In the High Court of Judicature at Madras

Dated: 11.11.2014

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) Nos.865 & 866 of 2014

M/s.P.Madhurajan (HUF)
Prop. Baalaji Process,
G.T.Garden,
Kaliamman Koil Thottam,
Magudanchavadi Via,
Gudalur PO,
Salem District.

.... Appellant in the above T.C.(A)s.

Vs.

The Assistant Commissioner of Income Tax
Central Circle, Salem.

.... Respondent in the above T.C.(A)s.

APPEALs under Section 260A of the Income Tax Act against the order dated 21.10.2013 made in I.T.A.Nos.258 & 374/Mds/2009 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai for the assessment year 2004-05.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent: Mr.M.Swaminathan
Standing counsel for Income Tax

C O M M O N J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the assessee as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"**T.C.(A)No.865 of 2014:**

1. Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is perverse and in violation of the principles of natural justice in not considering the submissions made and the materials placed before it in the proper perspective and proceeding to pass the order by not accepting the retraction of admission made by the appellant?

2. Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is perverse in not considering the submissions made and was right in upholding the addition of unexplained investment in SIDCO?

T.C.(A)No.866 of 2014:

1. Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is perverse and in gross violation of the principles of natural justice in not considering the submissions made and the materials placed before it in the proper perspective?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in restoring the addition in respect of investments made in agricultural land at Ariyanoor merely on suspicion by placing reliance on unperformed agreement dated 07.02.2001 in respect of uncomparable laid out housing plots?"

2. The brief facts are as follows:

The assessment in the above cases relate to the assessment year 2004-05. A search was conducted in the residence as well as the business premises of the assessee in his individual capacity on 10.8.2004. During search, certain documents belonging to HUF, of which the assessee is the karta, were seized. The assessee (HUF) is primarily engaged in the business of money lending and textile processing under the name and style of M/s.Balaji Process, Gudalur. He filed return of income for the assessment year 2004-05 on 24.3.2005 declaring its income as Rs.44,930/- and agricultural income of Rs.3.00 lakhs. Consequent to the search, notice under Section 153C read with Section 153A(a) was issued to the assessee. During the course of assessment proceedings under Section 153A read with Section 143(3) of the Income Tax Act, the Assessing Officer made additions in the income returned by the assessee on account of unexplained investment in purchase of land measuring 92 cents at Ariyanoor - Rs.42,70,072/- and investment in SIDCO land - Rs.5,63,263/-.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 02.12.2008 deleted the addition to the extent of Rs.32,51,872/- in respect of purchase of land at Ariyanoor but upheld the

addition made with regard to investment in SIDCO land.

4. Challenging the said order of the Commissioner of Income Tax (Appeals) confirming the addition made with regard to the investment in SIDCO land, the assessee preferred an appeal before the Income Tax Appellate Tribunal in I.T.A.No.258/Mds/2009. The Revenue has also preferred an appeal before the Tribunal in I.T.A.No.374/Mds/2009 challenging the order of Commissioner of Income Tax (Appeals) deleting the addition to the extent of Rs.32,51,872/-.

5. The Tribunal, by a common order, restored the order of the Assessing Officer, thereby, dismissed the appeal filed by the assessee and allowed the appeal filed by the Revenue.

6. Aggrieved by the order of the Tribunal, the assessee has filed the present Tax Case (Appeals).

7. Heard the learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

8. Two issues arise for consideration in the above Tax Case (Appeals). The first issue is addition made by the Assessing Officer

towards the investment in SIDCO land and the second issue is the addition made in respect of investments made in land at Ariyanoor.

9. In I.T.A.No.258 of 2009 filed by the assessee, the Tribunal considered the issue with regard to the addition made by the Assessing Officer towards the investment made in SIDCO land. In paragraph 6 of the order, the Tribunal considered the explanation given by the assessee, but, however, the Tribunal was of the view that such details were never given by the assessee either before the Assessing Officer or before the Commissioner of Income Tax (Appeals). The Tribunal also came to the conclusion that the assessee has not been very clear on his stand on the investment, on the contrary, it has been recorded by the Assessing Officer that the assessee in his letter dated 19.11.2004 has accepted the investment as unexplained investment. It is thereafter, the assessee had changed his mind and placed reliance on certain accounts. The plea of the assessee to show the source of borrowing of funds was rejected as an after thought. For better clarity, the relevant portion of the order of the Tribunal is extracted below:

> "6. In ITA No.258/2009, the assessee has assailed the addition confirmed by the CIT(Appeals) with regard to the investment of '5,63,263/- made in SIDCO land. The ld. Counsel for the assessee has submitted that the entire investment in purchase of SIDCO land has been explained. A sum of '1.00 Lakh was withdrawn from Allahabad Bank on 10-

11-2013 from the individual account of Shri P.Madhurajan, another sum of 4.00 Lakhs was withdrawn from Canara Bank on 06-12-2003. Out of the aforesaid 5.00 Lakhs, a sum of 4,50,000/- was deposited into assessee's account with Allahabad Bank on 08-12-2003. Another sum of 1,20,000/- was received through cheque in favour of M/s.Balaji Processors. Thus, sufficient funds were available with the assessee for taking out a Demand Draft of 5,63,263/-.

