

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

Tax Case (Appeal) No.1371 of 2008

Thiru S.Shyam Kumar

... Appellant

-VS-

The Assistant Commissioner of Income Tax,
Central Circle -III(3),
Chennai-600 034

..... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax appellate Tribunal Chennai "C" Bench, dated 18.01.2008 in IT(SS)A No.65/Mds/2006, for the Block Period 1991-92 to 2000-01 upto 19.01.2001.

For Appellant : Mr.M.P.Senthilkumar

For Respondent : M/s.K.G.Usha Rani for
Mr.T.R.Senthil Kumar

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

This Appeal by the assessee filed under Section 260-A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Chennai-C Bench (the 'Tribunal' for brevity) in I.T.(SS)A No.65/Mds/2006, for the Block Period 1991-92 to 2000-01 upto 19.01.2001.

2.This Appeal has been admitted on the following Substantial Question of Law, vide order dated 02.09.2008:

"Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition under Section 69 of the Income Tax Act, 1961?"

3.A search was conducted in the business premises of the assessee, which commenced on 19.1.2001 and stated to have proceeded till 19.06.2001. During the course of search, certain loose slips were recovered, which showed several entries pertaining to cash and cheque transactions. The Assessing Officer noted that the entries

show some specific details about the payments being made in cash and cheque and the entries are in evidence in support of purchase of a property. Further, the Assessing Officer noted that there is also an entry with regard to Tax Deduction at Source, by giving the short form TDS. Further, the Assessing Officer held that the entries in the loose slips relate to immovable property bought by the assessee along with his wife Smt.Sharmila and the total amount paid by them for purchase of the said property is Rs.62,90,560/- on various dates and the purchase price, including registration charges was Rs.33,06,100/- and the same has been paid from accounts and the balance amount of Rs.29,84,460/- was on-money payment and the same has not been accounted for. In the background of these facts, in the block return filed by the assessee on 31.5.2002, he did not admit the on-money payment as an undisclosed income.

4. On 11.6.2002, the assessee filed a letter before the Assessing Officer stating that the earlier statement given by him before the Assessing Officer was under mental tension and without understanding the full implications of the statement. Thus, there was an attempt made by the assessee to retract the statements which were given by him before the Assessing Officer, after a period of about

six months. The Assessing Officer did not accept the contentions raised by the assessee and also noted that there is substantial difference with the cash holdings of the assessee and the said amounts were not offered to tax and were treated as undisclosed income. Accordingly, the assessment stood completed, vide order dated 30.06.2003. The assessee preferred appeal to the Commissioner of Income Tax (Appeals), who rejected the contentions raised and dismissed the appeal, vide order dated 31.1.2006. On further appeal before the Tribunal, the assessee was once again unsuccessful and the appeal was dismissed by the impugned order dated 18.01.2008. This is how the assessee is before us, raising the above Substantial Question of Law.

5. The learned counsel for the appellant would submit that the initial statement obtained on 19.1.2001 was retracted on 11.6.2002 stating that the earlier statement was obtained when the assessee was undergoing severe mental tension and the retraction should have been accepted by the Assessing Officer and further, the statement recorded from the vendor of the assessee during the year 2002 does not state about any on-money payment. Further it is submitted that the figures in the loose sheets should not have been taken into

consideration by the Assessing Officer and the statement obtained from the assessee during the course of search under coercion or exerting of mental pressure, cannot be relied upon. In this regard, the learned Counsel for the assessee placed reliance upon the decision of the Division Bench of this Court in the case of **Commissioner of Income Tax, Chennai, vs. S.Dhader Khan Son [(2008) 300 ITR 157(Mad)]** and in particular, paragraph No.13 of the judgement, wherein a Circular issued by the Central Board of Direct Taxes, dated 10.03.2003 is relied upon.

6.The learned Counsel for the Respondent, on the other than would contend that the assessee has not given one statement, but has made three statements and one statement has been extracted by the CIT (Appeals) in his order dated 31.01.2006 and therefore, the case, as projected by the assessee before this Court is not tenable. Further, it is submitted that the entries which were found in the slips were clear that they were payments in cash as well as in cheques and one of the entries was towards the Tax Deduction at Source. Therefore, it is contended that the assessee cannot state that there was no corroborative material when the entire facts clearly shows on-money payment. Relying upon the decision of the Division Bench of this Court

in the case of **Commissioner of Income-Tax, Chennai vs. T.Rangroopchand Chordia [(2016) 69 Taxmann.com 202 (Madras)]**, it is submitted that loose sheets, which were sheets constituted 'documents' under Section 132(4) of the Act.

7. After elaborately hearing the learned counsels for the parties and carefully perusing the materials placed on record, we find that the decision arrived at by the Commissioner of Income Tax (Appeals) as well as by the Tribunal are cogent and clear. The entire issue revolves around the factual matrix as to whether the slips, which contain certain details, were pertaining to payments made by the assessee, not brought into the books of accounts. Before the assessing Officer, the assessee has given more than one statement accepting the on-money payment. For the first time, before the Commissioner of Income Tax (Appeals), the assessee took a stand that the slips are only dumb sheets and there was no connection with the purchasing of residential property and further, the assessee sought to explain the notings to mean as monthly instalments and arranging of funds and not for payment. The Commissioner of Income Tax (Appeals), after considering the said statement, has given reasons as to why the statements of the assessee are not tenable. In fact, the

assessee in no uncertain terms has accepted in his statement that the slip represents payment made for the purchase of property in question. The retraction is vague and a clear afterthought. Therefore, the Commissioner of Income Tax (Appeals) rightly considered the effect of the notings as well as the statement given by the assessee, wherein he had accepted the on-money payment. Once again before the Tribunal, the attempt of the assessee was to wriggle out of the entries in the slips by stating that they have no corroboration with that of the purchase of the immovable property.

8. The argument of the learned Counsel for the assessee is that there should be corroborative evidence to sustain the entries to link the same and treat it as an un-explained investment to bring the case under Section 69 of the Act. In our considered view nothing more is required than the facts, which were considered by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) and the Tribunal. The notings are clear and it is not any scribbling, which shows the figures and also shows whether the payments were in cash or in cheque. The retraction made by the assessee, after a period of two years, was rightly rejected as an afterthought. As held in the case of **T.Rangroopchand Chordia (Supra)**, the loose sheets

are also 'documents'. In terms of Section 2 of the Indian Evidence Act, 1872, they can be relied upon. In fact, the Division Bench took into consideration whether the loose sheets seized from the premises of the assessee would constitute 'documents', within the meaning of exception under Sub-Section (4) of Section 132 of the Act and has held as follows:

"21. Coming to the two questions of law now before us, it is seen that they revolve around the loose sheets picked up during search. These loose sheets are documents within the meaning of section 2 of the Indian Evidence Act. It reads as follows:-

"Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter"

22. It is relevant to note that this definition is a re-production of the definition of the same expression contained in Section 3(18) of the General Clauses Act. Therefore, it is clear that loose sheets recovered from the premises of

the assessee constitute documents within the meaning of the explanation under sub-section (4) of section 132. Sub-section (4) of Section 132 speaks about the admissibility of evidence of those documents. Sub-section (4) together with the explanation thereunder to section 132 reads as follows:-

"(4) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation:- For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922(11 of 1922), or under this Act.

23. Therefore, in the light of the definition of the expression 'document' and in the light of admissibility of the said document based upon the statements made by the assessee, the additions made by the Assessing Officer cannot be found fault with. Though there was a retraction of those statements by the assessee, those retractions were rightly rejected on the appreciation of the return filed on 27.09.2002 where admittedly, a particular amount was shown as undisclosed income. Therefore, the retraction is of no avail in the light of section 132(4) and its Explanation. In view of the above, the question of laws are answered in favour of the appellant/Department and the appeal is allowed. No costs"

9.The decision in the case of **S.Khader Khan Son (Supra)** is concerned, the Substantial Question of Law, which arose for consideration was whether the Tribunal was right in law in holding that the statement made during a survey under Section 133A of the Income-tax Act has no evidentiary value?

