

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JANUARY 2008

PRESENT:

THE HON'BLE MR. JUSTICE DEEPAK VERMA

And

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

L.T.A. No. 450/2003

BETWEEN:

1. The Chief Commissioner of
Income Tax,
Hubli.
2. Asst. Commissioner of Income Tax
(Investigation), Circle-I,
Hubli.

.... APPELLANTS

(By Sri Aravind Kumar, Advocate)

AND:

M/s. Pampepathi,
Hospet.

.... RESPONDENT

(By Sri M.V.Javali, Advocate)

This I.T.A filed u/s. 260-A of the Income Tax Act, 1961 arising out of order dt. 4.6.2003 passed in ITA No.122/PNJ/1998 for the assessment year 1993-94 praying that this Hon'ble Court may be pleased to:

Allow the appeal and set aside the order passed by the Income Tax Appellate Tribunal in ITA No.122/PNJ/1998 dated 4.6.2003 and confirm the order passed by the Asst. Commissioner of Income Tax (Investigation) Circle-I, Belgaum in the circumstances stated above and etc.

This I.T.A. coming on for hearing this day, K.L.MANJUNATHLJ., delivered the following:

JUDGMENT

This appeal is by the revenue challenging the order passed by the Income Tax Appellate Tribunal, Bangalore Bench in LT.A.No. 122/PNJ/98 dated 04.06.2003, wherein the Tribunal has reversed the concurrent findings of the orders passed by the Assessing Officer and the Commissioner of Income Tax (Appeals).

2. The respondent-assessee is a partnership firm indulged in extraction of iron-ore ^{2 am} mines taken on lease and exports it through Minerals and Metal Trading Corporation

of India Ltd., Madras. The assessee during relevant assessment years had filed the return of income. There was a search conducted on the premises of the assessee on 12th and 13th of December 1994. A statement under Section 132(4) of the Income Tax Act was recorded by the authorised officer at the instance of the partners of the assessee. They agreed to disclose voluntarily offering a tax on the income of Rs.1,15,00,000/- subject to deductions under Section 80HHC for the assessment years 1992-93 to 1995-96. Later on, one of the ^{partners} persons of the firm, on 25.01.1995 addressed a letter to the Department stating that the partners are willing to voluntarily offer an additional income of a sum of Rs.1,47,00,000/- which is inclusive of Rs.1,15,00,000/- declared earlier for four assessment years namely 1992-93, 1993-94, 1994-95 and 1995-96 subject to deduction under Section 80HHC and the letter further disclosed in the above terms that a revised return would be filed. Thereafter revised returns were filed by the assessee for each assessment years. The

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revised return was not accepted by the Assessing Officer only on the ground that the revised ^{return} ~~letter~~ is not in conformity with the letter dated 25.01.1995. The Assessing Officer rejecting the revised ^{and a} return passed an order of assessment based on the admissions made in the letter dated 25.01.1995 addressed by a partner of the respondent-assessee.

3. Aggrieved by the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Hubli. The appeal filed by the assessee came to be dismissed by the Commissioner of Income Tax only on the ground that when a partner of the assessee firm on 25.01.1995 has voluntarily agreed to disclose the higher income, the rejection of the revised return filed by the Assessing Officer was found to be correct. Accordingly the appeal filed by the assessee was dismissed. Thereafter the assessee filed a second appeal before the Income Tax Appellate Tribunal,

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which appeal was allowed by the Tribunal after hearing the learned counsel appearing for both the parties by holding that the letter dated 25.01.1995 could not have been considered by the Assessing Officer and he could not have passed an order of assessment without considering the revised return filed by the assessee. Accordingly the appeal was allowed in part, however, the Tribunal has directed the Assessing Officer to consider the statement made under Section 132(4) of the Income Tax Act on 13.12.1994 before the authorised officer, wherein the respondent- assessee firm had agreed to offer voluntarily an income of Rs.1,15,00,000/- subject to deductions under Section 80HHC of the Income Tax Act. Being aggrieved by the order passed by the Tribunal, the present appeal is filed by the revenue.

