IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.04.2018

Coram
The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mr.Justice N.Seshasayee

T.C.(A).Nos.857 and 858 of 2008

1. L.Jairam Parwani. ...Appellant in T.C.(A) No.857 of 2008
2. Shri. Kishore Parwani ... Appellant in T.C.(A) No.858 of 2008

Vs.

The Deputy Commissioner of Income Tax,
City Circle VI(Inv.)
Chennai - 600 006. ...Respondent in both Appeals.

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 25.08.2006, in I.T. (SS) A.Nos.133 and 134 /Mds/2002, for the Block Assessment Period from 01.04.1988 to 20.09.1998.

For Appellant : Mr.Philip George

For Respondent : Mr. T.R.Senthil Kumar
Central Government Standing Counsel

COMMON JUDGEMENT

(Judgement of the Court was delivered by **T.S.Sivagnanam, J.,**)

These Appeals by the assessees are directed against the common order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, (for short, ITAT), dated 25.08.2006, in I.T. (SS) A.Nos.133 and 134 /Mds/2002, for the Block Assessment Period from 01.04.1988 to 20.09.1998.

2. T.C. (A) No.857 of 2008, has been admitted on the following substantial questions of law:-

i) Whether on the facts and circumstances of the case the Tribunal was right in law, in upholding the addition made for the broken period, as undisclosed income, on estimate of proportionate income on the basis of the income disclosed for the AY 1999-2000?

ii) Whether on the facts and circumstances of the case the Tribunal was right in law, in upholding the addition of membership fee paid to Andhra Club, as undisclosed income?

3. T.C. (A) No.858 of 2008, has been admitted on the following substantial question of law:-

> i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition made for the broken period, as undisclosed income, on estimate of proportionate income on the basis of the income disclosed for the assessment year 1999-2000?

4. The issue involved in both the Tax Cases lie in a very narrow compass.

5. The apprehension of the petitioners/assessees is that, they would be taxed twice for the same Block Assessment Period, i.e., 01.04.1988 to 20.09.1998. This apprehension is because, the assessment for the period from 01.04.1988 to 31.03.1997, is based upon the materials, which were obtained by the Department during the search operations. The assessees would contend that the period from 31.03.1997, i.e., 01.04.1988 to 20.09.1998, there is no materials available with the Assessing Officer, and what the Assessing Officer has done, more particularly, in para No.7 of his order, dated 29.12.2000, is that, he has taken into consideration the return of the income filed by the assessees for the AY 1999-2000 and adopted the proportionate income.

6. It is submitted by the learned counsel appearing for the appellants that the procedure adopted by the Assessing Officer is incorrect, as there cannot be any estimation.

7. The learned Central Government Standing Counsel for the Revenue submitted that, the contention raised by the assessee is incorrect, and the law laid down by the Hon'ble Supreme Court, in **Assistant Commissioner of Income Tax, Chennai Vs. A.R. Enterprises,** reported in **[(2013) 29 Taxmann. Come 50 (SC)]** fully supports the stand taken by the Revenue.

8. We have heard Mr.Philip George, the learned counsel appearing for the appellant and Mr.T.R.Senthil Kumar, the learned Central Government Standing Counsel for the respondent.

9. In our opinion, it may not be necessary for us to decide the questions of law involved in these Appeals, when the apprehension of the assessees being, they should not be taxed twice for the same block assessment period. Thus, it would be sufficient for us to clarify this aspect of the matter. Accordingly, the question of law, which has been framed for consideration in T.C.A.No.858 of 2008, which is also the first question of law framed in T.C.(A). No.857 of 2008, are left upon, however, with a direction to the Assessing Officer to ensure that the assessees should not be taxed twice for the same block assessment period from 01.04.1988 to 20.09.1998.

10. Insofar as the second question of law, involved in T.C.(A) No.857 of 2008 is concerned, the ITAT took into consideration, the claim made by the assessee; and whether the payment effected by them for acquiring the membership in a Social Club should be allowed, and after considering the factual matrix and re-appreciating, what was placed before the Commissioner of Income Tax Appeals, in our opinion, rightly held that the personal expenses cannot be allowed as business expenditure, more so, when there was no evidence so as to prove that the membership of the

Social Club was acquired for entertaining the customers. Thus, the second question of law, involved in T.C. (A) No.857 of 2008 is answered against the appellant therein.

11. In the result, both the Tax Cases are disposed of. No costs.

T.S.S.J., N.S.S.J.,
09.04.2018

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Index : yes/no
Speaking Order /Non speaking

To

1. The Income Tax Appellate Tribunal,
   Madras 'A' Bench, Chennai.
2. The Deputy Commissioner of Income Tax,
   City Circle VI(Inv.)
   Chennai - 600 006.

T.S.Sivagnanam,J.,

&
N.Seshasayee, J.,

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T.C.(A).Nos.857 and 858 of 2008

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