

In the High Court of Judicature at Madras

Reserved on : 30.11.2020	Delivered on : 08/12/2020
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Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

Tax Case Appeal No.39 of 2019

Shri Babuji Jacob

...Appellant

Vs

The Income Tax Officer, Non
Corporate Ward 1(2), Chennai

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.3.2018 made in ITA.No.1922/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2013-14.

For Appellant:

Mr.A.S.Sriraman

For Respondent:

Mrs.R.Hemalatha, SSC

JUDGMENT

T.S.SIVAGNANAM,J

We have elaborately heard Mr.A.S.Sriraman, learned counsel appearing for the appellant - assessee and Mrs.R.Hemalatha, learned

Senior Standing Counsel appearing for the respondent – Revenue.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 16.3.2018 made in ITA.No.1922/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench (for brevity, the Tribunal) for the assessment year 2013-14.

3. The appeal was admitted on 21.1.2019 on the following substantial questions of law :

"i. Whether the notice issued under Section 271(1)(c) of the Act dated 30.3.2016 in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal ?

ii. Whether the proceedings initiated by the respondent/the Assessing Officer is legal and valid?

iii. Whether the Appellate Tribunal is justified otherwise in rejecting the said technical ground of wrong initiation of the penalty proceedings under Section 271(1)(c) of the Act in misreading the show cause notice dated 30.3.2016 proving perversity in the findings of facts at para 6.5 of the impugned

order ?

iv. Whether the Appellate Tribunal is correct in ignoring the law laid down by the Apex Court in the case reported in 322 ITR 158 especially in overlooking the distinction between 'facts disproved' and 'facts not proved' ? And

v. Whether the Appellate Tribunal is correct in ignoring the main source of cash deposits from the sale of the capital asset by recording perverse findings of facts in para 6.3 of the impugned order?"

4. The assessee, who is an individual, filed his return of income for the assessment year under consideration namely 2013-14. The assessee received an intimation under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny and a notice under Section 143(2) of the Act was issued. During the course of assessment proceedings, it was found that the assessee sold two immovable properties, one at Egattur Village, Chengalput Taluk and another at Santhanakuppam, Pudhupakkam Village.

5. The Assessing Officer examined the statement of computation of income with regard to calculation of long term capital gains. So far as the property at Pudhupakkam Village is concerned, the Assessing Officer accepted the explanation of the assessee to be an agricultural

land. However, with regard to the property at Egattur Village, the Assessing Officer held the same to be a capital asset attracting tax on long term capital gains. Accordingly, a notice was issued to the assessee. After computation of long term capital gains, the assessee was asked to explain the source for the cash deposits made in Karur Vysya Bank and Dhanalakshmi Bank.

6. The assessee explained the same to be the sale proceeds of livestock and standing crops. This explanation did not find favour with the Assessing Officer, who held that it was not imaginable that the assessee sold livestock and standing crops worth Rs.1.56 crores. With regard to the deposits made in the Dhanalakshmi Bank, the assessee stated that the same was received from the purchaser, which was a school towards charges for land development work in the land sold by the assessee and in that regard, a letter of confirmation was produced from the school.

7. The Assessing Officer considered the same, rejected the explanation and treated it as unexplained cash deposit in the bank under Section 68 of the Act and accordingly, a sum of Rs.1,34,50,000/- was added to the total income of the assessee. It is not disputed before us that the assessee did not challenge the assessment order dated 30.3.2016 and had remitted tax.

8. A show cause notice was issued to the assessee proposing to initiate proceedings under Section 271(1)(c) of the Act vide notice dated 30.3.2016. A copy of the said notice dated 30.3.2016 has been furnished in the typed set of papers and we find that the said notice does not specifically state as to whether the assessee is guilty of concealing particulars of his income or has furnished inaccurate particulars of income.

9. It is the submission of the learned Senior Standing Counsel appearing for the Revenue that both limbs are attracted in the notice.

10. This issue will be considered by us in the latter part of this judgment.

11. On receipt of the said notice dated 30.3.2016, the assessee submitted a reply dated 11.4.2016 pointing out that there was no bona fide, that there was no cause for imposing penalty, that he had furnished correct particulars and that the allegation made against him was erroneous.