4. Though several grounds are raised as substantial questions of law in the appeal memo, during the course of arguments, the learned counsel for the appellant requests

us to reframe the substantial question of law as follows and answer the same.

Ans n
"Whether on facts and circumstances of the case, the Tribunal was justified in discarding the letter dated 25.01.1995 addressed by a partner of the assessee without considering the provisions of Sub-section (4) of Section 132 of the Income Tax Act and without due regard to provisions of Section 28 and 58 of the Indian Evidence Act?"

5. We have heard the learned counsel for the parties.
6. According to Mr. Arvind Kumar, learned counsel for the appellant, the Tribunal having accepted the sworn statement given by the partners of the firm on 13.12.1994 as a statement given by the partners by the assessee firm under Sub-section (4) of Section 132 of the Income Tax Act, has committed a serious error in holding that the letter dated 25.1.1995 addressed by a partner of the assessee voluntarily agreeing to disclose more additional income. According to him, the letter dated 25.1.1995 should have

been treated as a continuation to the statement recorded under Sub-section (4) of Section 132 of the Income Tax Act. He further submits that the Tribunal did not consider the provisions of Section 28 and 58 of the Indian Evidence Act while rejecting the letter dated 25.1.95. He further submits that when a voluntary statement has been made by the assessee, the same should have been considered as admission on the part of the assessee and that the Assessing Officer and the Commissioner of Income Tax (Appeals) were justified in rejecting the contention of the assessee. Therefore he requests the court to allow the appeal.

7. Per contra, Mr. Javali, learned counsel appearing for the respondent contends that the letter dated 25.1.1995 cannot be treated as a statement said to have been recorded under Sub-section (4) of Section 132 of the Income Tax Act. He further contends that the letter dated 25.1.1995 cannot be treated as an admission while passing

an order of assessment. According to him, the Tribunal was justified in allowing the appeal of the assessee by reversing the findings of the Commissioner of Income Tax (Appeals) and the Assessing Officer since the Assessing Officer did not consider the revised return solely based on the letter dated 25.1.1993. He further contends Section 28 of the Indian Evidence Act could be pressed into service only in a criminal proceedings and not under the Income Tax Act when an order of assessment has to be passed. He lastly contends that Section 58 of the Indian Evidence Act cannot be applicable to the facts and circumstances of the case since the assessee has not agreed either before the Assessing Officer or before the Commissioner of Income Tax (Appeals) while considering the revised return filed by the assessee. Therefore he requests the court to dismiss the appeal.

8. Having heard the learned counsel for the parties, this court has to examine whether the letter dated 25.1.1995

can be treated as part and parcel of the statement made by the partners of the firm under Sub-section (4) of Section 132 of the Income Tax Act. Sub-section (4) of Section 132 of the Income Tax Act reads as hereunder:

"132(4): The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922) or under this Act."

Under Sub-section (4) of Section 132 of the Income Tax Act, an authorised officer during the course of search or seizure can examine on oath any person who is found to be in possession or control of any books of accounts, documents, money, etc. and any statement made by such

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person during such examination may thereafter be used in evidence in any proceedings under the Income Tax.

9. In the instant case, letter dated 25.1.1995 cannot be treated as a statement said to have been made under Sub-section (4) of Section 132 of the Income Tax Act since the said letter is not recorded on oath by the authorised officer during the course of search or seizure. The search was conducted on the premises of the respondent-assessee on 12th & 13th December 1994. The letter dated 25.1.1995 has been addressed by one of the partners of the assessee and the same is sent through post to the Assistant Director of Income Tax (Investigation), Hubli, marking a copy to the Assistant Commissioner of Income Tax, Bangalore and the Deputy Director of Income Tax (Investigation), Belgaum. Therefore it is clear that it is an ordinary letter despatched by one of the partners of the assessee and such letters can ^{not ~} be considered as a statement said to have been recorded during the course of search invoking Sub-section (4) of

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Section 132 of the Income Tax Act in order to use the same against the assessee under the proceedings of the Income Tax Act.

