(2016) 01 KAR CK 0258

In the Karnataka High Court

Case No : I.T.A. Nos. 33 and 119/2010

Ayesha Abbas APPELLANT

Vs

The Income Tax Officer, Ward-2 RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:
Income Tax Act, 1961 — Section 148

Citation : (2016) 01 KAR CK 0258

Hon'ble Judges : N.K. Patil and S. Sujatha, JJ.

Bench : Division Bench

Advocate : A. Shankar and M. Lava, Advocates, for the Appellant; K.V. Aravind, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—1. These appeals are by the appellant questioning the legality and validity of the impugned order dated 31.08.2009 passed in I.T.A. Nos. 123 & 124/Bang/2009 on the file of the Income Tax Appellate Tribunal, "A" Bench, Bangalore, raising the following substantial questions of law:

(a) Whether the Tribunal is justified in law in hearing the appeal ex-parte without following the principles of natural justice on the facts and circumstances of the case?

(b) Whether the Tribunal was justified in law in holding that the ld. CIT (Appeals) has not followed the direction of the Hon''ble High Court and consequently gave a perverse finding?

(c) Whether the Tribunal was justified in law in holding that the proceedings under Section 148 of the Income-tax Act, 1961 is valid on the facts and circumstances of the case?

(d) Without prejudice whether the Tribunal ought to have adjudicated the issue on merits or atleast directed to the CIT (A) to look in to the claim of the appellant on the facts and circumstance of the case?

2. Respondent herein had filed I.T.A. Nos. 123 & 124/Bang/2009 for the assessment years 1997-98 and 1998-99 against the order dated 03.10.2008 passed by the Commissioner of Income Tax (Appeals) Hubli. The said appeals had come up for consideration before the Appellate Tribunal on 31.08.2009. The Appellate Tribunal after hearing the learned counsel appearing for the respondent and treating the appellant herein ex-parte, allowed the appeals filed by the respondent - Revenue for the assessment years 1997-98 and 1998-99. Aggrieved by the said order dated 31.08.2009 passed by the Income Tax Appellate Tribunal, "A" Bench, Bangalore, appellant has presented these appeals.

3. We have heard the learned counsel for the appellant and the learned counsel appearing for the respondent.

4. Learned counsel appearing for the appellant Sri Shankar. A, at the outset submitted that the impugned order passed by the Income Tax Appellate Tribunal, "A" Bench, Bangalore, is liable to be set aside and the matter is liable to be remanded back to the Appellate Tribunal for consideration of the matter afresh in accordance with law. To substantiate the said submission, he vehemently submitted that the order impugned is an ex-parte order, which is passed without considering the request made by S.R.Kiron & Co., Chartered Accountants vide letter dated 22.08.2009 and in gross violation of the principles of natural justice. Therefore, it is submitted that on this ground alone, the impugned order passed by the Income Tax Appellate Tribunal, "A" Bench, Bangalore, may be set aside and the matter may be remanded back for consideration afresh in accordance with law and all the contentions of both parties may be left open.

5. Learned counsel for the respondent supported the impugned order passed by the Income Tax Appellate Tribunal and submitted that inspite of opportunity being provided, nobody represented the appellant herein when the matter was taken up for consideration and hence, after hearing the learned counsel for the respondent herein and perusing the material available on record, the Income Tax Appellate Tribunal has passed the order impugned. He further submitted that except producing the letter, the Chartered Accountant had not produced any authenticated acknowledgment. However, he does not dispute that the order is passed without compliance of the principles of natural justice and therefore, fairly submitted that the matter may be remanded back to the Appellate Tribunal with a direction to pass appropriate order in accordance with law.

6. On careful consideration of the contentions of learned counsel for both parties and on perusal of the order impugned dated 31.08.2009 passed in I.T.A. Nos. 123 & 124/Bang/2009 on the file of the Income Tax Appellate Tribunal, "A" Bench, Bangalore, for the assessment years 1997-98 and 1998-99, it is manifest on the face of the same that nobody represented the appellant before the Appellate Tribunal as specifically referred in paragraph No. 3 of its order. Therefore, on the basis of the request made by the learned counsel appearing for

the respondent, the matter was taken up for hearing and the same was concluded ex-parte.

7. It is significant to note that S.R. Kiron & Co., Chartered Accountants had made a request by a letter dated 22.08.2009 to grant a fortnight''s time as he had gone abroad to admit his son to a Medical College, but unfortunately, he was hospitalized on the suspicion of H1N1, Meningitis and Dengue and was under treatment. It is further stated in the letter that Mr. S.R. Kiron himself had undergone minor surgery on 22.08.2009. But, there is no reference in the entire impugned order regarding the request made by S.R. Kiron & Co., Chartered Accountants on behalf of the appellant. However, it is pertinent to note that as per the order sheet maintained by the Appellate Tribunal, the matter was posted on 11.08.2009 and the same was ordered to be listed on 24.08.2009 and the order impugned was passed on 31.08.2009, a week thereafter. It establishes from the same that the Appellate Tribunal has proceeded and passed the order ignoring the principles of natural justice. The Appellate Tribunal ought to have taken note of the same and afforded opportunity to the legal representatives of the deceased - assessee, who had pleaded time on medical grounds.

8. Therefore, we are of the considered view that the order impugned is vitiated for non-compliance of principles of natural justice. Accordingly, the first substantial question of law is answered in favour of the assessee and against the revenue. On this ground alone, the appeals filed by the appellant are allowed without going into further merit and demerit of the case.

Impugned order dated 31.08.2009 passed in I.T.A. Nos. 123 & 124/Bang/2009 on the file of the Income Tax Appellate Tribunal, "A" Bench, Bangalore, is hereby set aside.

The matter is remitted back to the Appellate Tribunal for reconsideration afresh and to pass appropriate orders in accordance with law after giving opportunity of hearing to both the appellant and respondent, as expeditiously as possible, at any rate, within a period of three months from the date of appearance of the parties before the Appellate Tribunal.

All the contentions of both parties are left open.

Both parties are directed to appear before the jurisdictional Tribunal personally or through their counsel without notice on 08.02.2016 at 10.30 AM and collect the next date of hearing.

Since the matter is remanded, the other questions raised in these appeals do not survive for consideration.

