

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.604 of 2019

Shri S.J.SuryahAppellant

Vs

The Income Tax Officer,
Media Ward III,
Chennai - 34.

.....Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 27.07.2016 made in ITA.No.1863/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'C' for the assessment year 2002-03.

For Appellant:

Ms.Vandhana Vyas
for Mr.R.Sivaraman

For Respondent:

Mr.M.Swaminathan, SSC
assisted by Ms.V.Pushpa, JSC

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 27.07.2016 made in ITA.No.1863/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'C' ('the Tribunal' for brevity) for the assessment year 2002-03.

2. The assessee filed this appeal by raising the following substantial questions of law:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing an amount of Rs.30,00,000/- as an "undisclosed investment" u/s. 69 of the Act without considering the letter from Indira Productions Pvt. Ltd. addressed to the ADIT, Investigation Unit IV(1), evidencing the nature of payment made to the Appellant?"

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not considering the fact that the revised computation filed by the Appellant wherein he has

categorically admitted the income received by him in the specific Assessment Year which has not be considered by the Respondent?

3. Whether, on the facts and in the circumstances of the case, the Tribunal committed an error in not considering the revised computation which reflects the actual income of the Appellant as it is a settled law that only the real income of the Appellant could be taxed?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in accepting the revised computation of Rs.1,27,28,414/- inclusive of Rs.34,13,386/- which was written back in the subsequent year and therefore it is not taxable in the hands of the Appellant for the current Assessment Year?"

3. We have heard Ms.Vandhana Vyas, learned counsel appearing on behalf of the appellant and Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Junior Standing Counsel appearing for the respondent/Revenue.

4. We need not labour much to go into the factual matrix, as the Tribunal, with regard to one of the issues, remanded back the matter to the Assessing Officer for a fresh consideration. The direction issued by the Tribunal is to the following effect:

"3.4.....

The Assessing Officer has not considered this amount. In our opinion, the amount returned by the assessee in the revised computation of statement is to be accepted at Rs.1,27,28,414/- subject to our finding in para 3.5 herein below and instead of making addition of Rs.1.00 crore by overlooking the revised statement. Accordingly, we direct the Assessing Officer to consider the revised computation of income for the assessment year 2002-03 with reference to the income at Rs.1,27,28,414/- subject to our finding in para 3.5 herein below. In other words, the assessee is not entitled for loss of Rs.11 lakhs in respect of "Kushi" Telugu movie."

5. It is the submission of the learned counsel appearing for the appellant/assessee that out of the total income of Rs.1,27,28,414/- for direction of Hindi version of the movie "Kushi", the assessee did not receive

a sum of Rs.34,13,386/- and Mr.Bonny Kapoor has also written the said sum in his books of accounts in the assessment year 2005-06 and as such, there is no incidence for the Department to arrive at a conclusion that the entire amount is taxable. Further, it is submitted that the communication received by the said Mr.Bonny Kapoor, which was referred to by the Assessing Officer, was not furnished to the assessee and the assessee was at a loss in not being able to properly defend his case. It is also submitted that the assessee included a sum of Rs.34,13,386/- erroneously by oversight and the said sum was written back in the subsequent year by the said Mr.Bonny Kapoor and the amount was neither accrued nor received by the assessee. It is further submitted that when the assessee submitted a revised computation along with a letter dated 28.03.2005, the amount of Rs.34,13,386/- was shown as outstanding payment and this amount was never received by the assessee.

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6. Considering this fact, we are of the opinion that an open remand to the Assessing Officer to reconsider the issue would meet the ends of justice.

7. Therefore, we set aside the order of direction issued by the Tribunal in paragraph 3.4 of the impugned order and remand the issue back to the Assessing Officer for a fresh consideration leaving all points open to be canvassed by the assessee and such remand will be by way of open remand.

8. The next issue is with regard to the disallowance of Rs.30 lakhs as undisclosed investment under Section 69 of the Act.

9. It is the submission of the learned counsel appearing for the appellant that the Assessing Officer disallowed the said amount without taking note of the communication sent by M/s.Indira Productions Pvt. Ltd. addressed to the Assistant Director Income Tax, Investigation Unit, IV(1), Chennai, evidencing the nature of payment. If this payment has been taken into consideration, in all probabilities, the disallowance should not have been made. Though the Tribunal is aware of this fact, it faulted the assessee for not producing Mr.Prasad Potluri to appear in person before the Assessing Officer. However, the fact remains that the statement of accounts was available with the Assessing Officer, which should have been

considered by the Assessing Officer. Further, the assessee, while admitting that there was a cash deposit of Rs.30 lakhs in the assessee's bank account, stated that this amount has been received by him from M/s.Indira Productions Pvt. Ltd., Hyderabad towards advance for their film "Nani", which was released in the month of May 2004 and that confirmation letters were awaited and the same would be furnished with an application under Rule 46A of the Income Tax Rules. However, the assessee was non suited on the ground that they could not substantiate the submission.

10. The prayer made before this Court by the assessee is to afford an opportunity to the assessee to substantiate that the said investment is an undisclosed investment.

11. Considering the nature of the transaction involved, which is verifiable, we are of the view that this issue can also be reconsidered by the Tribunal.

12. Accordingly, the finding rendered by the Tribunal confirming the disallowance of Rs.30 lakhs as undisclosed investment under Section 69

of the Act is set aside and the matter is remanded back to the Assessing Officer for a fresh consideration.

13. Since it has been pointed out by the learned Senior Standing Counsel that the assessee is not co-operating with the earlier proceedings, we direct the assessee to co-operate in the assessment proceedings and any failure to extend co-operation to the Department would be viewed seriously. If the assessee, in spite of this observation/direction, fails to co-operate, then the Assessing Officer is entitled to proceed and take a decision in accordance with law.