12. The Assessing Officer, by order dated 28.9.2016, did not accept the explanation offered by the assessee and levied penalty of Rs.50 lakhs. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-2, Chennai [for short, the CIT(A)], who dismissed the appeal by order dated

30.6.2017. Challenging the same, the assessee preferred an appeal before the Tribunal, which was rejected by the impugned order. This is how the assessee is before us by way of this appeal.

13. The first aspect to be considered is as to whether the notice issued under Section 271(1)(c) of the Act dated 30.3.2016 is legally valid and proper. Admittedly, the notice did not specifically mention as to whether the assessee concealed particulars of his income or furnished inaccurate particulars or both.

14. Such notices, which did not specify as to which limb of Section 271(1)(c) of the Act would get attracted, were held to be bad in law in the decision of the Karnataka High Court in the case of ***CIT Vs. Manjunatha Cotton and Ginning Factory [reported in (2013) 359 ITR 565]***, which was followed in the decision of the Karnataka High Court in the case of ***CIT, Bangalore Vs. SSA Emerald Meadows [reported in (2016) 73 Taxmann.com 241]*** and in the decision of this Court, ***to which, one of us (TSSJ) was a party***, in the case of ***CIT Vs. Original Kerala Jewellers [TCA.No.717 of 2018 dated 18.12.2018]***.

15. Thus, by applying the law laid down in the above decisions, we can safely hold that such notices are bad in law. Consequently, the penalty proceedings initiated are to be held to be wholly invalid.

16. It is the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue that what was alleged against the assessee was concealing particulars of income and also furnishing of inaccurate particulars of income and that the decision of this Court in the case of **Original Kerala Jewellers** was held to be not treated as a precedent, that this Court, in the decision, **to which, one of us (TSSJ) was a party**, in the case of **Sundaram Finance Ltd. Vs. ACIT [reported in (2018) 93 Taxmann.com 250]** rejected a similar plea raised by the assessee, which decision was affirmed by the Hon'ble Supreme Court in the decision reported in **(2018) 99 Taxmann.com 152**.

17. We test the correctness of the argument of Mrs.R. Hemalatha, learned Senior Standing Counsel appearing for the Revenue, for which purpose, we have to take note of the facts.

18. The first aspect is as to whether there is any concealment of particulars of the assessee's income. At the first instance i.e. during the scrutiny assessment, the assessee sent a letter dated 15.3.2016 explaining the entire transaction wherein he had stated that while filing the return of income, he was under the impression that both the properties were agricultural lands and that there was no tax liability. Consequently, since one of the properties namely the property at

Egattur Village was treated to be a capital asset, the long term capital gains were computed and the assessee requested for deduction under Section 54F of the Act, as the sale consideration received was utilized for purchase of a new flat, in which, the name of the assessee's wife was also included as a purchaser. The assessee further stated about the sale of livestock and standing crops. The assessee also stated that he is a senior citizen carrying on agricultural operations for 27 years and that his income was based upon the interest received from bank deposits and offered that a sum of Rs.50 lakhs may be treated as revenue in nature and taxed as income though there was no positive fact or finding had been found so as to avoid protracted litigation.

19. Further, with regard to deposits, the assessee explained that he had received the amount of Rs.21,56,250/- towards development cost of the agricultural land and a copy of the letter acknowledging payment made by the party was produced. This amount was received by RTGS to his bank account and the buyer had confirmed in writing that this was paid as development cost. Hence, this amount related to sale consideration of the land.

20. This explanation, which was offered by the assessee, did not find favour with the Assessing Officer, who rejected the same and completed the assessment vide order dated 30.3.2016 under Section

143(3) of the Act and made additions as mentioned above. Thus, there was no allegation in the assessment under Section 143(3) of the Act that there had been concealment of particulars of income.

