

In the High Court of Judicature at Madras

Dated: 10.08.2012

Coram

The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN
and
The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Tax Case No.110 of 2006

Shri.R.Dharmichand Kothari
11, North Car Street,
Chidambaram 608 001.

.... Petitioner

Vs.

The Commissioner of Income-tax,
Tamil Nadu V, Chennai 600 034.

.... Respondent

REFERENCE Application under Section 256(1) of the Income-Tax Act, 1961 in
I.T.A.No.1755/Mds/1996 for the block assessment years 1986-87 to 1996-97.

For Petitioner : Mr.Quadir Hoseyn

For Respondent: Mr.Arun Kurien Joseph

Standing Counsel for Income-Tax

O R D E R

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

Following are the questions of law referred to this Court under Section 256(1) of the Income Tax Act:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the addition of Rs.43,06,458/- warranted as unexplained investment in Gold even though no primary gold was found?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in coming to a conclusion that the applicant has made investment in Gold at any point of time, especially when there were no material or proof to show that such investment was made?

3. Whether on the facts and in the circumstances of the case and having regard to the provisions of Section 132(4A), whether the Tribunal was justified in holding that there was no

nexus or proximity between the alleged acquisition of primary gold and the investment in Gold Bond Scheme?

4. Whether on the facts and in the circumstances of the case, the Tribunal was justified in the assuming that the dates mentioned in the Customs Receipts were the dates of purchase of gold without any material?

5. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the addition of Rs.6,20,000/- as credits unexplained was warranted especially no such credit appear in the books of the applicant?"

2. Learned counsel appearing for the assessee submits that the assessee is not pressing the fifth question of law. He has also made an endorsement to that effect.

3. It is seen from the narration of facts that there was a search in the assessee's premises on 12.7.1995. The search revealed unaccounted jewellery weighing 3007 grams. Apart from that, the search party also found bogus credits in the names of Shri.Kapoorchand and Smt.Kiran to an extent of Rs.6,20,000/-; unaccounted investment in shares to an extent of Rs.2.00 lakhs; customs receipt for Rs.50,000/- for delivery of 100 kg of silver and unaccounted investment in gold, which was evidenced by the receipt in the names of Mohammed Mustafa for Rs.1,07,932/- and Abu Tahir for Rs.1,09,005/- evidencing payment of customs duty on 04.06.1992 and 12.06.1992 for import of gold weighing approximately 4,906 grams and 4,897 grams, totalling 9,803 grams.

4. As regards the bogus credits in the names of Shri.Kapoorchand and Smt.Kiran, wife of Kapoorchand, at the time of enquiry, the said Kapoorchand admitted that the money advanced by him in his name and his wife's name actually belonged to the assessee. Subsequently, the said Kapoorchand retracted the statement given earlier. The Assessing Officer pointed out that the said Kapoorchand was not having any asset worth mentioning and he was running his livelihood from the salary earned every month. The Assessing Officer further pointed out that the assessee had deposed that the balance available in the account of Shri.Kapoorchand and Smt.Kiran actually belonged to the assessee and he was prepared to offer the same for assessment. It is further found that money had been deposited by cash in the name of Shri.Kapoorchand and Smt.Kiran, a day earlier to the date of cheque issued. Thus the Assessing Officer pointed out to the statement given by the assessee that at the time of search before the search party, the assessee pointed out that money brought in by Kapoorchand and his wife were monies given by the assessee from their unaccounted income. He had filed returns of both these persons and this was done only to accommodate the credits. Thus the Assessing Officer made an addition of Rs.6,20,000/-. Aggrieved by this addition, the assessee filed an appeal before the Tribunal, which confirmed the addition. Since the assessee is not pressing this question, there is no need to go into this question. Thus the one and only question that survives for our consideration is as regards the unaccounted investment in gold.

