

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01/08/2016

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and
The Honourable **Mr.Justice D.Krishnakumar**

Tax Case Appeal Nos.488 and 489 of 2016
and
C.M.P.No.9944 of 2016

Commissioner of Income Tax
Tiruchirapalli

... Appellant in both appeals

Vs

Smt.S.Jayalakshmi Ammal
Rep. by Shri S.Natarajan
L/H of N.Somasundaram

... Respondent in both appeals

Prayer: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 30/06/2015 in IT(SS) A No.146/Mds/2002 and 154/Mds/2002.

For appellant : Mr.J.Narayanasamy
in all TCAs

COMMON JUDGMENT
(made by S.Manikumar,J)

Instant Tax Case Appeals arise out of a common order made in IT (SS) A.Nos.146 and 154/Mds/2002 dated 30.06.2015 of the Income Tax Appellate Authority, for the block assessment years 1990 - 1991 to 2000 - 2001.

2. Facts leading to the appeal are that for the assessment years 1990 - 1991 to 1999 - 2000 and 2000 - 2001, proprietor of Sri Bhuavneswari Jewellers, is the assessee. On 29.12.1999, a search under Section 132 of the Income Tax Act, 1961 was conducted in the residential and business premises of the assessee. Based on the materials collected during search, a notice under Section 158 BC of the Act was issued on 09.03.2000, and receipt of which was acknowledged, by the assessee on 11.03.2000. The assessee filed the return of income for the block assessment, in Form No.2B on 24.04.2000, disclosing 'Nil' income. Block assessment was taken up for scrutiny, by issuing a notice under Section 158 BC(b) of the Income Tax Act, 1961, on 12.12.2001. Assessee's explanation and details were sought for, along with a notice under Section 142(1) and 131 of the Act. A reply dated 18.12.2001 was submitted. After considering the books of accounts and other materials, the Assessing Officer, vide order dated 28.12.2001, for the assessment year 1990 - 1991 to 2000 - 2001, arrived at the undisclosed income for the block period, as Rs.38,59,700/- and assessed the same at 60%,

under Section 113 of the Income Tax Act, 1961, with an addition of 10%, on the tax, towards surcharge. The Deputy Commissioner of Income Tax (i/c.) Central Circle I, Trichy, the Assessing Officer, arrived at the total tax payable, as Rs.25,26,180/- Being aggrieved, the assessee filed an appeal in I.T.A.No.270/2001-2002, before the Commissioner of Income Tax (Appeals) Central II, Chennai. The assessee raised 14 grounds. The appellate authority regrouped the same, into six issues, which are as follows:

(i) Assessment in the hands of the appellant, the value of immovable properties at Rs.31,00,000/- purchased in the name of daughter-in-laws at TS No.3096, 3097 and 3908, Nelmandi Street, Pudukottai;

(ii) Addition of Rs.80,000/- towards excess stock of 215 gms. of gold jewellery found in the business premises;

(iii) Addition of Rs.2,90,000/- towards excess stock of 39 Kgs. of Silver articles;

(iv) Addition towards difference in cost of construction of Rs.83,700/-;

(v) Addition of Rs.3,00,000/- towards inadequate drawings; and

(vi) Levy of surcharge of Rs.2,10,360/-

3. After hearing the parties, on issue No.1 stated supra, vide order dated 05.07.2002 in ITA No.270/2001-2002, the Commissioner of Income Tax (Appeals) Central II, Chennai, substituted a figure of Rs.5,00,000/-, in the place of Rs.31,00,000/-, which relates to the

assessment in the hands of the appellant, regarding immovable properties stated supra, in paragraph 2 of this order.

4. As regards the second issue, addition of Rs.86,000/- towards the excess stock of 215 grams of gold jewellery found in the business premises, accepting the explanation of the assessee and by observing that the alleged excess of 215 grams, is negligible, deleted the said amount.

5. On the third issue, regarding the addition of Rs.2,90,000/-, towards the excess stock of 39 Kgs of Silver articles, the stock of silver articles was inventorised at 142.016 Kgs and whereas, the stock of articles, as per Stock Register maintained, in the business premises was found at 102.604 Kgs, and that there was an excess of 39.412 Kgs, value of which was estimated at, Rs.2,90,000/- and in the above said circumstances, the Commissioner of Income Tax (Appeals) treated the same, as undisclosed income.

