

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2009

C O R A M:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

and

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

TAX CASE (Appeal) No.347 of 2009

SUMITRA MENON

.. Appellant

vs.

The Assistant Commissioner of Income Tax,
Circle VII,
Chennai 600 034.

.. Respondent

Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 19.11.2008, in I.T.A.No.79/MDS/2008 relating to the assessment year 2004-2005.

For Appellant : Mr.J.Balachander

J U D G M E N T

(Judgment of the Court was delivered
by F.M.IBRAHIM KALIFULLA, J.)

The assessee has come forward with this appeal challenging the order of the Tribunal dated 19.11.2008, in I.T.A.No.79/MDS/2008, for the assessment year 2004-05.

2. The grievance of the appellant is that the Tribunal ought not to have interfered with that part of the order of the C.I.T.(Appeals), in and by which, the assessment order was set aside and the assessing authority was directed to rehear and re-determine the issue afresh.

3. According to the appellant, without serving proper notice on the appellant and above all by effecting service on a total stranger, the assessing officer had passed the impugned order of assessment dated 29.11.2006 and that the said order was set aside by the C.I.T. (Appeals), for the said irregularity in the service of notice to the appellant, the Tribunal ought not to have interfered with the order of C.I.T.(Appeals).

4. However forceful the contention of the appellant may be, we do not find any scope to entertain this appeal, in as much as, we find that the alleged irregularity in the service of notice as pointed out by the appellant virtually faded into insignificance, in as much as, the appellant was represented by her own Auditor viz., Mr.S.Thyagarajan, who filed the return on behalf of the appellant.

5. That apart, either in the course of the hearing before the assessing officer or before the C.I.T. Appeals, the appellant never raised any grievance as regards the appearance made by Mr.S.Thyagarajan on her behalf, on the footing that there was no proper service of notice in

relation to the assessment proceedings initiated originally by the assessing authority viz., the Joint Commissioner of Income Tax.

6. In the above stated background, when we examine the correctness of the order impugned in this appeal, the following part of the order of the Tribunal in paragraphs 5 & 6 are relevant, which needs extraction:

"5..... In the facts of the present case, we find that the *Id. Counsel for the assessee did appear before the Assessing Officer. The case was represented by him. Therefore, even if there be some irregularity as alleged by the assessee, it could be said to have been waived by the conduct of the assessee.* Therefore, we find that the C.I.T. (Appeals) was not correct in quashing the order on the ground of service of notice under sec. 143(2) of the Act. We restore the order of the Assessing Officer and reverse the order of the C.I.T. (Appeals) on this issue.

6. Adverting to the merits of the case, we find that the C.I.T. (Appeals) has not adequately discussed the issue in the impugned order. As such, in the interest of justice, we set aside the impugned order and remand this issue back to the file of the C.I.T. (Appeals) with a direction to decide it de novo in accordance with law after providing adequate opportunity to the assessee of being heard."

7. The observations made by the Tribunal as regards the appearance and representation by her auditor before the Assessing Officer was factually true and are not in dispute. That be so, as rightly held by the Tribunal the alleged irregularity was practically waived by the appellant which cannot be found fault with, in as much as, at no point of time till the final order was passed by the C.I.T. (Appeals), the appellant made any grievance as regards the representation and appearance made by Mr.S.Thyagarajan in his capacity as auditor, who admittedly filed the returns. Therefore, the ultimate relief granted by the Tribunal in directing the C.I.T.(Appeals) to decide the appeal de novo in accordance with law after providing adequate opportunity to the assessee is perfectly in order and we do not find any question of law in order to entertain this appeal. We only state that the observations and factual conclusion reached in regard to the appearance made on behalf of the appellant in paragraph 5 which have been extracted in this order are all special facts relating to the case of the appellant and any such conclusion based on those special facts cannot be quoted as a precedent in any other case. The appeal fails and the same is dismissed.

To

1. The Assistant Commissioner of Income Tax,
Circle VII,
Chennai 600 034.
2. The Income Tax Appellate Tribunal,
Madras 'C' Bench,
Chennai