceased assessee on record before the Tribunal.

Thereafter, when the proceedings continued before the Tribunal, the decision of the Supreme Court in **Commissioner of Income Tax v. Hotel Bluemoon (321 ITR 362)** was relied upon by the assessee for the proposition that the issuance of notice under Section 143(2) is mandatory and the omission is not curable. Nevertheless, the Tribunal, following the decision of this Court in **M/s Areva T & D India Ltd., v. Assistant Commissioner of Income Tax, (2007) 294 ITR 0233**, remanded the matter to the assessing officer, against which the appellant has filed the present appeal.

3. Heard the learned counsel for the parties.

4. The question that arises for consideration is whether the proceedings of the department for the purpose of assessment under Section 143(3) would be justified without the issuance of the mandatory notice under Section 143(2) of the Income Tax Act?

5. The issue is no longer res integra, as we have also recently in **T.C.(A)Nos.582 and 583 of 2014 dated 15.9.2014 (Commissioner of Income Tax, Trichy v. M/s Fathima Thanga Maaligai, Karaikal)**, placing reliance on the decision of the Supreme Court in **Commissioner of Income Tax v. Hotel Bluemoon (321 ITR 362)** as well as the decision of a Division Bench of this Court in **T.C.(A)No.159 of 2006 dated 17.7.2012 (Sapthagiri Finance & Investments v. Income Tax Officer)** held that the issuance of notice under Section 143(2) is mandatory. In such view of the matter, we set

aside the order of the Tribunal and answer the substantial questions of law in favour of the assessee and against the Revenue. The tax case appeal stands allowed. No costs.

Index : yes (R.S.J.,) (R.K.,J.)
Internet: yes 19.11.2014

ss

To

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

2. The Income Tax Officer
   Ward II(2)
   Erode

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

ss

Tax Case (A) No.766 of 2014

19.11.2014