6. On the fourth issue, regarding the addition towards difference in the cost of construction of Rs.83,700/-, accepting the contention *inter alia* made in the appeal by the assessee, and after referring to few decisions, the Commissioner of Income Tax (Appeals), accepted the contention of the assessee that the Valuation Officer had not given any allowance to self-supervision etc. and by observing that the said

contention, being reasonable, revised the cost of construction, as hereunder:

Cost of construction based on the valuation report	Rs.2,99,700
Less: Rebate on self-supervision @ 7.5% on Rs.2,99,700	Rs. 22,478

	Rs.2,77,222
Less: Further allowance on account of adoption high rates in the valuation report @ 7.5% on Rs.2,99,700/-	Rs. 22,478

	Rs.2,54,744

7. The fifth issue relates to addition of Rs.3,00,000/-, towards inadequate drawings. The appellant family consists of himself, his wife, three sons and two daughters-in-law and two grandchildren. Before the appellate authority, attention has been invited that the appellant had originally offered only Rs.2,00,000/- in his statement recorded under Section 132(4) of the Income Tax Act, 1961 and that therefore, the Assessing Officer was not justified, in adding Rs.3,00,000/- on this account. Therefore, submission has been made before the appellate authority that the appellant ought to have been given the relief, to the extent of Rs.1,00,000/-. Accepting the said plea, as reasonable, the Commissioner of Income Tax (Appeals), vide order dated 05.07.2002, has directed the Assessing Officer, to substitute the figure of Rs.2,00,000/- towards insufficiency in drawing for domestic expenses.

8. As regards the last issue, regarding levy of surcharge of Rs.2,10,360/-, by observing that in view of the first schedule which clearly imposes surcharge on taxes levied under Section 113, the appellate authority, dismissed the plea of the appellant, on the levy of surcharge. By common order dated 05.07.2002, Commissioner of Income Tax (Appeals) Central II, Chennai, has ordered and granted the reliefs, as stated supra.

9. Aggrieved by the same, Smt.S.Jayalakshmi Ammal and others have, filed IT (SS) A No.146/Mds/2002 for the block Assessment years 1990-91 to 2000-01. The Asst. Commissioner of Income-Tax, Central Circle I, Trichy, has also filed an appeal in I.T. (SS) A No.154/Mds/2002, for the above said years. Both the appeals have been taken up together.

10. As regards the first issue of addition of Rs.5,00,000/-, the Tribunal, at paragraph Nos.5 to 9, thoroughly discussed and held that the Commissioner of Income Tax (Appeals) is not justified, in sustaining addition of Rs.5,00,000/-. On this aspect, we have given our careful consideration, to the submissions and the material on record. Considering the discussion and reasoning of the Tribunal, we concur with the view of the Tribunal, that there was no material found, during the course of search operation and that the statement recorded from the assessee under Section 132(4) of the Income Tax Act, 1961 on

29.12.1999, has been relied on, by the Assessing Officer. However, upon perusal of the statement, the Tribunal has found that the preamble portion of the statement, it is recorded that the said statement has been given on 03.01.2000 under Section 132(4) of the Income Tax Act, and on the materials, the Tribunal has observed that, it is not known as to whether search was initiated on 29.12.1999 or 03.01.2000. A doubt has been raised by the Tribunal, regarding the statement said to have been recorded on 03.01.2000.

11. Taking note of Section 158 BB(1) of the Income Tax Act, 1961, which provides for the method of computation of the undisclosed income, for the block period, and that the Assessing Officer is obligated to compute the undisclosed income for the block period, in accordance with the provisions of the Income Tax Act, 1961, on the basis of the evidence found, as a result of search, or other documents, materials or other information, available with the Assessing Officer, and relatable to such evidence found, during the course of the search operation and by observing that the statement of the Assessee recorded on 03.01.2000 under Section 132(4) of the Act, 1961 does not throw any light on the aspect of payment of the money, for the purchase of property and in the light of the provision, Section 131 of the Income Tax Act, 1961, that such statement recorded, cannot be relied on, by making it referable, at the hands of the Assessee, the Tribunal has held that the Commissioner of Income Tax (Appeals), has rightly deleted addition of Rs.31,00,000/- and thus, dismissed the case of the Revenue.

