

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI
S.JAYARAMAN, ACCOUNTANT MEMBER

**I.T.A.Nos.3013 to 3018/Chny/2017 &
I.T.A.Nos.3019 to 3024/Chny/2017**

Assessment years : 2004-05 to 2009-10 &
Assessment years : 2004-05 to 2009-10

Karandhai Tamil Sangam,
No.1922,Seshaiya Sasthriyar,
Karuthattangudi Road,
Thanjavur.

Vs. Joint/Additional Commissioner of
Income Tax,
Non Corporate Ward-6(5),
Chennai.

[PAN AABTK 6593 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.K.Meenakshisundaram, I.T.P
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan,JCIT,D.R

सुनवाई की तारीख/Date of Hearing : 07-08-2018
घोषणा की तारीख /Date of Pronouncement : 07-08-2018

आदेश / ORDER

PER BENCH:

These two sets of appeals are filed by the assessee against the common orders of the Learned Commissioner of Income Tax(Appeals)-I, Tiruchirapalli all dated 27.09.2017 in I.T.A Nos.474 to 479/2012-13/CIT(A)-1/Try, challenging the jurisdiction of assessing authority, and in I.T.A Nos.

220 to 225/2012-13/CIT(A)-1/Tray against confirming the levy of penalty u/s.272A(2)(e) of the Income Tax Act,1961 for the assessment years 2004-05 to 2009-10. Since the quantum appeals and the penalty appeals are interlinked, they are disposed of by this common order for the sake of convenience.

2. Mr.K.Meenakshisundaram represented on behalf of the Assessee, and Mr.AR.V.Sreenivasan represented on behalf of the Revenue.

3. It was submitted by the Id.A.R that the assessee is a Trust, formed during the year 1911 and carried out activities in propagating the proficiency of Tamil language and culture. It was a submission that assessee-trust had originally been denied registration u/s.12A of the Act and subsequently on account of the Order of the Tribunal, Registration had been granted u/s.12AA of the Act by the Commissioner of Income Tax-II, Trichy vide order dated 17.11.2011 with effect from 01.07.1973. One of the primary grounds raised by the assessee was that there was a survey on the premises of the assessee-trust on 04.08.2010 by the Income Tax officer, Ward-1(1), Thanjavur and subsequently notices under sections 142(1) & 148 of the Act came to be issued by the Joint Commissioner of Income Tax (JCIT),

Thanjavur Range, Thanjavur. It was a submission that the JCIT, Thanjavur range did not have the jurisdiction to issue the notices u/s.148 or u/s.142(1) of the Act in so far as the jurisdiction has not been vested with JCIT, Thanjavur Range. Consequently, the assessments made u/s.144 r.w.s.147 of the Act for all the assessment years were liable to be held null and void. It was a submission that as the assessee was under the bona fide belief that the JCIT, Thanjavur Range, Thanjavur did not have jurisdiction over the assessee, the assessee had not co-operated for assessment proceedings and the assessments came to be completed u/s.144 r.w.s.147 of the Act wherein the Id. Assessing Officer had disallowed 40% of the expenses booked by the assessee and made the additions to the excess of the income over the expenditure. It was a submission that when the Id.A.O completed the assessments u/s.144 r.w.s.147 of the Act, Id. Assessing Officer had not considered the assessee's registration u/s.12AA of the Act. Further, it was submitted that the assessee-trust had filed a Writ Petition before the Hon'ble High Court of Madras at Madurai Bench and the Hon'ble High Court had dismissed the assessee's Writ Petition against which the Writ Appeal had been filed before the Hon'ble High Court of Madras and the same was pending in so far as the Revenue has been continuously seeking adjournments on some pretext or other. At this point, the Id.A.R was specifically asked whether he

wishes to proceed with the appeal filed before this Tribunal to which the Id.A.R submitted that he was ready to proceed with these appeals and he wants all these appeals to dispose off. It was put to Id.A.R as to with whom the PAN of the assessee was linked. It was fairly agreed by Id.A.R that the PAN of the assessee was linked with Income Tax officer, Ward-1(1), Thanjavur. It was then asked to the Id.A.R as to whether the assessee has challenged the jurisdiction of the JCIT, Thanjavur Range, Thanjavur in respect of notices issued under sections 148 and 143(2) of the Act by following the procedure provided in section 124(3)(b) of the Act. It was fairly agreed by the Id.A.R that the assessee has hitherto not filed its returns of income in so far as the assessee was under the bona fide belief that assessee's income was exempt. It was a submission that he did not have any documents immediately to prove that the assessee has challenged the jurisdiction of the JCIT, Thanjavur Range, Thanjavur within the time provided u/s.124(3)(b) of the Act. Further, it was submitted by the Id.A.R that the assessee had filed Writ before the Hon'ble Jurisdictional High Court of Madras in WP No.8062 of 2011. It was a submission that the assessee's main thrust of the argument was that there is violation of provisions of the section 120(4)(b) of the Act in so far as there is no notification directing the assessee is to be assessed by the JCIT, Thanjavur Range, Thanjavur. On merits, It was a submission that the

issues in the appeals may be restored to the file of Id. Assessing Officer for re-adjudication and that the assessee would co-operate in the set aside proceedings. The Id.A.R has specifically given a noting in the appeal folder file as follows:-

