

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A. NO.1 OF 2010

BETWEEN:

SRI. JAYESH S. MEHTA
PROP: SHANTHILAL O MEHTA
No.6, R.M.C. YARD
TIPTUR.

... APPELLANT

(By Sri. SHANKAR A, SENIOR COUNSEL FOR
Sri. M. LAVA, ADV.)

AND:

THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1, RAMAKRISHNA NAGAR
KUNIGAL ROAD, TUMKUR-572 102.

... RESPONDENT

(By Sri. K.V. ARAVIND, ADV.)

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 13-8-2009 PASSED IN ITA NO.12/BNG/2009, FOR THE BLOCK ASSESSMENT PERIOD 1/4/1996 TO 23/1/2003, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA No.12/BNG/2009,

DATED 13-8-2009, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Mr. Shankar A., learned Senior counsel for Sri.M.Lava, learned counsel for the appellant.

Mr.K.V.Aravind, learned counsel for the respondent.

2. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the assessee which was admitted by a Bench of this Court on the following substantial questions of law:

a) Whether the Assessing Officer was justified in law in not following the direction of the order passed by Tribunal dated 17.12.2009, wherein it has held that the undisclosed income has to be calculated at 2% of total turnover taking the average of subsequent three years on the facts and circumstances of the case?

b) Whether the Tribunal was justified in law in holding that the Assessing Officer has rightly given effect to the direction of the Tribunal on the facts and circumstances of the case?

3. Facts giving rise to the filing of this appeal briefly stated are that the appellant is an individual and is carrying on proprietary business of copra under the name and style of M/s. Shantilal O Mehta since 1.4.1999. A search was conducted under Section 132 of the Act on 23.01.2003 in the business and residential premises of the appellant. The Assessing Officer issued a notice dated 29.05.2003 under Section 158BC of the Act to the appellant which was served on 05.06.2003. The appellant thereupon filed a return and declared an undisclosed income of ₹62,27,305/-. The Assessing Officer re-computed the income declared by the appellant and passed an order of assessment on 28.02.2005 under Section 158BC read with Section 143(3) of the Act for the block period 01.04.1996 to

23.01.2003, computing undisclosed income at ₹2,67,58,592/-.

4. The appellant filed an appeal against the order dated 28.02.2005 before the Commissioner of Income Tax (Appeals). The CIT (Appeals) by an order dated 09.04.2007 partly allowed the appeal and directed the Assessing Officer to adopt 4% gross profit on undisclosed turnover of 1.30 crores. Being aggrieved, the appellant filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal', for short). The Tribunal by an order dated 17.12.2007 directed that gross profit be adopted at 2% of the turnover relying on comparable cases. Thus, the appeal was allowed in part. Being aggrieved, the respondent thereupon filed an appeal namely ITA No.545/2008 and connected matter which were dismissed by a Division Bench of this Court vide order dated 25.07.2014.

5. In compliance of the order passed by the Tribunal, the Assessing Officer by an order dated 17.01.2008 adopted gross profit at the rate of 2% on undisclosed turnover and arrived at an income of ₹21,80,593/-. However, the Assessing Officer adopted the undisclosed income of ₹62,27,305/- declared by the appellant in the block return filed on 14.07.2003. The appellant filed an appeal before the Tribunal against the order of the CIT (Appeals), which was dismissed by an order dated 15.12.2008. Being aggrieved, the appellant filed an appeal before the Tribunal which was dismissed by an order dated 13.08.2009. In the aforesaid factual background, this appeal has been filed.

