In the High Court of Judicature at Madras

Dated : 23.2.2016

Coram

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

T.C.A.No.104 of 2016

V.Babu ...Appellant

Vs

The Deputy Commissioner of Income Tax, Non Corporate Range-3, Chennai-34. ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 21.8.2015 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, for the assessment year 2007-08 made in ITA No.296/Mds/2015 as against the order dated 07/10/2014 on the file of the Commissioner of Income Tax (Appeals-V) for the assessment year 2007-08 in GIR NO/PAN AAKPB2530Q and as against the order dated 18/3/2013 on the file of the Income Tax Department in GI.No/PA.No.AAKPB2530Q for the Assessment year 2007-08.

For Appellant : Mr.A.Thiagarajan, SC for Mr.S.Ramesh Kumar
For Respondent: Mrs.Hema Muralikrishnan for Mr.T.Ravikumar

Judgment was delivered by V.RAMASUBRAMANIAN,J

The assessee has come up with the above appeal under Section 260A of the Income Tax Act, 1961 raising the following substantial questions of law:

> "(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the Department has discharged its burden of proof has on it under Section 68 of the Income Tax Act, 1961, is correct in law, when admittedly there was no partnership firm by name M/s.Babu and Associates ?

(ii) Whether on the facts and circumstances of the case, when the appellant has proved satisfactorily about the credit of the money and consequential transaction with admitted records, can the Department be said to have rebutted the same ? and

(iii) Whether on the facts and circumstances of the case, the Tribunal was right in not recording a finding about the existence or non existence of a partnership firm namely M/s.Babu and Associates of which, Mr.C.Karthikeyan claims to be a partner and in which, the appellant was not a partner ?"

2. Heard Mr.A.Thiagarajan, learned Senior Counsel appearing for the appellant.

3. The appellant/assessee filed return of income on 13.11.2007 for the assessment year 2007-2008. The return was processed under Section 143(1). After a survey under Section 133A, the case was reopened and a notice under Section 148 was issued. The assessment was completed on 31.12.2010.

4. The case was again reopened after issuing a notice under Section 148. The assessee contended that the return filed on 2.11.2007 may be treated as the return filed in response to the notice under Section 148 of the Act.

5. However, the Assessing Officer issued a notice on 10.8.2012 calling upon the assessee to show cause as to why the amount of Rs.10 crores credited on 9.2.2007 should not be added as income. The assessee submitted a reply. Thereafter, the Assessing Officer passed an order dated 18.3.2013, making the addition of Rs.10 crores to the total income.

6. As against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who, by an order dated 7.10.2014, dismissed the appeal. The assessee filed a further appeal before the Tribunal. The Tribunal found that the reopening of assessment was not on a change of opinion and that therefore, there was no reason to interfere with the order of the Original and Appellate Authorities. Hence, the present appeal.

7. As seen from the questions of law raised by the assessee, they revolve around the question of discharge of burden of proof under Section 68 of the Act. Therefore, it will be useful to extract Section 68, which reads as follows :

> "Where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

8. As per Section 68, whenever any sum is found credited in the books of an assessee maintained for the previous year, the assessee should offer an explanation, about the nature and source thereof. If he offers no explanation or if the explanation offered by him is not satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

9. In the case on hand, it was found on facts that a sum of Rs.10 crores stood credited. According to the appellant, the appellant's friend by name Mr.R.K.Ilangovan requested for an accommodation. Therefore, a credit transaction of Rs.10 crores was entered into on a commission of around Rs.3 lakhs. Once the entries in the books are admitted, the burden of proof shifts on the assessee.

10. Therefore, we find no substantial question of law that would go in favour of the assessee. Accordingly, the tax case appeal is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
Madras 'C' Bench, Chennai.

2.The Deputy Commissioner of Income Tax,
Non Corporate Range-3, Ch-34.

+1 cc to Mr.S.Ramesh Kumar Advocate sr.11038
+1 cc to Mr.T.Ravikumar Advocate sr.11107

T.C.A.No.104 of 2016

aa06/04/2016