

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
*THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
+I.T.T.A.No.196 of 2003**

% Dated 28.10.2014

Y.Ramachandra Reddy.

....Appellant

\$ Addl. CIT (Assts) SR-V, Hyderabad

....Respondent

! Counsel for the appellant : Sri A.V.Krishna Kaundinya

^ Counsel for respondent : Sri J.V.Prasad

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? Cases referred:

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JUDGMENT: (Per LNR,J)

The appellant is an assessee under the Income Tax Act, 1961 (for short 'the Act'). His office and other premises were searched by the concerned officials of the Income Tax Department on 04.03.1997 in exercise of power under Section 132 of the Act. Based on that, a notice dated 25.11.1997 was issued under Section 158BC of the Act. The appellant submitted his returns on 27.12.1997 covering the block period from 1987-88 to 1997-98 declaring Nil income. It was also mentioned that regular assessment of the assessment year 1998-99 has not been completed and that there was still time to file the returns for the assessment year 1997-98.

The assessing officer passed an order dated 22.03.2001 holding that there are three items of undisclosed income of the appellant in relation to the block period. The first is an amount of Rs.7,50,000/- said to have been paid to Yeturi General Finance, the second is a

sum of Rs.6,73,000/- used for purchased of land at Guttala Begumpet and the third is a sum of Rs.2,20,000/- representing the value of the land paid over and above the one shown in the sale deed. All the three items were attributed to the statement recorded from the appellant under Section 132(4) of the Act.

Aggrieved by the order of the Assessing Officer, the appellant filed I.T.(SS)A.No.16/Hyd/2001 before the Hyderabad Bench of the Income Tax Appellate Tribunal. The Appeal was dismissed by the Tribunal through its order, datd 23.11.2001. Hence, this further appeal under Section 260-A of the Act.

Sri A.V.Krishna Kaundinya, learned counsel for the appellant submits that the assessing officer rested his conclusions exclusively on the statement recorded under Section 132(4) of the Act and that the same is opposed to law. He contends that at the earliest point of time itself, the appellant made it clear that he made a statement subject to verification of books of accounts and that the three items referred to above are dealt with under the books of account. He places reliance upon the judgment of this Court, dated 09.09.2014 in I.T.T.A.No.112 of 2003, as well as the Circular dated 10.03.2003 issued by the Department.

Sri J.V.Prasad, learned Standing Counsel for the Department on the other hand submits that during the course of search, substantial material was recovered and the appellant was questioned with reference to the material so recovered. He contends that the statement is mostly in the form of questions and answers and at no point of time, the appellant has either retracted from the statement or stated that the same was recorded under any pressure or threat or coercion. He also submits that the judgment of this Court in I.T.T.A.No.112 of 2003 is in relation to a case, where the assessee retracted from the statement under Section 132(4) of the Act and that the same does not apply to the facts of the present case.

The search that was conducted on 04.03.1997 led to the block assessment against the appellant covering the period from 1987-88 to 1997-98. Though the appellant submitted the returns showing nil income, the assessing officer conducted a detailed enquiry with reference to various items that are said to have been noticed by him before the search. The three items referred to above were dealt with in detail in the order of assessment. The defence offered by the appellant was that he clearly mentioned at the time of recording of the statement that the same would be subject to verification of books of account. The statement recorded under Section 132(4) of the Act would certainly constitute an important basis for an Assessing Officer to take necessary steps under the provisions of the Act. However, if the statement is retracted and there does not exist any other reliable material, making of assessment on the basis of such retracted statement cannot be treated as legal. In I.T.T.A.No.112 of 2003, this

Court held as under:

“Secondly, the recording of statement even during the search is not a matter of course. It is only when the material such as, books of account, documents, money, bullion, jewellery and the like are found or discovered during search, that the statement can be recorded. If the search did not lead to the discovery of any matters, referred to above, there would not be any occasion to record the statement at all. In this case, admittedly, nothing was recovered from the respondent during the search. Hence, there was no occasion or basis to record the statement, even if it is done when the search was in progress. Hence, there is a basic infirmity in the very foundation of the case, upon which the appellant sought to rest their block assessment vis-à-vis the respondent.”

Two other important aspects in that case are that (a) the statement was recorded long after the search was conducted; and (b) the assessee retracted from the statement. That is not the case here. The search and recording of statement have taken place simultaneously and the appellant did not complain of any coercion much less did he retract from the statement. The Assessing Officer extracted in detail, the statement recorded from the appellant during the course of search. For example, question Nos.13 and 17 and the answers thereto, which are part of the statement, read as under:

Q.13) During the course of search, a promissory note was found for Rs.20,000/- given to Askari Venkataswamy by you. Please confirm whether you have given the above amount?

Ans) Yes. I have given an amount of RS.20,000 to Aksari Venkataswamy.

Q.17) Please go through page No.7 of Annexure YRR/A/1 of the seized material found in your room in the office and comment on the contents of the same?

Ans) Yes. I have gone through the page No. of Annexure of the seized material found in my table draw. This paper relates to the letter head of Yeturi General Finances Ltd. on which a payment of Rs.7.50 lakhs is written in my own hand writing. This is the amount paid on account which I am not able to explain. I cannot explain the sources also for the same. The amount of Rs.7.50 lakhs paid in cash is from my own sources which is not shown in the books of accounts, in other words, it is my unaccounted income. Hence, I offer the same for tax u/s. 132(4) of the I.T.Act.

Therefore, it is difficult to hold that the statement was bereft of any material. As a matter of fact, the relevant documents were shown to the appellant and he not only admitted the genuinity of those documents, but also made it clear that the amount mentioned therein is an unaccounted income.

Assuming that the appellant hyphenated his statement with a plea that the contents thereof are subject to verification of books of account, there is nothing on record to disclose that the amounts

mentioned in the statement were explained in any other manner. Heavy reliance is placed by the learned counsel for the appellant on certain observations made by the Tribunal, which are to the effect that no material was recovered during the course of search. A statement of that nature cannot be taken as reflecting any undisputed set of facts. The circumstances under which such an observation was made are not immediately before this Court. Once the questions were put to the appellant, on the basis of the seized documents, which in turn were assigned separate numbers, there is no way the appellant can disown the same. Further, this is not a case, where the block assessment is based exclusively upon the statement. It was supported by the other documents seized during the course of search.

The Circular relied upon by the learned counsel for the appellant deals with the cases, where the orders of assessment are passed exclusively on the basis of the statement. It has already been mentioned that the considerable material was seized during the course of search. Therefore, the circular has no application. We do not find any basis to interfere with the order passed by the Tribunal. The appeal is accordingly dismissed.

The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.

L.NARASIMHA REDDY, J

T.SUNIL CHOWDARY, J

Date: 28.10.2014

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