10. When the said letter cannot be made use of against the assessee, then the question to be considered by this court is whether such letter can be treated as a return filed under the provisions of Income Tax Act to enable the Assessing Officer to pass an order of assessment. The learned counsel for the revenue fairly submits that the letter dated 25.01.1995 cannot be treated as a return. It is also not in dispute that return has to be filed in the proforma prescribed under the Income Tax Act. The letter dated 25.01.1995 is not in such proforma. After perusal of the letter dated 25.01.1995, it is clear to us that there is no unconditional disclosure of income by the assessee. A partner of the assessee has stated in the said letter that a revised return would be filed, claiming deduction under Section 80HHC and in the said letter, he has only

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requested not to initiate any penal action against the partners of the assessee. Therefore it is clear that solely relying upon the letter dated 25.01.1995, the Assessing Officer could not have passed an order of assessment rejecting the revised return filed by the assessee. It was the primary duty of the Assessing Officer to scrutinize the revised return filed by the assessee and if the Assessing Officer after scrutinizing the return had noticed any irregularity, it was open for the Assessing Officer to pass an appropriate order either rejecting the contention of the assessee in claiming deduction under Section 80HHC or doubting the return of income filed by the assessee. Unfortunately such a disposal is not followed by the Assessing Officer. The same is the case of the Commissioner of Income Tax (Appeals) while passing an order in the appeal filed by the assessee.

11. We have also examined the provisions of Section 28 and 58 of the Indian Evidence Act. Section 28 of the

Evidence Act, came to be pressed into service by the appellant herein provided it satisfied Section 24 of the Evidence Act. Section 24 of the Evidence Act deals with confession caused by inducement, threat or promise, when irrelevant in criminal proceeding. Section 28 deals that when such confessions are relevant. In the instant case either Section 24 or Section 28 cannot be pressed into service by the revenue since the case does not arise under the criminal proceedings or any other provisions of Indian Penal Code.

12. Thus, lastly we have to examine whether Section 58 of the Indian Evidence Act can be pressed into service by the revenue. Section 58 of the Indian Evidence Act reads as hereunder:

"58. Facts admitted need not be proved:

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the

time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

13. Relying upon Section 58 of the Indian Evidence Act, the learned counsel for the revenue contends that the Tribunal could not have rejected the letter dated 25.01.1995 addressed by a partner of the assessee since there is a clear admission on the part of the assessee in regard to undisclosed income. According to him it is an offer voluntarily made by a partner offering additional income of Rs. 1,47,00,000/- for a period of four years which is inclusive of Rs. 1,15,00,000/- disclosed at the time of recording the statement under Sub-section (4) of Section 132 of the Income Tax Act. But the letter dated 25.01.1995 cannot be made use of by the revenue as an admission ^{by the assessee} as that the letter dated 25.01.1995 is a conditional one and moreover the said letter cannot be

treated as a return to be filed under the Income Tax Act when the said letter cannot be treated as a return to be filed under Income Tax Act, the same cannot be treated as an admission since the Assessing Officer was required to look into the revised return filed by the assessee and scrutinize the same and thereafter to pass an order on merits in accordance with law.

14. It is to be observed by us that letter dated 25.01.1995 was not submitted by a partner of the assessee either at the time of hearing the parties while scrutinizing the revised return or along with the revised return. The letter dated 25.01.1995 clearly shows that the assessee firm is going to file a revised return in accordance with law. Therefore what was required to be considered by the Assessing Officer was not the letter dated 25.01.1995, but the revised return filed by the assessee. In the circumstances, we are of the opinion that the question of law framed by the revenue has to be answered against it

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and in favour of the assessee. Accordingly we dismiss this appeal.

Sd/-
Judge

Sd/-
Judge

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