12. On the aspect of addition of Rs.5,00,000/-, the Tribunal held that, in the absence of any material found during the course of search operation, and whereas, the power of Commissioner of Income Tax (Appeals) though co-terminus with that of the Assessing Officer, cannot be extended to make any addition, towards the undisclosed income and accordingly, held that the Commissioner of Taxes (Appeals) is not justified, in sustaining addition of Rs.5,00,000/-. So saying, the Tribunal, has deleted Rs.5,00,000/-, under the head undisclosed income.

13. Coming to the cost of construction, to the extent of Rs.83,700/- held, in favour of the assessee, i.e. addition towards difference in cost, the Tribunal going through the materials on record, has noticed that the Assessing Officer has found that the Valuation Officer has estimated the cost of construction to the extent of Rs.2,99,700 and whereas, the assessee had disclosed the cost of construction at Rs.2,16,000/- only, and therefore, difference of Rs.83,700/- has to be treated, as unexplained investment for the block period. On this aspect, the appellate authority has granted relief for Rs.44,956/-. While considering the addition towards difference in the cost of construction, the Tribunal has noticed that no books of account was found during the course of search. Valuation report has been obtained, after the search. In fact, no material was available on the asset of construction of the building. In the absence of any material, the Tribunal held that there cannot be any addition, with regard to the so

called improvement to the property. So saying, the Tribunal, set aside both the addition of Rs.5,00,000/- towards investment for the immovable property, and the addition of Rs.83,700/- towards improvement of property.

14. Going through the material record, it could be seen that assessee's son S.Natarajan has been examined on 29.12.1999, under Section 132 of the Income Tax Act, 1961. As per the statement of the assessee's son, there was payment of Rs.31,00,000/-, towards purchase of property, and that such payment was made in the presence of his father, namely, the assessee. According to him , a sum of Rs.31,00,000/- was paid to Shri.Babu, whereas, going through the statement of the assessee said to have been recorded on 03.01.2000, the Tribunal has observed that, if there was any payment of Rs.31,00,000/- towards the purchase of property, the same ought to have been clarified from the assessee during examination, on 03.01.2000 and that the Revenue authorities have not taken any pain to clarify the same, from the assessee. The Tribunal, by observing that, in the absence of any clarification from the assessee, statement said to have been recorded from Mr.Natarajan son of the assessee is of any assistance to the revenue. Thus, the Tribunal, in the absence of any material found during the course of search operation, was also of the considered view that statement of Mr.Natarajan, son of the assessee, dated 29.12.1999, not corroborated with any documentary evidence,

cannot be relied upon, for making any addition, in the hands of the assessee.

15. Before the Tribunal, Revenue has contended that the Assessing Officer has rightly made an addition of Rs.86,000/- being the value of 215 grams of gold jewellery, found to be the excess stock, during the course of search operation. According to the Revenue, the excess stock was nearly 2% of the total stock available with the assessee and therefore, it cannot be ignored at all. Revenue has also contended that when the Assessing Officer had already considered 410 grams of jewellery, said to have been received for repair, the Commissioner of Income Tax (Appeals) ought not have held 215 grams of gold jewellery found to be in excess, during the course of search operation, as negligible.

16. On this issue, let us consider, as to how the Commissioner of Income Tax (Appeals), the appellate authority, has addressed this issue, which are detailed, as hereunder.

" 4.0 This issue has been dealt with by the Assessing Officer in para 7.1 to 7.5 of the assessment order. During the course of the search in the business premises of the appellant, the stock-in-trade of gold jewellery was inventorised and determined at 12.978 Kgs, whereas the stock of gold jewellery as per the Stock Register was found at 11.054 Kgs. Thus, there was excess stock of gold jewellery amounting to 1.924 Kgs. The appellant reconciled the difference as under:

Correct totalling of weight of jewellery found as per panchanama		12048 gms
(-) Order Jewellery Repair Jewellery	519 gms	
	410 gms	
	-----	929 gms

		11119 gms
(+) Own jewellery included in order jewellery and repair jewellery		150 gms

