

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE DR.JUSTICE P.DEVADASS

T.C.A.No.1061 of 2014

H.Gouthamchand Jain

.. Appellant

Vs.

The Income Tax Officer,
Ward-I(2),
No.181, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

.. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order, dated 12.02.2014 in I.T.A.No.1222/Mds/2013 on the file of the Income Tax Appellate Tribunal, A-Bench, Chennai against the order of the Commissioner of Income Tax (Appeals) VI, Chennai 34, dated 17.01.2013 made in ITA No.582/2010-2011 and against the order of the Income Tax Officer Business ward (2), Chennai 34 in PA/G1 No.AAFPC 0959 B.

For appellant : Mr.N.Devanathan

For respondent: Mr.T.Ravikumar,
Senior Standing Counsel for Income Tax

JUDGMENT

(The Judgment of the Court was delivered
by Nooty.Ramamohana Rao,J)

This appeal is preferred by the assessee under Section 260-A of the Income Tax Act, against the order passed by the Income Tax Appellate Tribunal, A-Bench, Chennai on 12.02.2014, allowing the appeal preferred by the Revenue before it.

2. The substantial questions of law that have been raised for consideration in this appeal are as follows:

"(i) Whether on the facts and circumstances of the case, the order of the ITAT is not perverse in law ? and

(ii) Whether on the facts and circumstances of the case, the ITAT in the absence of tangible materials was right in confirming double addition made to the sum of Rs.15 lakhs over and above the income offered and taxable under any of the provisions of the Income Tax Act ?"

3. For the assessment year 2008-2009, the assessee, who was a dealer of pharmaceuticals, has filed Return in respect of his total income of Rs.12,24,423/-. However, on 27.02.2008, survey operations were carried out at the business premises of the assessee under Section 133-A of the Income Tax Act. During the course of answering the questionnaire, the assessee offered to return additional income for Rs.15 lakhs. But however, the total income in respect of which the Return was filed by him, fell short of the said amount. Right at this stage, it will be relevant for us to notice the following from the sworn statement recorded from the assessee during survey operations, by way of answers furnished by the assessee for Question Nos.6 and 16, which have been relied upon by the assessing officer, while passing the assessment order on 29.12.2010. The said questions and answers are as under:

"Q.No.6. What are all the account books maintained for the current year ?

Ans: In the computer the details of purchase and sales are maintained daywise. For sales the details of sale receipts by way of cash and cheque are written in a note book. For expenses incurred I don't have any kind of record, and hence I could not tell the quantum of expenses in cash for the period from 1.4.2007 and 27.2.2008. Apart from this I don't have any other record. For Gautham Pharma I am not maintaining regular Day Book and ledger required under income tax Act either in computer or manually.

Q.No.16: In the answers to Q.No.6, you have stated that there is no records for the expenses incurred from 1.4.2007 to 27.2.2008 and also quantum of expenses incurred, and you have replied that you are not maintaining cash book in the answer to Q.No.5 considered the sales of Rs.9,23,01,893/- during the current years as on date, as per your computer and in

the absence of account books, how are you going to prepare a/c books ?

Ans: In the absence of regular a/c books, as well as primary documents for the preparation of accounts I may not be able to draw proper a/cs and arrive at current income. Hence I am offering voluntarily Rs.15,00,000/- (Rupees fifteen lakhs only) as income over and above the regular income and pay tax on this sum."

4. From the above statement, it is more than clear that the assessee has offered voluntarily Rs.15 lakhs as income over and above the regular income. But however, he has booked certain expenditure in the immediate aftermath of the survey operations carried on 27.02.2008 and claimed that because of the expenditure thus incurred, the net income has come down, though he did include Rs.15 lakhs increase in the total income. The assessing officer has discredited this attempt of the assessee and essentially based his reasonings on the following two factors:

(i) The expenditure is incurred towards commission by way of cash payments, but however, no receipts/vouchers, etc. have been produced in support of the said claim.

(ii) Similar expenditure was not booked by the assessee in the past four assessment years, though there was not much change in the line of activity of the business carried on by the assessee.