6. Learned Senior counsel for the appellant submitted that the Assessing Officer ought to have computed the income and given effect to the same as per the directions of the Tribunal contained in the order dated 17.12.2007. It is further submitted that during

the course of search, unaccounted cash only to the extent of ₹5,68,000/- was found and there was no difference in the book stock and physical stock. It is also submitted that while making an addition of undisclosed income, the Assessing Officer has traveled beyond the scope of the directions issued by the Tribunal which is not permissible in law and therefore, nothing can be added in excess of ₹21,80,593/- and on the aforesaid amount, gross profit ought to have been determined at 2%. It is also submitted that order passed by the higher appellate authority should be followed by the subordinate authorities. In support of his submissions, reliance has been placed on the decisions of the Supreme Court in the case of '**UOI Vs. KAMLAKSHI FINANCE CORPORATION LTD.'** AIR 1992 SC 711 AND '**ACCE Vs. DUNLOP INDIA LTD.'** 154 ITR 172(SC). Lastly, it is urged that by consent the parties cannot confer jurisdiction and there is no prohibition for the appellate authorities to determine the

income less than the returned income. In support of aforesaid submissions, reference has been made to the decisions in the case of **'BHANDARI METALS & ALLOYS LTD. Vs. STATE OF KARNATAKA' 136 STC 292 (KAR) AND 'PULLANGODE RUBBER PRODUCE CO. LTD. Vs. STATE OF KERALA' 91 ITR 18 (SC).**

7. On the other hand, learned counsel for the revenue has submitted that the Assessing Officer, in compliance with the directions issued by the Tribunal as contained in the order dated 17.12.2007, has assessed the gross profit at 2%. It is further submitted that the appellant himself had returned undisclosed income of ₹62,27,305/- in the block return of income filed on 14.07.2003 and therefore, the total undisclosed income as per the return filed by the appellant himself has been taken at ₹62,27,305/- and the gross profit has been assessed at 2%. Thus, the Assessing Officer has acted within the scope of the directions issued by the Tribunal

and the order passed by the Assessing Officer has rightly been upheld in appeal as well as by the Tribunal which does not suffer from any infirmity. It is urged that the substantial questions of law framed by the Court infact do not arise for consideration in this appeal.

8. We have considered the submissions made by the learned counsel for the parties and have perused the record. Admittedly, the assessee had returned an undisclosed income of ₹62,25,305/- in the block return of income filed on 14.07.2003. It is also pertinent to mention here that the Assessing Officer had made an addition of ₹2,67,58,592/-. The aforesaid addition was found to be unjustified by the Tribunal and in paragraph 10 of the order of Tribunal it was held as under:

"10. The addition that has been made in the case of the firm was Rs.41,40,870 and in the case of individual Rs.2,67,58,592. When this is compared with the various seized documents of Rs.62.27 lakhs and the conclusions arrived at by the authorities

below and correlating them with the investments made over the years, it goes to indicate that the claim of the assessee that the addition made is high-pitched is justified. The total of the additions in the hands of the firm as well as the individual for the block period comes to about Rs.3 crores which is five times the investments found during search to the tune of Rs.62 lakhs. This gets further strengthened when it is examined with reference to the order of assessment for the assessment years 2003-04 to 2005-06. There, the GP of less comparable cases have not been shown to be comparable by the Department in the strict sense of the term, which assessments have been framed much after the search in the case of the assessee. For the reasons mentioned above, we are of the opinion that it would be only reasonable to estimate the GP in the range of 2% taking the average of subsequent three years. We direct the AO to recalculate the addition on this basis."

9. Thus, from perusal of the aforesaid paragraph, it is evident that the Assessing Officer was directed to re-calculate the addition at the rate of 2% on the gross profit. The Tribunal nowhere has said that the undisclosed income which was filed by the appellant himself should not be taken into account. It is also pertinent to mention here that the assessee himself before the Assessing Officer had made a request that the income of ₹62,27,305/- declared by him be accepted and the assessment be completed. From perusal of the order passed by the Commissioner of Income Tax (Appeals) also, it is evident that the dispute was only with regard to rate of gross profit on the income which was not disclosed by the assessee. Therefore, it cannot be said that the Assessing Officer has disobeyed the direction contained in the order passed by the Tribunal.

10. In view of the preceding analysis, both the substantial questions of law are answered against the assessee and in favour of the revenue.

11. In the result, we do not find any merit in the appeal. The same fails and is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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