IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-03-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.No.584 of 2008

Shri R.Bhoopathy ... Appellant

-vs-

The Commissioner of Income Tax,
Chennai. ... Respondent

Appeal under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, dated 19.01.2007, passed in IT(SS) A.No.144/MDS/2005.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.T.R.Senthil Kumar,
Senior Standing Counsel,
assisted by Mrs.K.G.Usha Rani,
Junior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **Dr.Vineet Kothari,J.**)

Assessee has filed this Appeal, raising the following Substantial Question of Law, arising from the order of the learned Income Tax Appellate Tribunal, in short, 'Tribunal', dated 19.01.2007, whereby the learned Tribunal dismissed the appeal of the Assessee and upheld the Addition of Rs.5,60,000/- made in the hands of the Assessee as **Undisclosed Income** of the Assessee. The Substantial Questions of Law is quoted below for ready reference :

> *"Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in confirming the **addition** of **Capitation Fee** of Rs.5,60,000/- as **Undisclosed Income** of the appellant without any evidence found as a result of search or any document or material to prove the payment of **Capitation Fee** ?*

2. The facts, in brief, are as under :

A Search was conducted at the residential premises of the Assessee on 02.05.2001 under Section 132 of the Income Tax Act, 1961, in short, 'Act'. In the statements recorded under Section 132 (4) of the Act, in an answer to two questions, the Assessee admitted that he got his son admitted to **Engineering Course** in **Sathyabhama College of Engineering, Chennai**, and he paid Rs.5.00 lakhs as Capitation Fee and Rs.60,000/- as Annual Fee in the month of June,2000. The two questions and answers, quoted in the order of CIT (A), are extracted below for ready reference :

> *"Question No.8 : How much capitation fees has been paid by you to get your son's admission at Satyabhama College of Engineering and under which category ?*
>
> *Answer : Rs. 5 lacs was paid as capitation fee and he was admitted under payment category. His expenses per year is around Rs.60,000. He was admitted in June,2000."*
>
> *Question No.12 : Please give the details of total fee including capitation fee paid by you for your son to the Stayabhama Engineering College.*

<u>Answer</u> : My son was admitted to this college in July 2000 for which I paid a capitation fee of Rs.5 lacs and another Rs.60,000 was paid towards annual fee."

3. The Assessing Authority made additions of the said sum of Rs.5,60,000/- in the hands of the Assessee in the Assessment proceedings conducted under Section 158BC of the Act vide Assessment Order, dated 30.05.2003. The Preamble of the said Assessment Order would also reveal that the Assessee, after the Search, filed a Return of Income on 18.02.2003 for the Block Assessment Period and disclosed and declared **Undisclosed Income** to the extent of **Rs.23,65,700/-**, which was accordingly assessed and tax was paid thereon by the Assessee. Since the aforesaid separate addition was made in the hands of the Assessee at Rs.5,60,000/-, he filed an appeal before CIT (A), which came to be dismissed by CIT(A) and thereafter second appeal dismissed by the Tribunal.

4. Hence, the present Appeal before this Court under Section 260A of the Act. The findings of the learned Tribunal in this regard are also quoted below for ready reference :

*"8. **Having accepted the fact in his sworn statement that the assessee has got his son admitted to Satyabhama Engg. College for which he paid Rs.5,60,000/- towards capital fees and annual fees** and even before the ld. CIT(A) has not denied this fact, **in our opinion, merely on the basis of assessee's objection that no evidence regarding capital fees was found as a result of the search and hence no addition could be made in the block assessment order**, the addition of Rs.5,60,000/- as undisclosed income of the assessee **cannot be deleted**.*

*9. There may be two exceptions, viz. (i) the statement would have been made on **coercion or undue influence**, and/or (ii) given under a **mistaken impression** of fact or law. **These are only two exceptions**. If either of the two is established, then the assessee may have a remedy **to get rid of the clutches of addition** towards undisclosed income. Here on verification of details available on record, it could be seen that the **sworn statement recorded from the assessee on 22-5-2001** to the effect that his son was admitted to this college in July 2000 for which the assessee paid a capital fees of Rs.5 lakhs and another Rs.60,000/- was paid towards annual fees, **was not retracted by the assessee at any level** of the* *proceedings. Under the circumstances, we are of the considered opinion that the authorities below were* ***perfectly justified in including the said sum of Rs.5,60,000/- in the total undisclosed income*** *of the assessee relating to the block period under consideration.*

10. Further, Sec.132 being a complete Code in itself cannot intrude into any other provisions of the Act. Similarly, other provisions of the Act cannot interfere with the scheme or the working of sec.132 or its provisions. The legislature under sec.132 (4) has provided that the books of account, money, bullion, jewellery and other valuable articles or things and any statement made by such person during examination may thereafter be used as evidence in any other proceedings under the Act. In this view of the matter, and also in the light of the decision of the Hon'ble Supreme Court in the case of P.R.Metrani v. CIT (287 ITR 209), we uphold the finding of the authorities below and confirm inclusion of Rs.5,60,000/- in the total undisclosed income of the assessee in the block assessment."