21. Admittedly, all the amounts were received by the assessee through banking channels and he had mentioned about the same in his return of income. The only mistake done by the assessee was to treat both the lands as agricultural lands. Once the notice under Section 143(3) of the Act was issued, the assessee was able to convince the Assessing Officer that the lands in Pudhupakkam Village were to be treated as agricultural lands. But, he was unable to convince the Assessing Officer that the lands in Egattur Village were agricultural lands, which were treated to be a capital asset. Therefore, there was no material available with the Assessing Officer to allege concealment of particulars of income.

22. With regard to furnishing of inaccurate particulars, the stand taken by the assessee was that both lands were agricultural lands, that he had been carrying on agricultural operations for 27 years, that he had been filing return of income regularly and that the source of income was from agricultural income and interest income from bank deposits. These facts were never disputed by the Assessing Officer.

23. After receipt of the penalty notice, the assessee submitted a

reply dated 11.4.2016 wherein the assessee reiterated the stand taken in his letter dated 15.3.2016. However, the same was not accepted by the Assessing Officer while completing the assessment under Section 143(3) of the Act. The assessee further stated that he had produced all the facts of the transactions namely sale documents, materials, etc., before the Assessing Officer and therefore, it cannot be construed as furnishing of inaccurate particulars. The assessee also pointed out that while allowing exemption under Section 54F of the Act, the Assessing Officer considered 50% of the investments whereas 100% investments were done through banking channels. Therefore, the assessee stated that it cannot be said that correct particulars of income were not furnished. The assessee further pointed out that he was in need of funds for purchase of a new flat, that he sold trees with roots, coconut seedling and other miscellaneous items, that the farming sector was an unorganized sector, that all were sold to agriculturists and that he cannot be compelled to furnish details in this regard. The assessee furthermore pointed out that full particulars such as bank statements, cash deposit out of accumulated income were fully disclosed and furnished to the Assessing Officer, that there was no non disclosure, that the explanation offered was bona fide and that therefore, penalty could not be imposed.

24. The Assessing Officer, while imposing penalty vide order dated 28.9.2016, held that but for the scrutiny assessment under Section 143(3) of the Act, the cash deposits would not have come to light and therefore, rendered a finding that the assessee furnished inaccurate particulars.

25. This finding of the Assessing Officer is incorrect because while completing the assessment under Section 143(3) of the Act, there was no allegation against the assessee as to furnishing of inaccurate particulars. But, the Assessing Officer did not accept the explanation offered by the assessee and made certain additions, which will not automatically result in interpreting the same as furnishing of inaccurate particulars. Further, we find that there is no specific finding as regards the concealment against the assessee because, on facts, it has been established before the Assessing Officer while completing the assessment under Section 143(3) of the Act that all transactions were through banking channels. Hence, the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue that both limbs of Section 271(1)(c) of the Act are attracted has to necessarily fall. Hence, we hold that there is inherent defect in the notice dated 30.3.2016 issued under Section 271(1)(c) of the Act, as it will vitiate the entire proceedings.

26. Since we have heard the learned counsel on the correctness of the orders passed by the Assessing Officer, the CIT(A) and the Tribunal on the merits of the matter, we proceed to discuss the other issues as well.

27. The CIT(A), while confirming the order of penalty, took note of the order passed by the Assessing Officer wherein the Assessing Officer rejected the explanation offered by the assessee, which ultimately resulted in an addition and the assessment was completed vide order dated 30.3.2016. The question would be as to whether rejection of the explanation and the consequential addition would automatically result in an order of penalty.

28. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue seeks to substantiate her case by relying upon the decision of the Hon'ble Supreme Court in the case of **Mak Data (P) Ltd. Vs. CIT, II [reported in (2013) 38 Taxmann.com 448]** wherein it was held that voluntary disclosure does not release the assessee from mischief of penalty proceedings under Section 271(1)(c) of the Act and in terms of the said provision, the Assessing Officer has to satisfy as to whether the penalty proceedings have to be initiated or not during the course of assessment proceedings and he is not required to record his satisfaction in a particular manner or reduce

it into writing.

29. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of ***K.P.Madhusudhanan Vs. CIT [reported in (2001) 118 Taxman 324]***. The decision of the Hon'ble Supreme Court in the case of ***Mak Data (P) Ltd.***, was taken note of by the Division Bench of this Court, ***to which, one of us (TSSJ) was a party***, in the case of ***CIT, Chennai-IV Vs. Gem Granites (Karnataka) [reported in (2014) 42 Taxmann.com 493]*** and the aspect as to how onus/burden of proof shifts from the assessee to the Revenue when penalty proceedings are initiated, is held in the following terms :

"11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 ([Mak Data P. Ltd., vs. Commissioner of Income Tax-II](#)), the Hon'ble Supreme Court while considering the Explanation to [Section 271\(1\)](#), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to [Section 271\(1\)](#) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported

and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee."

30. In the instant case, the assessee offered an explanation and we find the explanation to be cogent because all deposits were made through banking channels and out of two properties sold, the Assessing Officer accepted the assessee's stand that one of the

properties was an agricultural land. Hence, we find that the burden cast upon the assessee to offer an explanation stands fulfilled. Consequently, the burden now shifts to the Revenue to establish the concealment of income or furnishing of inaccurate particulars of income or both. If the Revenue does not agree with the explanation offered by the assessee as in the instant case, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income. We find this aspect to be completely absent in the instant case. Therefore, we also find the imposition of penalty to be unjustified.

31. The assessee filed an appeal before the Tribunal, which confirmed the order passed by the CIT(A) that the assessee raised a new stand before the CIT(A). No such new stand has been raised. The stand taken by the assessee after receipt of the notice under Section 143(2) of the Act dated 02.9.2014 has been consistent i.e. before the Assessing Officer while submitting the reply to the penalty notice, in the appeal before the CIT(A) and before the Tribunal. This is evident on a reading of the grounds of appeal filed before the CIT(A) as well as the notes of arguments filed by the assessee before the CIT(A) dated 30.6.2017. Therefore, to that extent, the CIT(A) and the Tribunal have committed an error.

32. The decision of this Court in the case of **Sundaram Finance Ltd.,** was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee.

33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30.3.2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of **Sundaram Finance Ltd.,** cannot be applied.

34. The decision of the Hon'ble Supreme Court in the case of **K.P.Madhusudhanan** is factually different wherein the assessee was

unable to furnish evidence for loans and that he offered the amount of transaction as additional income and this explanation was not acceptable to the Assessing Officer and he applied Explanation (1B) to Section 271(1)(c) of the Act and imposed penalty.

35. In the instant case, the assessee has been able to explain the transaction even at the first instance i.e. while submitting the reply dated 15.3.2016 in response to the notice under Section 143(2) of the Act, which explanation he maintained till he filed an appeal before the Tribunal. Therefore, on facts, the decision of the Hon'ble Supreme Court in the case of **K.P.Madhusudhanan** is distinguishable.

36. Further, the CIT(A) found fault with the assessee in not challenging the assessment order and for having accepted the same. However, this cannot be a ground to enable the Assessing Officer to automatically levy penalty. In this regard, it is beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of **CIT Vs. Smt.Anitha Kumaran [reported in (2017) 79 Taxmann.com 304]** wherein the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petro Products (P) Limited [reported in (2010) 322 ITR 158]** was followed wherein the Hon'ble Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression '**concealment of particulars of income**

and/or furnishing of inaccurate particulars of income' and after applying the decision in the case of **Reliance Petro Products (P) Ltd.**, the Hon'ble Division Bench of this Court dismissed the appeal filed by the Revenue in the following terms :

"13.3. The Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression concealment of particulars of income and/or furnishing inaccurate particulars of income and went on to observe as follows:

".....A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word

"particulars" used in [Section 271\(1\)\(c\)](#) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his

income or furnished inaccurate particulars of such income...."

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under [Section 271\(1\)\(c\)](#) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such

claim made in the Return cannot amount to the inaccurate particulars.