		11269 gms
(-) Jewellery belonging to others not entered into the repairs register at the time of search (refer reply to question No.21 by Natarajan)		215 gms

Correct stock as per register		11054 gms

Reconciliation made by the appellant has been accepted by the Assessing Officer, but, then, he has proceeded to assess the value of difference of 215 gms. treating the same, as undisclosed income. Before the appellate authority, the Learned Counsel for the Appellant has submitted that the alleged excess of jewellery of 215 gms., being negligible, explanation given at the time of search that the jewellery belonged to the customers, who had given for repairs, ought to have been accepted by the Assessing Officer. Having regard to the nature of the business and keeping in view the quantum of stock of gold jewellery traded by the Appellant, excess of 215 gms. has been considered, as negligible and, therefore, addition of Rs.86,000/- on this account, has been held, as not warranted. The same, therefore, was deleted.

17. Going through the material on record, we are of the considered view that Commissioner of Income Tax (Appeals), thus held that the reasoning of the appellate authority, deleting Rs.86,000/- towards the excess stock of 215 gms gold jewellery cannot be said to be perverse. Further, the Tribunal has found that, in spite of the reconciliation made by the assessee, the Assessing Officer has proceeded to assess the value of the difference of 215 gms gold jewellery, treating the same, as undisclosed income. The Tribunal has categorically held that when the assessee has filed reconciliation statement, there was no need for making any further addition or deletion, only to the extent of Rs.86,000/-. So saying, the Tribunal held that there was no infirmity, in the order of the appellate authority, as regards deletion of Rs.86,000/-.

18. Perusal of the Memorandum of Grounds in the instant appeals, shows that there is no specific ground, relating to deletion of Rs.1,00,000/- towards, inadequate drawings. The Commissioner of Income Tax, Tiruchirappalli has sought for an answer under section 260A on the following substantial questions of law:

1. Whether on the facts and circumstances of the case the Tribunal was right in holding that the addition of Rs.31 lakhs made with respect to on money payment by the assessee for the purchase of property cannot be sustained on the ground the said addition was made based on the statements recorded during the search

from the assessee and his son and seller of the property.

2. Whether on the facts and in the circumstances of the case the Tribunal was right in not holding that the above said statements recorded at the time of search from the purchaser of the property is to be treated a corroborative evidence in support of the admission made by the assessee and his son and consequently the addition of Rs.31 lakhs is to be sustained.

3. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the addition made on the difference in cost of construction cannot be sustained on the ground that it was not made on the basis of material seized at the time of search.

4. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the addition made with respect to difference in stock of gold of 215 grms cannot be sustained on the ground that the said difference was reconciled.

19. While advertng to the above, we are of the considered view that, for deciding any issue, against the assessee, the Authorities under the Income Tax Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under Section 132(4) of the Income Tax Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the Income Tax Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an

arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore, under Judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred.

20. In the case on hand, statement recorded on 29.12.1999 from the son of the assessee under Section 132(4) of the Act is not corroborated by any material document. Admittedly, Revenue has also not confronted the assessee, with the said statement of his son. If that be the case, it can be safely concluded that, there was no material documentary evidence, to substantiate and corroborate the statement of Mr.Natarajan, son of the assessee. If the assessee makes a statement under Section 132(4) of the Act, and if there are any incriminating documents found in his possession, then the case is different. On the contra, if mere statement made under Section 132(4) of the Act, without any corroborative material, has to be given credence, than it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterised as undisclosed and on the facts and circumstances of the case, we are of the view that mere statement without there being any corroborative evidence, should not be treated as conclusive evidence against the maker of the statement.

21. In the light of our discussion, we are of the considered view that the Revenue has not made out a case for reversal of the orders impugned, on the grounds raised, and thus we hold that all the substantial questions of law, are answered in the negative against the Revenue, and in favour of the respondent/assessee.

In the result, Tax Case Appeal Nos.488 and 489 of 2016 are dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K.,J) (D.K.K.,J)
01.08.2016

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Index : yes
website : Yes

To

The Income Tax Appellate Tribunal,
Madras 'D' Bench

S.MANIKUMAR,J

a n d

D.KRISHNAKUMAR,J

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Tax Case Appeal
Nos.488 and 489 of 2016

01/08/2016