5. Against the above order of assessment, an appeal was carried to the Commissioner of Income Tax (Appeals), who by his order dated 17.01.2013, has allowed the appeal partly. Insofar as the additions made by the assessing officer by disallowing the inflated expenditure, the CIT (Appeals) reversed the same upon the following reasons:

"11.2. I had gone through the submissions made by the AR and the observations of the AO. It is a fact admitted by the assessee during the course of survey u/s 133A that the books of accounts were not regularly maintained. In order to overcome its deficiency the assessee has come forward by disclosing the additional income of Rs.15 lacs over and above his regular income. He has accordingly offered the same by crediting these monies to the capital account and thus were brought to tax. Having been established that books of accounts were not maintained regularly and the additional incomes were brought to tax, it would

not be fair to go into each and every item of expenditure debited to the P&L account, especially an estimated amount is admitted as additional incomes. In a sense where the additional incomes over and above the regular income were offered, the AO cannot go into the details of the expenditures as book results gets submerged under the provisions of S.145. Hence the additions cannot be sustained."

6. Hence, the Revenue went before the Income Tax Appellate Tribunal, which by its order, dated 12.02.2014, allowed the appeal of the Revenue. It is against this order that the present appeal is directed.

7. Heard Shri.N.Devanathan, learned counsel for the appellant/assessee and Shri.T.Ravikumar, learned Senior Standing Counsel appearing for the respondent-Income Tax Department.

8. There is no gain-saying that during the survey operations, the assessee has given his statement in the form of questions and answers. In relation to Question No.6, calling for the details of the account books maintained, the assessee has said the following, which would be relevant for our inquiry:

" For expenses incurred I don't have any kind of record, and hence I could not tell the quantum of expenses incurred in cash for the period from 1.04.2007 to 27.02.2008. Apart from this, I don't have any other record I am not maintaining regular Day Book and ledger required under the Income Tax Act either in the computer or manually...."

9. From the above statement of the assessee, it becomes clear that he has not maintained any record for incurring the expenditure in cash for the period from 01.04.2007 up to 27.02.2008, the date on which the survey operations were carried out.

10. Insofar as Question No.16 is concerned, the answer furnished by the assessee, inter-alia, is as follows:

" Hence, I am offering voluntarily Rs.15,00,000/- (Rupees fifteen lakhs only) as income over and above the regular income and pay tax on this sum."

11. Therefore, what has been offered by the assessee voluntarily is in respect of filing Return with regard to Rs.15 lakhs over and above the regular income. This is the reason why, to ascertain the quantum of regular income, normally that can be

expected in respect of the Return filed by an assessee for the relevant assessment year, the assessing officer will look into the Returns of the immediately preceding four years period. From that, it has emerged that the gross turnover for the four preceding years, was shown to the tune of Rs.3,44,27,963/-, Rs.4,24,67,070/-, Rs.5,79,89,402/- and Rs.8,12,36,798/-. As against this, for the assessment year 2008-2009, the assessee has reported the gross turnover of Rs.9,71,88,656/-. It is no doubt true that there was consistently considerable quantum of increase in the gross turnover and consequently, the gross profit and net profit had been reflected by the assessee by incremental increase each year. Hence, in those circumstances, the assessing officer has reversed some of the expenditure said to have been incurred in cash, for the relevant assessment year, and added it to the taxable income.

12. The order passed by the assessing officer has contained adequate reasons as to why he has discredited the expenditure incurred in cash. When the expenditure has been booked in the post-27.2.2008 period, upto 31.03.2008, it has not inspired enough confidence in the assessing officer's mind, for it, to pass the muster, whereas, the CIT (Appeals) has not looked into those factors while reversing the order of assessment passed by the assessing officer. The Income Tax Appellate Tribunal has noticed that what was pointed out by the assessing officer is that the assessee has not claimed any expenditure by way of payment of commission during the preceding four assessment years, but however, for the relevant assessment year, he has booked an expenditure of payment of commission of Rs.6 lakhs in cash. This amount of expenditure towards the payment of commission in cash, which was considered by the assessing officer, is booked to nullify the offer of additional income of Rs.15 lakhs. Further, during the course of assessment, no receipts had been produced by the assessee, on his own showing as of 27.02.2008, there are no records/registers maintained by the assessee with regard to the cash payments made. Therefore, the finding of the assessing officer is that there are no proper books of accounts maintained by the assessee and hence, it is not possible to infer that he has legitimately expended and claimed the expenditure in cash, particularly after the survey operations were carried out on 27.02.2008. In those set of circumstances, the Income Tax Appellate Tribunal has reversed that portion of the order of the CIT (Appeals) and restored the order of the assessing officer. The learned counsel for the appellant/assessee submitted that the finding of the Income Tax Appellate Tribunal is patently perverse and hence it calls for interference at our hands.

