IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr.Justice ANITA SUMANTH

TAX CASE APPEAL No.810 of 2016

The Commissioner of Income Tax,
Trichy. ... Appellant/Appellant

Versus

Shri P.Pawan Kumar Jain,
No.8/3, 105, Pammalcort,
Apartments,
1st floor, Raja Annamalai Street,
Purasavakkam,
Chennai - 600 084. ... Respondent/Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "A" Bench dated 9th December, 2015, passed in ITA No.672/Mds/2015, against the Order of the Commissioner of Income Tax (Appeals)-2(i/c), Tiruchirapalli, dated 18.12.2014 made in ITA.No.16/13-14/(IT(A)/TRY, against the Joint Commissioner of Income Tax, Kumbakonam Range, Kumbakonam, dated 14.03.2013 made in P.A.No./P-9000/AFUPJ4906P; Assessment Year 2007-2008.

For Appellant : Mr.J.Narayanasamy

For Respondent : Mr.Raghul Balaji

JUDGMENT
(Order of the court was made by Dr.Anita Sumanth,J.)

The assessee respondent is engaged in the manufacture and sale of jewellery. There was a survey in the premises of the assessee on 22.3.2007, in the course of which, gold and cash were found. The department sought the assistance of a valuer Sri.H.Gopaldas & Company, Kumbakonam, to value the gold and to determine the purity thereof. The valuer determined the quantum at 10689.584 grams and the valuation to be in the range of Rs.230/- to 635/- per gram. In carrying out this exercise, the modus operandi adopted by the valuer was to categorise the gold into four lots based on the articles and then value the same based on the purity of the gold.

2. The assessing authority while accepting the quantum of the gold at 10689.584 grams, valued the same at Rs.955/- per gram. The adoption of the rate was as per a statement recorded from the assessee on 5.4.2007, in the course of survey. However, no other material was brought on record by the department to substantiate the valuation of Rs.955/- per gram as against the valuation arrived at by the valuer appointed by it. The assessment was completed on this basis.

3. An appeal was filed by the assessee before the Commissioner of Income Tax (Appeals), who, after a detailed examination of the matter confirmed the quantum of gold, but adopted a uniform rate of Rs.635/- being the highest number adopted by the valuer in respect of all four lots of gold. He thus quantified the unexplained investment at a figure of Rs.29,39,836/- as against Rs.1,02,80,052/- arrived at by the assessing authority.

4. An appeal was filed by the department before the Income Tax Appellate Tribunal (in short 'Tribunal') before which, the assessee also filed a cross objection.

5. The Tribunal finds as fact that the quantum of gold as well as the valuation by the departmental valuer is proper. The valuation report by the valuer appointed by the Tribunal was perused by the Tribunal which notes the categorization of the gold into four lots and the range adopted for valuation between Rs.255/- per gram to Rs.635/- per gram. In the light of the valuation arrived at by the valuer, the statement of the assessee offering any other value does not carry any relevance. In fact, the assessing officer has accepted the valuation of Sri.H.Gopaldas & Company, Kumbakonam, in part in regard to the quantum of gold. Having done so, there is, in fact no basis for rejecting the valuation arrived at by the valuer. The Commissioner of Income Tax (Appeals) has examined the matter in detail adopting the highest figure of valuation for the entire gold. The Tribunal, the final fact finding authority, rightly confirms the aforesaid order upholding the said valuation.

6. The question raised by the Department before us now in appeal under section 260A of the Act is the following :

> 'Whether on the facts and in the circumstances of the case the tribunal was right in holding that unexplained investment under section 68/69 with respect to stock of jewellery found during the survey had to be adopted at Rs.29,33,836/- as against the figure of Rs.1.02 Cr arrived by the Assessing Officer without properly appreciating the valuers report.'

7. In view of the discussion above, we are of the view that no substantial question of law arises in the matter.

The findings recorded by the Commissioner of Income Tax (Appeals) as confirmed by the Tribunal are proper and warrant no interference. The departmental appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Commissioner of Income Tax,
  Trichy.

2.The Income Tax Appellate Tribunal,
  “A” Bench, Chennai.

3.The Commissioner of Income Tax (Appeals),
  2(i/c), Trichy.

4.The Joint Commissioner of Income Tax,
  Kumbakonam Range,
  Kumbakonam.

+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No.7959
+1cc to M/s.G.R.Associates, Advocate, S.R.No.7251

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CA(CO)
CA(10/10/2017)