

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case (Appeal) No.128 of 2006

Mrs.Kumari Kanagam

... Appellant

-Vs-

The Commissioner of Income Tax

Central II

Chennai 34

... Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, dated 29.7.2005 in IT(SS) A No.95/Mds/1998 for the block assessment period 1986-87 to 1996-97 (upto 19.1.1996).

For appellant : Mr.C.V.Rajan

For respondent : Mr.M.Swaminathan

Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J.)

The assessee is on appeal as against the order of the Income Tax Appellate Tribunal raising the following questions of law in respect of the block assessment period 1986-87 to 1996-97 (upto 19.1.1996) :-

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the sum of Rs.78 lakhs advanced to P.Maniammal of Maniammal Textiles Pvt. Ltd., was unexplained investment under Section 69 of the Income Tax Act, 1961 assessable as undisclosed income in the block assessment ?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in holding that the amount of Rs.78 lakhs being the gifts by demand drafts from the appellant's mother and brothers in Singapore was taxable under Section 5(1)(a) of the Income Tax Act 1961 and Section 5(1)(c) cannot be invoked in the appellant's case to take shelter under the proviso in respect of the income accrued in Singapore in view of the status of the appellant as "Not Ordinarily Resident?"

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in sustaining the determination of undisclosed income at Rs.1,23,73,680/- in the block assessment made on the appellant ?"

2. The assessee is an individual. There is no dispute as to the fact that the residential status of the assessee is "Not Ordinarily Resident". The assessee is a Singapore citizen married to an Indian and settled in India. There was a search conducted in the case of one Dyaneswaran on 19.1.1996 and in connection with this search the residential premises of the assessee and the place of business of the firm Tvl.Maniammal Textiles Pvt., Ltd., in which the assessee was a partner were also searched. Based on that search, proceedings were initiated for assessment under Chapter XIV-B. One of the materials seized during the course of search revealed that the assessee had advanced a sum of Rs.78/- lakhs to Smt.Maniammal of M/s.Maniammal Textiles Pvt. Ltd., Chennai on 8.11.1995. On enquiry, the assessee explained that the said amount was received through banking channel from Singapore from her family members. The assessee produced confirmation letters from her mother, her four brothers as well as sisters-in-laws wherein they had stated that they were permanent residents of Singapore having independent sources of income and that the amounts were paid to the assessee, who was their only sister so as to enable her to make permanent income in India out of this sum.

3. Since there was no material indicating the source of the said amount, the Assessing Officer pointed out that the assessee had not made any substantive proof to show the source of the above funds and in the absence of any material regarding the source the amount would be treated as undisclosed income. It is seen from the assessment order that enquiries were made with the Revenue Authorities in Singapore and it was found that none of the donors had sufficient income to make the gift. Even in respect of two of the so called donors who were found to be assessed to tax, the income shown was not sufficient to make a gift of Rs.13 lakhs by each one of the donors. Thus, based on the information and in the absence of substantive evidence regarding the source of funds, the Assessing Officer concluded that the amount of Rs.78/- lakhs which was credited in the assessee's bank by way of demand drafts from Singapore was not satisfactorily explained. Thus, the same was assessed as undisclosed income. Aggrieved by this, the assessee went on appeal before the Income Tax Appellate Tribunal.

4. On going through the evidence, the Tribunal pointed out that the assessee encashed the demand drafts in India through her bank account in Indian Bank, Anna Nagar and later on this amount was advanced to Smt.Maniammal on 8.11.1995. In spite of a direction to the assessee to produce the details of the income tax of her mother and brothers, the assessee did not produce any material. On enquiry with the Revenue Authorities of Singapore, the Assessing Officer learnt that one of her brothers R.Pandian had a very meagre income of Singapore \$ 5663 in the year 1996 and one R.Mooventhar had income of Singapore \$ 22,319. The details as to why amounts had not originated from the bank accounts of the so called donors and why demand drafts were purchased in Singapore were not available. In the absence of any details regarding the sources of income of the mother and other brothers, the Tribunal came to the conclusion that it was difficult to comprehend that all the six persons decided on the same day to send the sum of Rs.13/- lakhs each and demand drafts were purchased in serial numbers from the same bank. Thus, ultimately, the Tribunal held that the assessee had failed to prove the sources of such sums and creditworthiness of the parties who had given such amounts.

