IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.No.189 of 2017

Shri.S.Raman
M/s.Mabel Engineers Pvt. Ltd.,
Plot No.66-69, EPIP Sipcot Industrial Complex,
Gummidipoondi - 601 201 ... Appellant

Vs.

The Deputy Commissioner of Income-tax,
Company Circle - IV (1),
Chennai - 600 034. ... Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 30.11.2016 passed in I.T.A.No.2573/MDS/ 2014 by the Income Tax Appellate Tribunal, 'B' Bench, Chennai.

Appeal arising against the order of the Commissioner of Income Tax (Appeals) IV, Chennai in ITA.NO.459/13-14, dt.10.4.14, against the Assessment order of the Deputy Commissioner of Income Tax, Company Circle (IV) Chennai, dt.19.3.2013 in PAN/GIR.NO.AAFPR 1944 M.

For Appellant : Mr.M.P.Senthil Kumar
For Respondent : Mrs.R.Hemalatha

J U D G M E N T
(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. Before we deal with the appeal, we may indicate that the practice followed, vis-a-vis, tax appeals is that, advance copies are not served on the contesting party. It is only, after notice is issued, in the matter that the respondents are served.

2.The instant appeal has been filed by the Assessee. Though additional sets of paper book were filed with the Registry, no advance copy is served on any of the counsels who are empanelled to appear for the Revenue.

3.According to us, this practice delays, at times, the adjudication of the matter. In several cases, the matters, to our minds, can be disposed of, at the notice stage itself, as they may raise issues, which are either covered or raise questions of fact as against substantial questions of law. Assistance of the contesting counsel would go a long way in enabling the Bench, to reach a conclusion in the matter.

4.Therefore, we direct the Registry, to follow, hereon, the following practice, in respect of tax matters :

(i) Where the Assessee is in appeal, the counsel prosecuting the appeal would serve an advance set of the appeal paper book, along with the typed set of documents, on any one of the counsels, who are empanelled to appear for the Revenue.

(i)(a) We are informed by Ms.Hemalatha, who has been requested to appear for the Revenue, today, that inter se, the empanelled counsels, they can then hand over the papers, to the concerned counsels depending on the jurisdiction, ear marked for the empanelled counsel for the Revenue.

(ii) The counsel for the Assessee will ensure that the appeal paper book along with the typed set of documents, unless there is grave urgency, would be served at least three (3) days, in advance.

(iii) In cases, where Revenue is in appeal and, since, it is not known by the Revenue, as to who would be the counsel who would enter appearance on behalf of the Assessee, i.e., contesting party, the Revenue, will despatch, an advance intimation along with only the grounds of appeal via, Registered Post with Acknowledgement Due (RPAD), at least seven (7) days prior to the listing of the case. The communication will indicate the mode and manner by which complete set of papers can be collected.

(iv) In addition, intimation by way of a letter will also be sent to the counsels/authorized representative, on record, before the authorities below, in case, the relevant information with regard to the name and address is available on record.

(v) It is made clear, in case, the Assessee is not represented on the day, when, the matter is listed, it will not be held against the Assessee. The Bench concerned, in such circumstances, if thought fit, would issue formal notice to the Assessee.

(vi) In the event of an urgency arising in the matter, the concerned counsel would have liberty to mention the matter, before the Bench, for grant of waiver of the aforementioned directions.

4.1. We make it clear, that these directions are applicable, only to tax matters.

5.In so far as the present case is concerned, it is noticed, that the appeal, which pertains to the assessment year 2010-11, is directed against the judgment of the Income Tax Appellate Tribunal (in short the Tribunal), dated 30.11.2016.

6.The only issue, which arose for consideration, before the Tribunal was, as to whether additions made to the income of the Assessee, under Section 68 of the Income Tax Act, 1961 (in short, the Act), ought to be sustained.

6.1.To be noted, the Assessee has lost throughout.

7.The learned counsel for the Assessee, however, says that the evidence produced, before the Authorities below, has not been properly appreciated.

7.1.It is, his contention that the initial onus, regarding source of unexplained funds, was discharged by the Assessee.

7.2.It is, in this connection, that the learned counsel for the Assessee says that the Authorities below, failed to appreciate, which is, that not only, the identity of the persons, who furnished funds to the Assessee was disclosed, but also their creditworthiness and source was established.

7.3.Learned counsel says that therefore, the transactions entered into between the persons, who furnished the funds to the Assessee, which stood deposited in his bank account, were explained and therefore, all transactions, with which, fault is found by the Authorities below, would necessarily be genuine.

8.In order to adjudicate upon the present appeal, the following broad facts need to be noticed:

8.1.The Assessee had filed his return of income for the Assessment Year in issue, i.e., 2010-11 on 31.12.2010.

8.2.The Assessee's case was picked up for scrutiny.

8.3.Upon scrutiny, it was found that they were monies amounting to Rs.30,83,000/- credited to his account.

8.4.Since, the Assessing Officer was not satisfied, with the explanations given by the Authorized Representative of the Assessee, individual notices were issued under Section 133 A of the Act, to those persons, from whom, the Assessee indicated that funds had been received.

9.To be noted, out of the total credit reflected in the Assessee's account for the relevant period, i.e., a sum of Rs.30,83,000/-, the Assessee had attempted to furnish explanation for a sum of Rs.29,68,000/-, by attributing the source to relatives and his own means.

9.1.For the balance amount, i.e., Rs.1,15,000/-, explanation was furnished, which was not duly supported by requisite material.

9.2.In the Assessee's words, clear and cogent explanation was furnished in respect of sums amounting to Rs.23,48,000/-. The explanation, which was given, in respect of this amount, is, as follows:

9.3.It was the Assessee's case before the Assessing Officer that monies to the tune of Rs.23,48,000/-, were, largely, received, from his close relatives. This sum included an amount equivalent to Rs.2,28,370/-, which, the Assessee claimed were his own funds.

9.4.In so far as the sum of Rs.1,15,000/- was concerned, it was the Assessee's stand that it was received from his employer i.e., Mabel Engineers Private Limited.

9.5.The detailed break up, as furnished by the Assessee, is as follows:

Sl. No.	Name	Relationship	Amount Rs.
1	Mr.K.Venkatadhri	Father-in-law	5,00,000
2	Mrs.V.Rukmani	Mother-in-law	5,00,000
3	Mr.S.Krishnamoorthy	Younger Brother	2,49,630
4	Mr.S.Muthukrishnan	Elder Brother	2,00,000
5	Mr.S.Srinivasan	Elder Brother	2,00,000
6	Ms.Varshini Raman	Daughter	2,30,000
7	Ms.Divya Raman	Daughter	2,40,000
8	Own Funds		2,28,370
9	Mabel Engineers P. Ltd.	Employer	1,15,000
		Total	24,63,000

9.6. As would be evident upon perusing the details set out in the table that each one of them from Serial No.1 to 7 are close relatives of the Assessee.

9.7.The explanation given, with regard to, each one of them was examined by the Assessing Officer. Since, we do not wish, to reiterate the findings of fact, returned by the Assessing Officer, which, as indicated above, have been affirmed both by the CIT(A) and the Tribunal, we would only, observe, that the same finds a discussion in paragraphs 3.1 to 11, of the order of the Assessing Officer.

9.8.However, only to highlight the fact as to why, the Assessing Officer came to the conclusion which, he did, we may, indicate that in so far as the mother-in- law and father-in-law of the Assessee were concerned, it was sought to be explained that between them, a sum of Rs.10,00,000/- was given to the Assessee, in the form of a gift.

9.9.The father-in-law, as noted by the Assessing Officer, was at the relevant point of time aged 83 years, while the mother-in-law was aged 73 years.

10.The father-in-law's explanation was that, he was an agriculturist and a retired Purohit/Priest. It was sought to be explained by the father- in-law that thereby a parcel of agricultural land was sold and a sum of Rs.1,98,000/- was generated thereby.

10.1.The Assessing Officer seems to have examined the papers in that behalf and noted that while, the sale transaction was carried out on 10.06.2008, the money was gifted only on 19.03.2010.

10.2.The mother-in-law, on the other hand, also submitted before the Assessing Officer that the sum of Rs.5,00,000/-, that she had gifted to the Assessee, was sourced from her savings from agricultural income. No details of any bank account, were given.

10.3.The mother-in-law, did not indicate, to the Assessing Officer that she owned any agricultural land or any other asset. She did, however, try to explain that she carried out agricultural activity on leasehold land(s).

10.4.Concededly, the details of income generated from leasehold lands was not furnished to the Assessing Officer.

10.5.Furthermore, as noted by the Tribunal also, the gift deeds which were produced and are dated 19.03.2010, did not indicate the date when the gift was made.

10.6.Therefore, for these, amongst other reasons, the explanation given by the mother-in-law and father-in-law, were not accepted.

10.7.In so far as the brothers are concerned, it is noticed that one of the brothers, i.e., Mr.S.Srinivasan, whose name is found at serial no.5 of the Table, set out above, was engaged as a Purohit/Priest. He had sought to explain that the sum of Rs.2,00,000/-, which, he gave, to the Assessee was generated from private savings.

10.8.There was no proof, placed before the Assessing Officer, as to the income which Mr.Srinivasan had earned during the relevant period.

10.9.In so far as the other two brothers were concerned, i.e., Mr.S.Krishnamoorthy and Mr.S.Muthukrishnan, they had indicated that the monies given to the Assessee, were, in fact loans, which were being repaid.

11.The Assessing Officer, while considering the explanation of Mr.S.Muthukrishnan, noticed that he earned a salary of approximately, Rs.17,000/- per month. Since, it was sought to be explained by Mr.S.Muthukrishnan that in order to repay the loan, he had also dipped into the savings of his son, the earnings of his son, were also looked at. After examining the accounts of the son of Mr.Muthukrishnan, it was found that he earned a salary of approximately, Rs.20,000/- to Rs.25,000/- per month and on most occasions, he had withdrawn only Rs.200/- to Rs.2,000/- from his bank account. The withdrawal, in certain instances, ranged between Rs.10,000/- and Rs.20,000/-.

11.1.The Assessing Officer came to the conclusion after a holistic appreciation of the evidence, produced before him, that taking into account, the domestic expenses of Mr.S.Muthukrishnan, who earned an annual salary of approximately, Rs.2,00,000/- to Rs.2,04,000/-, he could not have, garnered enough funds, to pay monies, which were categorised as repayment of loan.

11.2.Likewise, in the case of Mr.Krishnamoorthy, the evidence produced was examined by the Assessing Officer and it was found that the annual salary, which he earned, was a sum of Rs.2,60,000/-.

11.3.Since, in this case, as well, it was stated by Mr.Krishnamoorthy that his son had helped him out, with repayment of loan, to the Assessee, the said explanation was also examined.

11.4.The Assessing Officer notes that Mr.Krishnamoorthy, in the relevant year, had only three credits in his accounts, which totalled to Rs.80,000/-.

11.5.Thus, having factored the monies, which, Mr.Krishnamoorthy would have expended for domestic purposes, the Assessing Officer came to the conclusion that the Assessee had not given satisfactory evidence, with regard to the source of credit, qua the sum of Rs.2,49,630/- paid to the Assessee.

11.6.In so far as the two daughters are concerned, the Assessing Officer returned a categorical finding of fact that during the relevant period, the daughters were students and therefore, they could not generated the sums which were sourced to them. The daughters did attempt to furnish an explanation to the effect that they had to receive monies from certain persons qua their own account, which were collected on their behalf by the Assessee, i.e., the father and directly, deposited in his account.

11.7.Concededly, the details of those debtors, who owed moneys to the daughters were not furnished.

11.8.In so far as the sum of Rs.1,15,000/- is concerned, which, the Assessee said he had received from his employer; concededly, the Assessee had not furnished the balance sheet of the employer.

11.9.In so far as the explanation given for his own funds was concerned, the Assessing Officer noted as follows:

> "With regard to the argument of his drawings being the source for deposit of case of Rs.2,28,370, The cash balance, he refers to has got no relevance. The withdrawals are only Rs.4.19 lakhs, which would not allow him to save 2.28 lakhs, as he needs to meet his domestic expenses. The assessee did not co-ordinate with the dates or amounts of withdrawals with cash deposits. In view of this, the assessee's argument is not tenable in the facts and circumstances of the case. He fails to satisfactorily explain the source of funds in respect of the cash deposits into his bank account to an extent

of Rs.2,28,370. Hence, in accordance with the provisions of section 68 of the Income Tax Act, 1961, the same is assessed as income of the assessee.”

12.These explanations, were, once again, scrutinized both by the CIT(A) and by the Tribunal. We have also looked at the explanations given by the Assessee.

13.Mr.M.P.Senthil Kumar, learned counsel for the Assessee, in support of his submission has relied upon the judgment of the Delhi High Court rendered in: Commissioner of Income Tax Vs. Kinetic Capital Finance Limited, (2013) 354 ITR 296 (Delhi).

13.1.According to us, the judgment is completely distinguishable on facts.

13.2.In that case, CIT has reversed the view of the Assessing Officer, after, inter alia, noting the fact, that 86 investors who were third parties, 16 had confirmed the deposit and in one case, the deposit had been repaid with interest.

13.3.It is also noticed that the Assessee in that case was a limited company, having branches in different parts of the country. The assessee was in the business of non-banking finance and was registered with the RBI. Out of the total deposit amounting to Rs.1,08,54,463/-, a sum of Rs.62,13,485/- was received in earlier years. Furthermore, the deposits were renewed in the assessment year in issue.

13.4.Having regard to the aforesaid broad facts, as culled out from the said judgment, we are of the view, that on facts, it cannot be applied to the case, at hand.

14.Mrs.R.Hemalatha, who appears for the Revenue says that apart from the fact that no substantial questions of law arise for consideration by this Court, this Court, may also like to take into consideration the fact that three Authorities have returned concurrent findings of fact against the Assessee. In sum, it was Ms.R.Hemalatha's submission that no interference is called for with the impugned judgement and order.

15. According to us, while the Assessee has not been able to discharge what he claims is the initial onus, satisfactorily, the observations made by the authorities below are findings of fact based upon appreciation of evidence. The onus, in this case, according to us, did not shift to the Revenue. The reason being that while, the Assessee was able to identify the source for whatever it was worth, he definitely failed to establish the creditworthiness of his source. We have ourselves examined the explanation given by the Assessee and are satisfied that there is no fundamental error committed by the authorities below in the appreciation of evidence.

15.1. Each of the relatives identified as source, clearly, lacked the capability of lending funds to the extent attributed to them by the Assessee. While, the Assessee is not expected to establish the means, by which, funds are generated by the source. In other words, look to the "source of the source" - the capability of the source to generate funds is an exercise, which needs to be carried. In the instant case, an exercise in that behalf was, in fact, carried out, which led to the conclusion that each source identified by the Assessee did not have the necessary wherewithal to provide funds to the Assessee. We are persuaded to hold that in this case, additions have not been made based on mere suspicion, surmises and/or conjectures, as alleged by the Assessee.

16.Therefore, in our opinion, no question of law, arises for our consideration, much less a substantial question of law.

16.1.Thus, we find no reason to interfere with the judgement and order of the Tribunal.

17.The appeal is, accordingly, dismissed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To
1.The Deputy Commissioner of Income-tax,
Company Circle - IV (1), Chennai - 600 034.

2.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

3.The Registrar (Judicial)
High Court of Madras, Chennai - 600 104.

copy to:
1.The Section Officer,
Judicial Section,High Court, Madras.

2.The Section Officer,
"F" Section,High Court, Madras.

+1 cc to M/s.G.Baskar,advocate,sr.16289

+2 cc's to Mrs.R.Hemalatha,advocate,sr.16032.(20/4)

rsk(co)
krd 19/4

T.C.A.No.189 of 2017