13. Perversity, as is too well known, is a factor which vitiates any exercise, legal or otherwise, determinative of the

rights and obligations of the parties. Broadly understood, the concept of perversity, would mean all the facts possibly leading to one inference/conclusion, and if an opposite inference/conclusion is drawn, then any such exercise can be called as a result of perversity. Further, upon considering the same material, if no reasonable body of men would have reached such a conclusion, then the concept of perversity would spring up.

14. In the instant case, the statement of the assessee during the survey operations, no doubt, could have been made due to duress or stress of the very operations, but however, the circumstance which could be taken note therefrom is that there are no registers or records maintained by the assessee insofar as the expenditure incurred by him up to that point. Only sales and purchase details are maintained in the computer. Therefore, the sudden booking of huge expenditure in a month's time, that too, after survey operations were carried out, would lead any reasonable and prudent man to an inference that the same was deliberately booked to neutralise the obligation to report additional income of Rs.15 lakhs over and above the normal income. When expenditure in cash is incurred, receipts/vouchers have got to be maintained accurately and the same will have to be produced for acceptance of the assessing officer. No explanation is forthcoming as to why an expenditure to the tune of Rs.6 lakhs, has been shown to have been incurred for the first time during the relevant assessment year towards the payment of commission, while similar expenditure was not reflected at all in the preceding four years, particularly, when there was no change in the line of business activity of the assessee, all these years. Therefore, the inference drawn by the assessing officer cannot be construed to be perverse, and on the other hand, it is a reasonable deducible inference and that is exactly what the Tribunal has subscribed to.

15. We, therefore, do not see any substantial question of law arising for consideration in this appeal and consequently, we decline to grant admission to the appeal. The appeal stands dismissed at the stage of admission. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

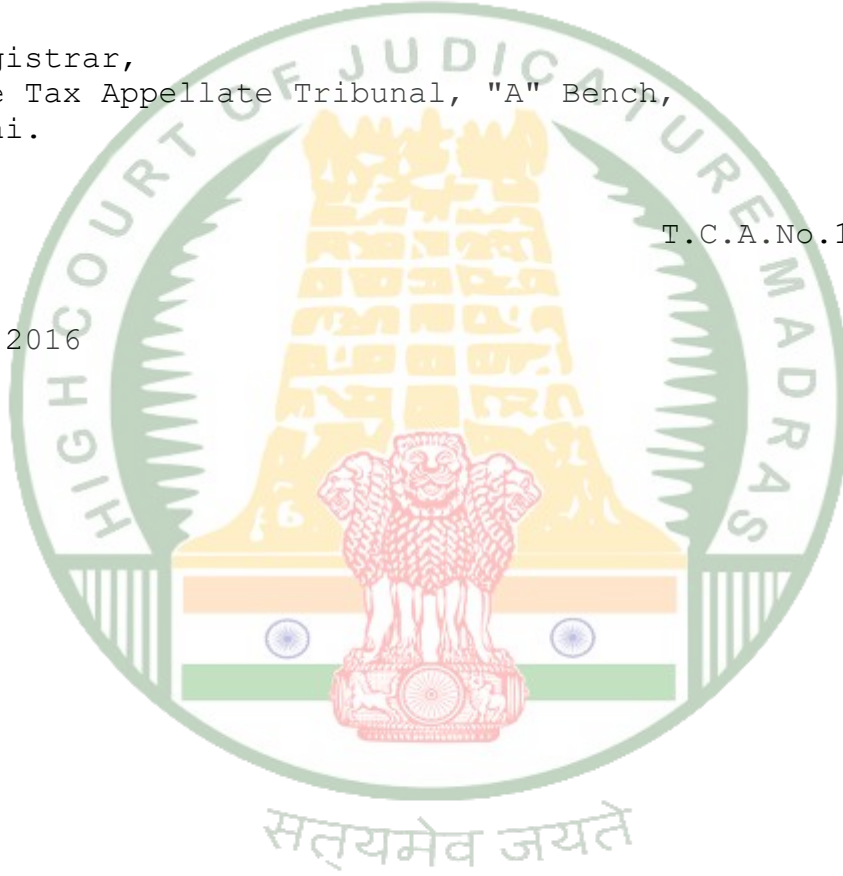
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To:

1. The Income Tax Officer, Ward-I(2),
No.181, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.
2. The Commissioner of Income Tax (Appeals) VI,
Chennai 34.
3. The Registrar,
Income Tax Appellate Tribunal, "A" Bench,
Chennai.

T.C.A.No.1061 of 2014

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