"I am undertaking to co-operate with the Department, by rendering all co-operation in case the matter is restored to the Assessing Officer."

Sd/-
K.Meenakshi Sundaram
7/8/18

The photocopy of above noting in appeal folder file is attached with this order as Annexure-I. When the Id.A.R was asked as to whether he has any evidence to show the challenge to the jurisdiction has been made within the time provided u/s.124(3)(b) of the Act. The Id.A.R submitted that when the Writ Appeal filed by the assessee is pending before the jurisdictional High Court, the Tribunal should await the decision of the Hon'ble jurisdictional High Court of Madras. To this effect, a specific query was put as to whether there was any Stay Order by the Hon'ble High Court of Madras, to which the Id.A.R submitted there was no Stay Order.

4. In reply, the Id.D.R submitted that the Writ Petition had been filed by the assessee against the order passed u/s.127(3) transferring the jurisdiction from the Income Tax officer, Ward-1(1), Thanjavur to

JCIT, Thanjavur Range, Thanjavur for framing the assessment for assessment years 2004-05 to 2009-10. Consequent to the order passed u/s.127(3) of the Act, as it was noticed that the assessee had not filed any returns of income nor had obtained registration u/s.12AA of the Act, nor approval u/s.10(23C)(iv), based on information and the Survey u/s.133A of the Act conducted on 04.08.2010, proceedings were initiated by issuance of notice u/s.148 of the Act on 12.08.2010, which provided the statutory time of 30 days for filing the returns. The assessee had filed a letter on 08.10.2010 after the expiry of the period provided u/s.148 of the Act, stating that they have not filed the returns and referred various impediments in complying with the notices u/s.148 of the Act. It was a submission that subsequently the assessee filed a Writ Petition to the Hon'ble High Court of Madras at Madurai Bench, which came to be dismissed with costs. It was a submission that no evidence of having filed the Writ appeal has been produced before the Tribunal. It was a submission that consequently the question of the jurisdiction in terms of order passed u/s.127(3) of the Act no longer survives for consideration before the Tribunal. It was prayed by the Id.D.R that regarding restoring the issue to the file of Id. Assessing Officer, the Tribunal should recognize the fact that when disposing the Writ Petition, the Hon'ble Madras High Court had taken strict cognisance of the act of the assessee to stall the

proceedings of the Department without there being any legal basis that too knowing fully well that the provisions of law is clear with regard to transfer in terms of Sec.127(3) of the Act and that the Petitioner had been imposed with costs for wasting the valuable time of the Court. He vehemently supported the order of Ld.CIT(A).

5. We have considered the rival submissions. The facts in the present case clearly shows that the notice u/s.148 of the Act issued by the JCIT, Thanjavur Range, Thanjavur on 12.08.2010 was served on the assessee on 12.08.2010. This is evident from page-13 of the assessment order. Notice u/s.142(1) was served on the assessee on 08.03.2011. Admittedly, assessee has not challenged the jurisdiction by intimating the Id. Assessing Officer as required u/s.124(3)(b) of the Act within the time provided therein. It must be mentioned herein that the challenge to the jurisdiction has been provided in Section 124(3) of the Act wherein the time for challenging has also specified, so that the Revenue would also have an opportunity to rectify any defects, if found validly raised. This has not been done. Once the time limit for challenging jurisdiction has expired, the same cannot be challenged. Admittedly, the provisions of the section 292BB introduced by the Finance Act, 2008 would not apply in so far as the assessee is not