5. A perusal of the assessment order in this regard shows the explanation given by the assessee on the acquisition of gold as one for the purpose of investment in Gold Bond Scheme, 1993; hence, the source for acquisition of gold to be used for investment in the Gold Bond

Scheme could not be enquired at all by the Revenue. The Assessing Authority, however, pointed out that at the time of acquiring the gold, there was no such scheme giving immunity and exemption from any enquiry either as regards the investment in gold or gold being invested in bonds. Thus the contention of the assessee that the source of acquisition of gold not to be enquired into, was not accepted. Considering this, the contention of the assessee, particularly with reference to the import of gold as one for the purpose of investment in Gold Bonds, was rejected. The Assessing Officer pointed out that there was no nexus between the gold acquired through the receipt of customs duty for import of gold found at the time of search and acquisition of Gold Bonds under the Gold Bond Scheme, 1993. Thus the assessment included a sum of Rs.43,06,458/- as per Section 69 of the Income Tax Act. Aggrieved by this, the assessee went on appeal before the Income Tax Appellate Tribunal.

6. As regards the acquisition of gold, which was invested in Gold Bond Scheme, the Tribunal rejected the contention of the assessee that based on the Budget Speech of the Finance Minister in Parliament on 29.2.1992, the assessee imported gold from abroad utilising the services of Shri.Mohammed Mustafa and Shri.Abu Tahir. and held that the assessee could not say anything about the names and addresses of those two persons, whose services were taken for import of gold into India; the relationship of the assessee with those persons, whether they were partners of the assessee or employees or in what manner they were associated or connected with the assessee to go abroad and acquire gold from there. The Tribunal rejected the assessee's contention that at the time of search, except the excess gold jewellery, there were no primary gold or gold in any other form, found by the search party and hence, the investment in Gold Bonds had to be correlated to the imported gold, as evidenced by the two receipts evidencing payment of customs duty. The Tribunal pointed out that the assessee had failed to prove with cogent and acceptable evidence the nexus between the gold imported on 4th and 12th June, 1992 through two persons, namely, Shri.Mohammed Mustafa and Shri.Abu Tahir and the investment of the same imported gold in Gold Bonds. It is no doubt true that the search party did not seize the Gold Bond Certificates, which were found in the assessee's premises during search operation in view of the provisions contained in the Gold Bond (Immunities & Exemptions) Act, 1993. However, the Tribunal pointed out that the assessee was called upon to explain the source of amount invested by him in importing the gold from foreign country. No explanation was offered as regards the acquisition of gold and as regards the money available with the assessee for importing gold through the above-mentioned persons. In the absence of any satisfactory explanation linking the import of gold in the investment under Gold Bond Scheme, which came long after the import of gold, the Tribunal rejected the assessee's contention that based on the speech of the Finance Minister made in the Parliament dated 29.2.1992 relating to the year 1992-93, he imported gold.

7. Considering the fact that the Gold Bond Scheme pursuant to the Gold Bond Immunity Act was brought on the statute book pursuant to the introduction of the bill in the Loksabha on 23.2.1993, the Tribunal held that the assessee was not entitled to any immunity as spoken thereto in the said enactment. The Gold Bond Scheme was notified on 18.2.1993, which came into force from 15.3.1993 and the assessee tendered gold for investment in gold bonds in the last week of March, 1993. There was no reasonable and acceptable explanation from the

assessee that it kept the imported gold for a period of nine months before investing in the Gold Bonds. The Tribunal further pointed out that the assessee was asked about the source of money for sending two persons abroad and getting gold from foreign country; even before the Commissioner, in response to the show cause notice, the assessee had not let in any evidence to establish the nexus between the import of gold in June, 1992 and the investment in the Gold Bonds in March, 1993. In the absence of any such convincing material to establish the nexus, the Tribunal upheld the order of assessment. Aggrieved by this, the assessee sought for reference before this Court.