5. Mr.R.Sivaraman, learned counsel for the Assessee, assisted by Mr.Mudit Bohra and Mr.Prasanth, urged before this Court that there is no admission on the part of the Assessee that the said Capitation Fee of Rs.5,00,000/- besides Rs.60,000/- as Annual Fee was paid out of **Undisclosed Income** of the Assessee, in addition to what has been declared in the Return filed by the Assessee after the search. According to him, the word "**Undisclosed Income**" is nowhere found in the answers to Questions 8 and 12, as quoted above. Therefore, he submitted that **no admission** on the part of the Assessee that the Capitation Fee has been paid out of the Undisclosed Income has been made by the Assessee, even though the statements recorded under Section 132 (4) of the Act are admissible in evidence.

6. Per contra, learned Standing Counsel for the Respondent-Revenue supported the impugned order.

7. Having heard the learned counsel for the parties and upon perusal of the findings rendered by the Appellate Authorities and also the learned Tribunal, we are satisfied that the present Appeal filed by the

Assessee deserves to be allowed and the Question of Law framed above deserves to be answered in favour of the Assessee.

8. Merely because the Statements recorded under Section 132 (4) of the Act are admissible in evidence, it does not mean that the said statements or their contents can be read out of context and beyond the terms of the statements itself and without the corroborating material. There is no admission on the part of the Assessee in the present case that Capitation Fee was paid by the Assessee out of **Undisclosed Income** not so far declared. Just because the statements state that he paid Capitation Fee to the Engineering College viz., **Satyabhama Engineering College, Chennai**, it does not mean that it could result in an **addition** *ipso facto* in the already declared **Undisclosed Income** in the hands of the Assessee in his Returns filed after the search.

9. In fact, on the basis of disclosure of **Undisclosed Income** made by the Assessee himself in the **Return of Income** after search was made to the extent of Rs.23,65,700/- and the same was brought to tax and the Assessee has paid tax thereon. Therefore, even though such Capitation

fee was presumed by the Assessing Authority to have been paid out of Undisclosed Income, there was no reason to impose tax separately on the said amount of Rs.5,60,000/- and the same could have been very well taken as paid out of **Declared Undisclosed Income** in the Return filed by the Assessee after the search.

10. We cannot sustain such an addition merely on the basis of the alleged admission made by the Assessee in the Statements. Such an addition could not have been made, as we do not find any incriminating confession made by the Assessee in the said statements recorded under Section 132 (4) of the Act. Such an admission on the part of the assessee would require a corroborative evidence to support such an addition and, therefore, such an unsupported, vague and non-specific admission can not result in a sustainable addition in the declared income, attracting imposition of tax thereon.

11. Upon the Court question to the learned Standing Counsel for the Revenue that if the Capitation Fee was an illegal payment and without authority of law, did the Department take any action against the recipient of such Capitation Fee, namely, the **Satyabhama Engineering**

College, Chennai, the learned Standing Counsel submitted that no such action appears to have been taken against the said College.

12. The scourge of Capitation Fee by Medical and Engineering Colleges is an infamous and thoroughly extortionist act that is going on in the education sector in our country and it is almost a known fact that these so called Educational Institutions act more like Business Houses rather than Educational Institutions, throwing out of gear the entire higher educational system in India. Parents and students, who are compelled to pay such high Capitation Fee in different forms developed in innovative ways, have no choice in the matter and such Capitation Fee is just extracted from them, making an affordable higher education a mirage for middle class families. What the Revenue-Department i.e., Income Tax Department, having come to know of such facts existing should have proceeded against such Engineering Colleges cancelling their Section 11 exemption entitlements, which most of them illegally enjoy, rather than punishing parents and students by imposing tax on such alleged **Undisclosed Income** merely on the basis of the so called admission made in the statements recorded under

Section 132 (4) of the Act, which too, as we have found in the present case, does not support the case of the Revenue at all.

13. Therefore, we find that the orders passed by both the Appellate Authorities below are perverse and unsustainable. As we have found the admission made by the Assessee in the statements recorded under Section 132 (4) of the Act was merely to the extent of payment of Capitation Fee and nothing about the source of such payment was disclosed by the Assessee in the said statements, much less such source being an Undisclosed Income liable to be taxed in the hands of the Assessee besides the declared income in the Return filed, this Appeal of the Assessee deserves to be allowed and the same is, accordingly, allowed. The Question of Law framed above is answered in favour of the Assessee and against the Revenue. No costs.

Index : Yes (V.K.,J.) (C.V.K.,J.)
Internet : Yes 07-03-2019
Speaking / Non-Speaking Order

dixit

To

1.The Commissioner of Income Tax,
Chennai.

2.Income Tax Appellate Tribunal,
Chennai 'B' Bench,
Chennai.

DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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