7. We find that the above details were never given by assessee either before Assessing Officer or the CIT (Appeals). No reason whatsoever is given by the ld. Counsel, as to what prevented the assessee to furnish the details before lower authorities. The Assessing Officer in his order has categorically stated that vide letter dated 19-11-2004, the assessee had submitted that he would admit the whole amount of 35.00 Lakhs for purchasing land from SIDCO as un-explained investment as the loan taken for the above investment is un-explainable. Subsequently, the assessee changed its stance and after fabrication of accounts, claimed that the amounts were credits for investment. The CIT(Appeals) in his order has categorically stated that the assessee had not produced any additional evidence to show that the assessee had borrowed any funds from M/s.New Ashok Finance, Ellampillai, or Ellampillai Ashok Corporation for utilizing the same for investment in SIDCO.

8. We do not find any force in the submissions made by the ld. Counsel for the assessee. No reliability can be placed on the submissions made on behalf of the assessee. The assessee has been taking different stand before the authorities below and before us to cover up the investments made in

SIDCO land. There is no merit in the appeal of the assessee, therefore, the same is dismissed."

10. We find that this is a question of fact, which the appellant/assesee should have pursued before the Original Authority or before the Commissioner of Income Tax (Appeals). The Tribunal, after examining the issue threadbare, declined to interfere with the order of the Commissioner of Income Tax (Appeals) principally on the ground that no reliability could be placed on the submissions made by the appellant/assessee, who had taken different stands before the Authorities below. We find no reason to interfere with the order of the Tribunal.

11. In I.T.A.No.374/Mds/2009 filed by the Revenue challenging the order of the Commissioner of Income Tax (Appeals) partly deleting the addition in respect of investments made in land at Ariyanoor, the Tribunal taking note of the earlier sale agreement dated 07.02.2001 between C.Balan and others and Smt. K.Vanaja for sale of land measuring 15000 sq.ft. at Rs.106/- per sq.ft. and also taking note of the fact that a total sum of Rs.15,60,000/- was re-paid to smt.K.Vanaja in favour of C.Balan on the cancellation of such agreement, came to the conclusion that the subsequent sale in favour of the assessee vide registered document dated 17.3.2004 was for Rs.2.00 lakhs only and it is not a case of distress sale by C.Balan in favour of the assessee. The Tribunal also took note of the

fact that the Commissioner of Income Tax (Appeals) sustained the addition of Rs.10,18,200/- on the ground that there is evidence that the assessee had advanced a sum of Rs.10.00 lakhs to Shri.Balan and the remaining amount of Rs.18,200/- towards Stamp Duty and registration charges to hold that the transaction was not proper. The Tribunal found error in the order of the Commissioner of Income Tax (Appeals) deleting the addition to the extent of Rs.32,51,872/- and accepted the Department's plea taking note of the fact that there was no decline in the real estate prices during the relevant period and on the contrary the value of another piece of land purchased by Devabala Group showed appreciation in price. This fact is not disputed by the assessee. The Tribunal also looked into the agreement dated 07.02.2001 at the instance of the assessee and came to the conclusion that even as per the translated copy of the agreement, he did not show that it is in respect of developed residential plots. The assessee tried to explain the difference in value between February, 2001 agreement and the present one as a distress sale, but that was, on facts, found to be not correct by the Tribunal. The Tribunal came to the clear conclusion that the Assessing Officer has rightly made additions on this account.

12. Before us, learned counsel appearing for the appellant wanted to rely on the statement of Smt.K.Vanaja, who is said to be the partner of C.Balan. In her statement, she had stated that she signed the agreement

as was told by Shri.C.Balan, but she did not receive any money from anybody. Similarly, when the sale agreement was cancelled, she did not receive any money even though there was an endorsement at the back of the sale agreement regarding payment received. She agrees that it is her signature on the reverse of the document, as proof of receipt of money. Her husband is stated to be a politician and eking out a living out of such political activities. We extract hereunder the statement of Smt.K.Vanaja as such:

> "Smt.K.Vanaja W/o Shri K.Krishnan was examined on 5-11-2004 by the ADIT u/s 131(1A) of the Incometax Act, 1961. Vide her answer to question No.2, she stated that Shri C.Balan came to her husband. The said Shri C.Balan when he entered into an agreement for the purchase of land near the checkpost at Veerapandi, she was also asked to sign the document. Accordingly she also signed. Otherwise she claimed that she did not give any money to anybody. Similarly, when the sale agreement was cancelled she did not receive any money even though there was a narration in the back of the sale agreement in which she had also signed. Her husband is stated to be a politician and eking out the living out of such political activities."

13. The mere statement of the said Vanaja saying that she did not pay money or receive money will be of no avail, when she herself admits that she signed on the back of the agreement having received the money on the cancellation of the sale agreement. Her statement, which we

extracted above, throws more light on the present case that is was not a clear transaction. The entire transaction was shrouded in mystery and the Assessing Officer has correctly made additions.

14. All the issues raised by the appellant are pure questions of fact, which the Assessing Officer had thoroughly analysed and gone into in detail. The Tribunal has analysed it threadbare and we find it to be in order. Hence, being pure questions of fact, we are not inclined to interfere with the order of the Tribunal. We find no merits in the above Tax Case (Appeals).

15. Accordingly, we find no question of law much less any substantial question of law arises for consideration in the above Tax Case (Appeals). Accordingly, both the Tax Case (Appeals) stand dismissed. No costs.

Index :Yes (R.S.,J) (R.K.,J)
Internet:Yes 11.11.2014
sl/sasi

To
1. The Income Tax Appellate Tribunal, "C" Bench, Chennai.

2. The Commissioner of Income Tax (Appeals), Salem.

3. The Assistant Commissioner of Income-tax, Central Circle, Salem.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

Sl/sasi

T.C.(A) Nos.865 & 866 of 2014

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