challenging the notices or the service of the notices, but the assessee has challenged the very jurisdiction and the challenge to the jurisdiction has to be within the time provided u/s.124(3) of the Act. Further, as has been pointed out by the Id.D.R, though the assessee has filed Writ Petition before the Jurisdictional High Court, the Hon'ble High Court of Madras has dismissed the Writ Petition vide order dated 24.08.2011. Here in respect of Writ Petition filed by the assessee and the order passed by the Hon'ble Jurisdictional High Court thereon it should be clearly understood that the challenge in the Writ Petition was in respect of the order passed u/s.127(3) regarding the transfer of jurisdiction. What is before the Tribunal is not the transfer of jurisdiction, but is a challenge to the jurisdiction u/s.120(4)(b) of the Act. This challenge to the jurisdiction is completely different from the challenge to the transfer of jurisdiction, which has been made in the Writ Petition and which has been dismissed by the Hon'ble jurisdictional High Court. Admittedly, no evidence of filing of writ appeal or pendency of the Writ Appeal or any orders passed by the Hon'ble jurisdictional High Court in respect of the Writ Appeal has been produced before us. The challenge to the jurisdiction u/s.120(4)(b) of the Act has not been made within the prescribed time u/s.124(3) of the Act to the authority, whose jurisdiction is being challenged. Consequently, the issue of the challenge of the jurisdiction no more

survives. Consequently, the jurisdiction of the JCIT, Thanjavur Range, Thanjavur stands confirmed.

5.1 Coming to the merits of the issue in this appeal, admittedly the assessee has submitted that the assessee was under the bona fide belief that the JCIT, Thanjavur Range, Thanjavur did not have jurisdiction. Admittedly, the assessee has never filed its returns hitherto earlier. This being so, the bona fide belief of the assessee cannot be disregarded. Further, perusal of the assessment order also shows that the Id. Assessing Officer has completed the assessment with the presumption that the assessee does not have registration u/s.12AA of the Act. However, the fact remains that the assessee has been granted registration u/s.12AA of the Act by an Order of the Tribunal, which has been given effect by the Commissioner of Income Tax-II, Trichy in his order dated 17.11.2011 granting the registration u/s.12AA of the Act with effect from 01.07.1973. This being so, the issues in the assessment orders passed by the Id. Assessing Officer would have to be re-adjudicated afresh after considering the registration granted to the assessee-trust u/s.12AA of the Act. In these circumstances, the issues in these appeals in respect of the merits are restored to the file of Id. Assessing Officer for re-adjudication after considering the registration u/s.12AA of the Act granted to the assessee by Commissioner of Income Tax vide order

dated 17.11.2011 and after affording an opportunity to the assessee in view of the undertaking given by the Authorised Representative of assessee-trust that the assessee would co-operate in the set-aside proceedings.

6. In the result, the quantum of appeals, filed by the assessee in ITA Nos. 3013 to 3018/Chny./2017 are partly allowed for statistical purposes.

ITA Nos. 3019 to 3024/Chny./2017 (penalty u/s.272(A)(2)(e) of the Act)

7. It was submitted by the Id.A.R that the assessee was under the bona fide belief that the JCIT, Thanjavur Range, Thanjavur did not have the jurisdiction over the assessee. In consequent, the assessee had not filed returns. It is also submitted by the Id.A.R that the assessee was under bona fide belief that no returns need to be filed as the assessee was having an exempt income. It was the prayer that the penalty levied u/s.272(A)(2)(e) of the Act may be cancelled.

8. In reply, the Id.D.R vehemently supported the orders of Id. Assessing Officer and the Ld.CIT(A). It was a submission that the assessee has been absolutely 'not co-operative' and has been doing

everything in his powers to thwart assessment and involved in protracting litigation to avoid the assessments in the assessee's case. It was the prayer that penalty imposed on assessee may be confirmed.

9. We have heard considered the rival submissions and perused the materials on record. As mentioned earlier in respect of the quantum appeals, we have already accepted the bona fide belief of the assessee that the assessee was not liable to file its returns of income as valid bona fide belief in respect of challenging the jurisdiction of the JCIT, Thanjavur Range, Thanjavur for assessing the assessee. After considering that bona fide belief, as also the factum of the registration u/s.12AA grant to the assessee, we have restored the issues raised in the quantum appeals to the file of Id. Assessing Officer for re-adjudication. This, view of ours herein is also, on account of undertaking given by the Authorized Representative of assessee, is that the assessee would co-operate in the set-aside proceedings. This bona fide belief of the assessee has not been shown to be false. It is very much plausible belief, though it has not been upheld either by the Hon'ble Jurisdictional High Court of Madras in the Writ Petition or by us in the quantum appeals. However, such refusal to accept the bona fide belief would not make the bona fide belief of the assessee to be false,

or improbable or implausible. This being so, we accept the reasonable cause shown by the assessee and the penalties levied u/s.272(A)(2)(e) of the Act stand cancelled.

10. In the result, the penalty appeals, filed by the assessee in ITA Nos. 3019 to 3024/Chny./2017 are allowed.

11. To summarize the result, the quantum appeals of assessee are partly allowed for statistical purposes, and the penalty appeals of the assessee are allowed.

Order pronounced in the open court after conclusion of hearing on 07th August, 2018, at Chennai.

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 07th August, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |