IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.10.2016

Pronounced on : 26.10.2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO

AND

The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL No.2408 of 2006

K.R.Ganesh Kumar .. Appellant

Versus

The Assistant Commissioner of Income Tax,
Central Circle I, Trichy. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 16.06.2006 in IT SS A No.21/Mds/2006.

For Appellant .. Mr.S.Sridhar

For Respondent .. Mrs.R.Hemalatha

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

This Tax Case (Appeal) challenges an order of the Income Tax Appellate Tribunal dated 16.06.2006 in relation to the block period 1989-99 to 2003-2004 and part of 2004-2005. The following Substantial Question of Law has been admitted for consideration:-

> *Whether the Tribunal is correct in confirming the order(s) of the Lower Authorities in invoking Section 40A(3) of the Act to make the disallowance which resulted in assessment of 'undisclosed income' in spite of the purchases were assessed on an estimated basis in the said block assessment order?*

2. The brief facts relevant for deciding the substantial question of law are as follows:

The Appellant was engaged in the business of manufacture and trading of gold jewellery. Pursuant to search and seizure action in terms of s.132 of the Income Tax Act (herein after referred to as 'the Act'), an order of assessment in terms of s.158 BC of the Act was passed on 30.05.2005 effecting various additions/disallowances.

3. It appears that in the course of the proceedings for search, loose sheets of paper were seized indicating unaccounted purchase of gold jewels to the extent of 40118.179 grams. The Appellant agreed to offer to tax the value of the unaccounted purchases/investment as representing his unexplained income. To arrive at the quantum thereof, the Appellant suggested that the peak of the purchases of gold jewellery be adopted at a rate of Rs.478 per gram. The Appellant thus offered to tax an amount of Rs.14,34,300/- as unexplained investment representing the purchase of gold jewels of 3000 gms, as reflected in loose sheet No.30 which indicated a purchase of 2980.390 gms, at the rate of Rs.478/- per gram. The Assessing Authority accepted the same substantially,

only enhancing the rate per gram to Rs.500/- as against Rs.478/- offered by the Appellant. The difference of Rs.65,700/- was added as undisclosed income. So far so good.

4. Thereafter, the Assessing Officer proceeds to address the same issue of investment in gold jewellery yet again on the ground that the offer made by the appellant leads to the conclusion that the consideration was paid in cash. He thus invoked the provisions of 40A(3) of the Act in terms of which an assessee who incurs and claims expenditure exceeding an amount of Rs.20,000/- was liable to have paid the same only by way of a crossed cheque drawn on a Bank or a crossed Bank Draft, failing which 20% thereof would stand disallowed. The objections of the Appellant in this regard were rejected and a disallowance in terms of s.40A(3) effected on the entire purchases of 40118.179 grams of gold at the rate of Rs.500/- per gram. An amount of Rs.40,11,818/- being 20% of Rs.2,00,59,090/- thus stood disallowed.

5. Assailing the aforesaid disallowance, appeals were filed before the Commissioner of Income tax (Appeals) and further before the Income Tax Appellate Tribunal, which rejected the same, vide orders dated 15.12.2005 and 16.06.2006 respectively. As against the aforesaid conclusion, the Appellant is before us in appeal.

6. Heard Mr.S.Sridhar, learned Counsel appearing for the appellant and Mrs.R.Hemalatha, learned Standing Counsel appearing on behalf of the Income Tax Department.

7. We are called upon to decide whether the invocation of the provisions of s.40A(3) in the aforesaid facts and circumstances of the present case is justified in law. There is no dispute that the provisions of s.40A(3) apply to block assessments in general. The provision however, would apply only where expenditure in question has been incurred and claimed in the computation of income. The Supreme Court, in the case of ***Attar Singh Gurmukh Singh Vs. Income Tax Officer, Ludhiana (191 ITR 667)***, reiterates this position as well. In the present case, the Tribunal confirms as a finding of fact at para 17 of its order that no expenditure has been incurred except the investment in gold. The consideration paid towards the investment has been duly brought to tax as unexplained income, such income not having been claimed as expenditure in the computation of income. The objection of the Revenue is that the valuation of the gold per gram is not Rs.500 but more as revealed by other disallowances made in the order of assessment and if the higher rate was taken into consideration, one could assume that certain expenditure has been incurred and claimed. We are not persuaded to accept this submission in so far as there is no necessity to consider any other valuation except that relating to the subject disallowance, being Rs.500 per gram adopted by the Assessing officer after due consideration and application of mind. We are thus of the view that the provisions of 40 A(3) are wholly inapplicable to the facts and circumstances of this case. The substantial question of law is answered in favour of the assessee and against

the Revenue. No costs.

(N.R.R.,J) (A.S.M.,J)

26.10.2016

Index: Yes/No

vga

NOOTY. RAMAMOHANA RAO, J

AND

Dr.ANITA SUMANTH,J

JUDGMENT IN
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