*10. It was tried to be suggested that **Section 14A** of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as*

well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

37. On this issue, a useful reference can be to the decision of the Gujarat High Court in the case of **National Textiles Vs. CIT [reported in (2001) 249 ITR 125]**, which related to the assessment year 1974-75 wherein it was held that in order to justify the levy of penalty, two factors must co-exist namely (i) there must be some material or circumstance leading a reasonable conclusion that the amount does not represent the assessee's income and it is not enough for the purpose of penalty that the amount has been assessed as income and (ii) the circumstances must show that there was animus

i.e. conscious concealment or act of furnishing inaccurate particulars on the part of the assessee.

38. Further, the decision of the Hon'ble Division Bench of this Court in the case of **CIT Vs. S.I.Paripushpam [reported in (2001) 118 Taxman 844]** would support the case of the assessee. In the said case, the Appellate Assistant Commissioner, in the penalty proceedings, held that the amount, the addition of which was agreed to by the assessee was an amount, which had been set out in an enclosure filed along with the return. While testing the correctness of the order, the Tribunal held that the levy of penalty under Section 271(1)(c) of the Act was wholly unwarranted as there had been no fraud or wilful neglect and that the assessee had only, with a view to cooperate with the Department, agreed to the addition. We observe that the above position will help the assessee, as there is not even a remote allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

39. For the above reasons, the assessee has to succeed on all grounds and consequently, it has to be held that the notice initiating the penalty proceedings is defective and invalid and the other findings

rendered by the Assessing Officer, the CIT(A) and the Tribunal do not warrant imposition of penalty on the assessee.

40. In the result, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs.

08.12.2020

To

- 1.The Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai
- 2.The Income Tax Officer, Non Corporate Ward 1(2), Chennai.

RS

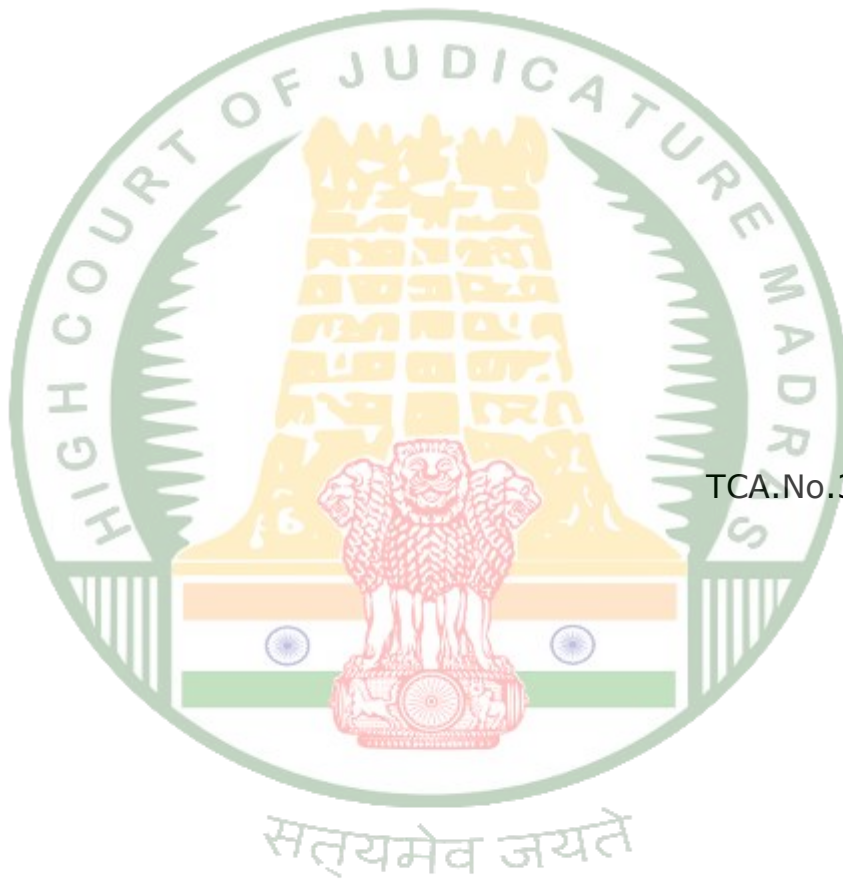


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T.S.SIVAGNANAM,J
AND
PUSHPA SATHYANARAYANA,J

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