10. While considering the said question, the Hon'ble Division Bench took note of the Circular of the Central Board of Direct Taxes, dated 10.3.2003. The Circular at best be the guidelines to be followed by the Department. In the instant case, the retraction made by the assessee is stated to be on 11.06.2002, whereas, the statements were given by the assessee in January 2001 and the Statements were not one but three. The statement which has been extracted by the Commissioner of Income Tax (Appeals) shows that it was cogent and clear. Thus, in our considered view the decision in the case of **S.Khader Khan Son (Supra)** can render no assistance to the case of the assessee.

11. We find that the case on hand is not a simple case of relying upon some scribbling and notings, but a case where the entries, which were clear and legible, were taken into consideration by the Assessing Officer. The correctness of which was examined by the Commissioner of Income Tax (Appeals) and further examined by the Tribunal. Thus, we find the assessee has not made out any good ground to interfere with the order of the Tribunal.

12.For the above reasons, the appeal fails and the same is dismissed. The Substantial Question of Law is answered against the assessee. No costs.

[T.S.S., J.] [V.B.S., J.]
10.10.2018

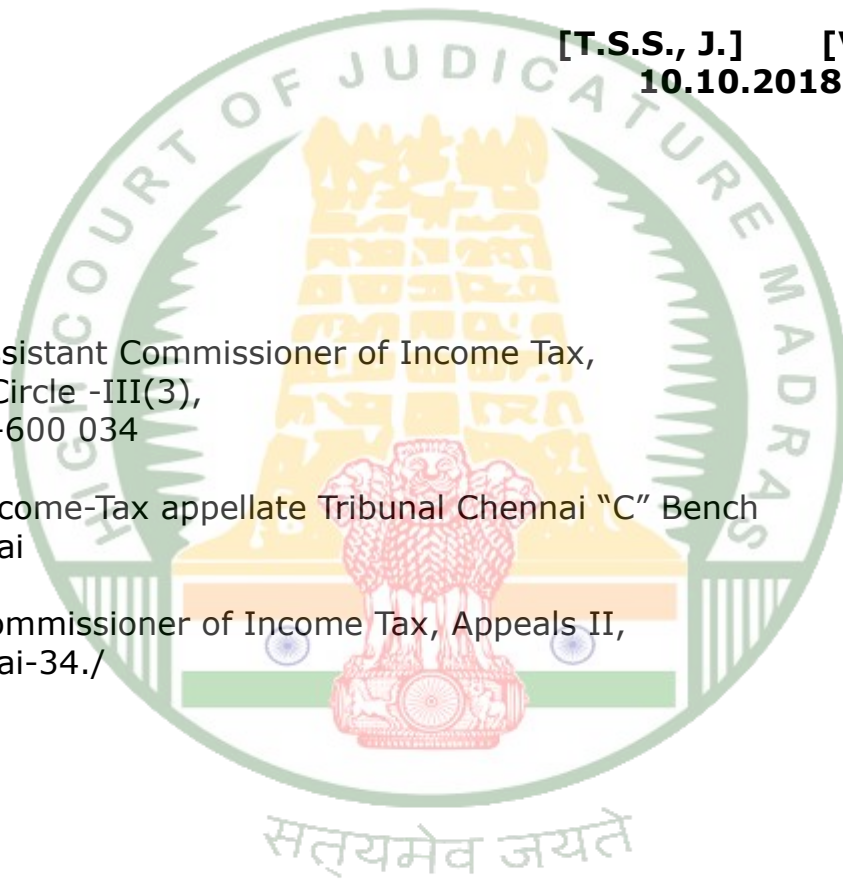
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To

1.The Assistant Commissioner of Income Tax,
Central Circle -III(3),
Chennai-600 034

2.The Income-Tax appellate Tribunal Chennai "C" Bench
Chennai

3.The Commissioner of Income Tax, Appeals II,
Chennai-34./



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**T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.**

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