8. Learned counsel appearing for the assessee placed reliance on the Budget Speech of the Finance Minister dated 29.2.1992, wherein the Finance Minister pointed out to the suggestions of the Members about the introduction of Gold Bond, which would help the Government in mobilizing the idle gold resources of ordinary citizens to supplement official reserves. Thus while proposing the Scheme under which citizens could obtain a Gold Bond in return for gold, the Minister, in turn pointed out that as an additional incentive, the holders of such bonds would not be asked any questions about the source of gold holding and the Reserve Bank of India was preparing a detailed proposal along those lines.

9. Learned counsel appearing for the assessee relied on the Budget speech of the Finance Minister as well as the Scheme, which, under Section 4 of the Gold Bonds (Immunities and Exemptions) Act, 1993, granted immunity that no subscriber shall be required to disclose the nature and source of acquisition of the gold subscribed for the Gold Bonds including the source of money with which the gold was acquired and submitted that the Revenue was not justified in making the assessment. Further, he pointed out that no primary gold was seized from the assessee, thus, there being no seized material, the charge for assessment under Chapter XIV-B of the Income Tax Act itself is not there to sustain the assessment. In the light of the above-said facts, the assessee seeks the assessment to be set aside as one without sanction of law.

10. We do not agree with the submissions made by the learned counsel appearing for the assessee, particularly, by the facts found by the Tribunal in its order in paragraph 22. It is no doubt true that the investment in Gold Bond Scheme enables an assessee to gain immunity as per Section 4 of the Gold Bonds (Immunities and Exemptions) Act, 1993. Gold Bonds (Immunities and Exemptions) Act, 1993 came into force on 31.1.1993. It is not denied by the assessee that the import of gold was made on 4th and 12th June, 1992 at a time when there was no such Scheme. It is no doubt true that the Finance Minister proposed a Scheme on Gold Bond investment in the course of his Budget Speech on 29.2.1992 for the year 1992-93. Unless and until there is a definite enactment made, we do not think that one could take advantage of the Minister's Speech to buttress the argument that the import was made consequent on the speech made by the Minister. Even though there is a reference in the speech that the Reserve Bank of India was directed to formulate guidelines, the proposal being at a nascent stage and with no certainty spoken thereto, it is difficult to visualise that the assessee had gone for import of gold for the purpose of investment in Gold Bonds and gained immunity and exemption as spoken to under Section 4 of the Gold Bonds (Immunities and Exemptions) Act, 1993.

11. It is no doubt true that all that was seized was only Gold Jewellery from the premises of the assessee. Yet, as rightly pointed out by the Tribunal, there is hardly any explanation from the assessee as regards the import of gold using the services of two persons about whom the assessee was not in a position to say anything. There is equally no explanation as regards the keeping of the gold for the period of nine months. Except for the Finance Minister's speech, which we do not think, would afford an acceptable ground for treating the import as one for the purpose of investment in Gold Bond, the contention of the assessee based on a possible enactment to come to act, as an inducement of import, is a very weak one for any judicial acceptance. As pointed out by the Tribunal, the Section was notified on 18.2.1993 and came into force from 15.3.1993. The Act made on 2nd April, 1993 was brought into statute effective from 31.1.1993. Thus, when there is no convincing explanation linking the import of gold to the investment in Gold Bond under the Scheme, which itself was notified long after the import, we fail to understand how the assessee could possibly plead protection under the said Act based on the Budget Speech of the Finance Minister.

12. In the circumstances, there being no satisfactory explanation, rightly, the Tribunal rejected the assessee's plea and upheld the assessment. Being pure question of fact, we do not find any justifiable ground made to accept the assessee's plea. We also do not find that the Budget Speech dated 29.2.1992 relating to the year 1992-93 would offer any assistance to the assessee that the import of gold was linked only to the proposed Scheme. Accordingly, the questions raised are answered against the assessee and this Tax Case stands dismissed. No costs.

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To

1. The Income Tax Appellate Tribunal "B" Bench, Chennai.
2. The Assistant Commissioner of Income Tax, Circle I(1),
Pondicherry