

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No. 500 OF 2017

DATED 07TH NOVEMBER, 2017

Between:

The Commissioner of Income Tax (Central),
Hyderabad ... Appellant

AND

M/s. Hyderabad Security and Offset Printers Limited,
3-6-432, Himayatnagar,
Hyderabad ... Respondent

Counsel for the appellant : Sri J.V.Prasad

Counsel for the respondent : Sri Avinash Desai

THE COURT MADE THE FOLLOWING

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This appeal arises out of common order dated 29-01-2008 in I.T.(S.S.)A.No. 134/Hyd/2003 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad (for short, 'the Tribunal').

2. The purported substantial question of law framed in the appeal is as follows:

"Whether in the facts and circumstances of the case, the order of the Tribunal is not perverse as being based on surmises and conjectures?"

One of the issues that fell for consideration before the Tribunal was whether the added income for taxing already suffered tax or not. By holding this issue in favour of the respondent-assessee, the Tribunal assigned the following reasons:

"The argument of the revenue is that why the assessee did not disclose the factum of VDIS declarations either at the time of search or while filing the block return. Well, perhaps, according to the revenue, to err may be human, but to rectify a genuine error is inhuman. In fact, the wisdom of the Supreme Court saying "to perpetuate an error is no heroism" (Distributors (Baroda) Pvt. Ltd. Vs. Union of India in 155 ITR 120) seems to have been forgotten. Jackson J. in Massachusetts Vs. United States (333 US 611) stated: "I see no reason why I should be consciously

wrong today because I was unconsciously wrong yesterday". The thought expressed by Jackson J. is more relevant in the context of the facts of the present case. While recording the statement or while filing the block return, for whatever reason, the assessee failed to state anything about the declarations made under VDIS. Consciously hiding this fact was in no way beneficial to the assessee. Hence, no mala fides can be attributed to the assessee for not disclosing this fact earlier. The contention of the assessee asking for set-off of the declarations made has been brushed aside as an after-thought simply because it favours the assessee. In fact, to our mind, it does not favour either the assessee nor does it cause prejudice to the revenue. To quote Justice Krishna Iyer, when you earn income, "pay Caesar what is due to him" (CIT Vs. T.N.Aravinda Reddy in 120 ITR 46). This very thought is reflected and enshrined in Article 265 of our Constitution, which states that no tax shall be levied or collected except by authority law. The expression "after-thought" has become an expression of taboo in the administration of tax laws. The Chambers of English Dictionary describes it as a thought or thing thought of after the occasion; a later thought or reflection or modification. Thus, when it occurred to the assessee that the addition being made in the present assessment consists of the same amounts on which tax has already been paid, is he not justified to bring this fact to the notice of the revenue authorities. As a matter of fact, it is on record that before the assessment was finalized, the assessee brought this fact to the notice of the Assessing Officer. This is admitted by the Assessing Officer in his remand report dated 31-07-2003. It is also admitted by him in the said report that these declarations have been made by the associates of the assessee and the same has been accepted by the department. But then he chose not to discuss this in the assessment order

and refuses to accept the same in the remand proceedings also simply because the assessee had passed book entries reducing the share application money and taking the amount to reserves. Undoubtedly, this was not required. But then, the provisional balance sheet reflecting these entries was drawn up merely to present the same facts what had been stated by the Managing Director in his statement. Be that as it may, all these aspects cannot drift us away from the fact that if the set-off is not allowed, the assessee would end up paying tax twice on the same income. This would causes injustice to the assessee monetarily. It would also cause injustice to the revenue for collecting more tax than what is due in terms of being unjust to its subjects."

3. Sarcasm and rhetoric apart the reasoning assigned by the Tribunal, as reproduced above, falls in the realm of pure question of fact. Therefore, the finding rendered by the Tribunal on these facts does not raise any substantial question of law. Hence, we do not find any reason to interfere with the order of the Tribunal. The appeal is accordingly dismissed.

C.V.NAGARJUNA REDDY, J.

CHALLA KODANDA RAM, J.

Date: 07-11-20-17.

JSK