14. In the result, the tax case appeal is allowed and the matter is remanded on the aforementioned two grounds to be considered by the Assessing Officer afresh in accordance with law. Consequently, the substantial questions of law are left open. No costs.

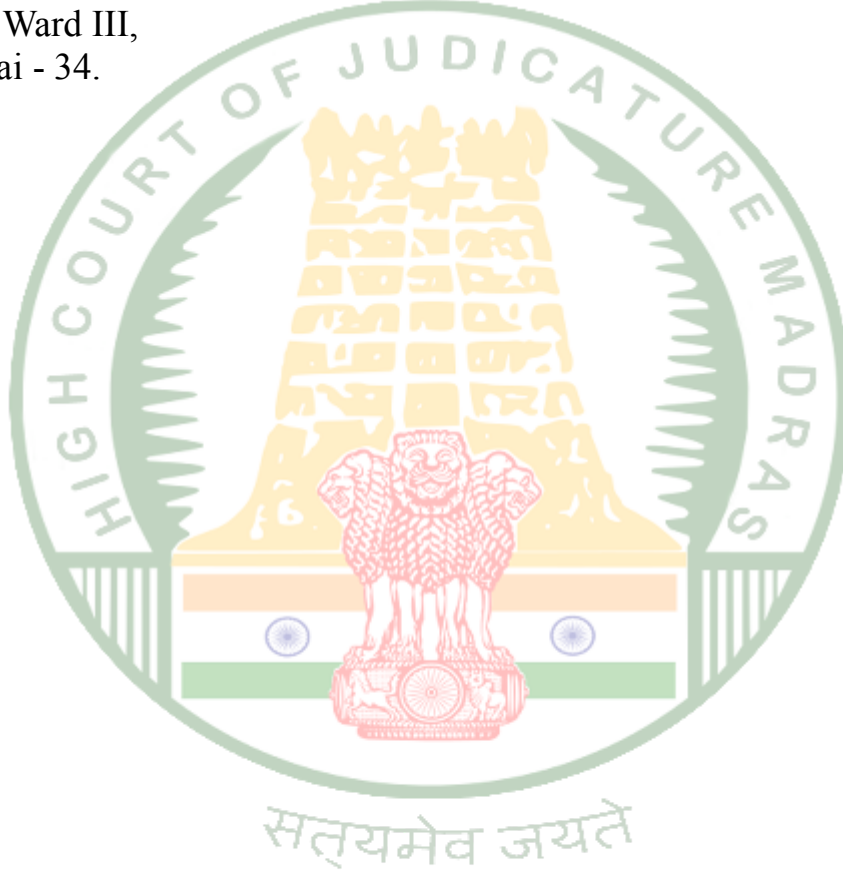
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(T.S.S.,J.) (R.N.M.,J.)
25.01.2021

Index: Yes/No
Speaking Judgment/Non speaking Judgment
hvk

To

1. The Income Tax Appellate Tribunal,
'A' Bench, Chennai.
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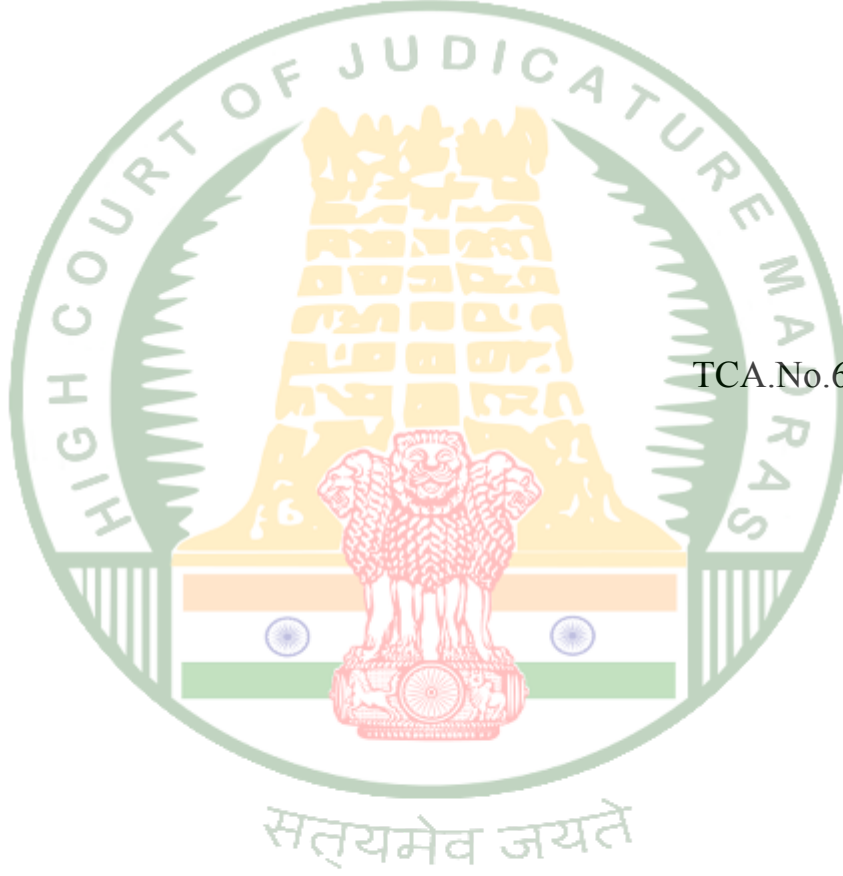


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