5. The assessee took an alternative contention before the Tribunal that the amounts were not taxable in India by reason of proviso to Section 5(1)(c). Since the assessee's status in India is one of "Not Ordinarily Resident" the Tribunal pointed out that the proviso could be applied only if the assessee is able to prove that being "Not Ordinarily Resident" in India, such income had accrued or arisen outside the country and it is not an income earned in India. In the absence of any proof that the said amount was the income earned outside India, the Tribunal confirmed the order of the Assessing Officer.

6. As far as the claim of the assessee that the amount was sent by her mother and brothers is concerned, we do not find any ground to accept the case of the assessee and as pointed out by the Tribunal in the absence of any material to show, particularly with reference to the source of income for the donors, the claim of the assessee does not merit any consideration. Thus, the amount of Rs.78/- lakhs treated as unexplained investment under Section 69 and assessable as undisclosed income for the block period stands confirmed and the order of the Tribunal is accordingly confirmed.

7. As far as the alternative contention of the assessee that in view of the proviso to Section 5(1)(c), the amounts are not taxable in India, we do not agree with the said submission. Section 5(1) reads as under:-

5(1) Subject to the provisions of the Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which

- (a) is received or is deemed to be received in India in such year by or on behalf of such persons ; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or
- (c) accrues to him outside India during such year.

Provided that in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India .

8. There is no denial of the fact that the assessee's status is of a person "Not Ordinarily Resident" in India. While in the case of a resident, income that accrues to him outside India during such year is included in the total income, in the case of a person "Not Ordinarily Resident" in India within the meaning of sub-section (6) of section 6, if the income accruing or arising to the assessee outside India is an income derived from a business or a profession set up in India, then the same shall stand included as his total income. In other words, in respect of the business / profession set up in India, if there is no income arising/accruing to the assessee outside India, there could be no inclusion of the same in his total income. The assessee claims that the sum of Rs.78 lakhs came by way of Bank demand drafts taken outside India. The Revenue had not disputed these facts. The assessee emphasised that the receipt of drafts were from Singapore and that it was not relatable to the income derived from the business or profession set up in India. It is a matter of record that the assessee had business interest in India.

9. A reading of the order of the Assessing Officer and the Tribunal would show that the assessee took the stand that the amount received by her represented gifts from her relatives abroad. However, the assessee did not take any steps to produce the proof before the Assessing Officer to substantiate her contention. Before the Assessing Officer the assessee took the stand that the money was received from out of rental income. However, the enquiries

with the Revenue Authorities in Singapore showed that the rental income started coming only with effect from 15.12.1995 i.e. 6 months after the receipt of cash, a fact which found appreciation otherwise was rejected by the Tribunal. If the claim that it was a rental income which had accrued or arisen outside India, is true, then, the theory of gift made by her brothers and mother could not stand. There was no evidence of the assessee being in receipt of this income too. In such circumstances, if the assessee contends that the benefits of proviso to Section 5(1)(c) enures to the advantage of the assessee, then, the assessee has to prove what is required under the provisions of the Act viz., that she had not derived any income outside India from the business controlled or a profession set up in India. A mere claim that the assessee is "Not Ordinarily Resident" in India does not take the assessee automatically away from the purview of Section 5. When the proviso stipulates certain conditions to be satisfied, rightly the Tribunal held that in the absence of any proof that such income that had accrued or arisen outside India was not on account of the any business interest or trade, the benefits of the proviso to Section 5(1)(c) could not be taken advantage of by the assessee. Going through the order and the provisions of the Act, we have no hesitation in holding that the alternative plea taken by the assessee could not be sustained on facts and in the absence of any material placed before the authorities concerned that such income had accrued or arisen outside India. In such circumstances, the tax case appeal is dismissed. No costs.

(C.V.,J) (K.R.C.B.,J)
22.08.2012

Index:Yes/No
Internet:Yes/No
krr/

To
1. The Income Tax Appellate Tribunal 'A' Bench, Madras
2. The Assistant Commissioner of Income Tax,
Central Circle II(4), Chennai 34.
CHITRA VENKATARAMAN,J.
AND
K.RAVICHANDRABAABU,J.

krr/

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