(2015) 04 GUJ CK 0058

In the Gujarat High Court

Case No : Tax Appeal No. 234 of 2015

Ajaykumar J. Patel APPELLANT

Vs

Dy. Commissioner of Income Tax RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (2015) 04 GUJ CK 0058

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : R.K. Patel, for the Appellant; Sudhir M. Mehta, Advocates for the Respondent

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.03.2014 passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench ''D'', Ahmedabad (hereinafter referred to as "Tribunal") in ITA No. 2558/Ahd/2013 for the assessment year 2006-07, the appellant - assessee has preferred the present Tax Appeal requesting to consider the following substantial questions of law.

"(1) Whether on facts and in law, the Tribunal has substantially erred in interpretation of scheme and provisions of Income Tax Act, 1961 read alongwith ratio of jurisdictional High Court decision to uphold validity of reopening u/s. 147 read with s. 148 of Income Tax Act, 1961?

(2) Whether on facts and in law, the Tribunal''s finding and conclusion for upholding jurisdiction u/s. 147 and s. 148 for reopening of assessment is in ignorance of relevant material on record and taking aid of irrelevant factors not germane to subject matter of appeal with the result that the finding and conclusion of the Tribunal is "vitiated" on facts and in law?"

2. The main grievance voiced by Shri Patel, learned advocate appearing on behalf

of the appellant - assessee is that though a specific ground was raised before the learned Tribunal that the reasons to re-open the assessment were recorded by one officer and the notice under section 148 of the Income Tax Act, 1961 was by another officer and therefore, the re-assessment proceedings has been vitiated, has not been dealt with by the learned Tribunal. It is submitted that even the decision which was relied upon by the assessee before the learned Tribunal in support of his above submission/ground has not been dealt with by the learned Tribunal.

3. Shri Sudhir Mehta, learned advocate appearing on behalf of the Revenue is not in a position to point out from the impugned judgment and order passed by the learned Tribunal that infact the learned Tribunal had considered the aforesaid submission/ground and/or has dealt with the decision which was relied upon by the assessee.

4. Having heard learned advocates appearing on behalf of the respective parties and without further entering into larger question on merits and/or without expressing anything on merits more particularly in favour of either parties whether re-assessment proceedings were vitiated or not, when it is found that the ground which was raised before the learned Tribunal and the decision which was relied upon by the assessee has not been dealt with by the learned Tribunal, we are of the opinion that this is a fit case to remand the matter to the learned Tribunal to decide the appeal afresh in accordance with law and on merits and to deal with and decide all the grounds raised before the learned Tribunal including to deal with the decision which has been relied upon before the learned Tribunal.

5. In view of the above and for the reasons stated above, without further entering into the larger question on merits and/or without expressing anything on merits more particularly deciding anything on merits whether the reassessment proceedings were valid or not, on the aforesaid ground alone, the present Tax Appeal is allowed. Impugned judgment and order dated 07.03.2014 passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench ''D'', Ahmedabad in ITA No. 2558/Ahd/2013 is hereby quashed and set aside and the matter is remitted to the file of the learned Tribunal directing the learned Tribunal to decide and dispose of the appeal on remand afresh in accordance with law and on merits and to deal with the contention on behalf of the appellant that the reasons were recorded by one officer and the notice under Section 148 of the Income Tax Act, 1961 was issued by another officer and therefore, re-assessment has been vitiated. We are making it very much clear that we have not expressed anything on merits whether the re-assessment proceedings are valid or not more particularly the re-assessment proceedings shall be invalid on the aforesaid ground. The learned Tribunal to consider and deal with the same in accordance with law and on merits. The aforesaid exercise shall be completed within a period of three months from the date of receipt of the present order. Present Tax Appeal is allowed to the aforesaid extent. No costs.