IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos. 447, 448, 449 and 450 of 2018,
C.M.P.Nos.9801, 9802 & 9803 of 2018

Principal Commissioner of Income Tax 6,
No.121, Nungambakkam High Road,
Chennai 600 034. ... Appellant in all the Appeals

-vs-

AnandhiAkilan,
No.9, State Bank Colony,
Shastri Nagar, Adyar,
Chennai - 600 020.
PAN: AFQPJ 5942 P ... Respondent in all the Appeals

Common Prayer: Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 12.04.2017 in I.T.A.No.970/Mds/2016 for the assessment year 2006-2007 and in I.T.A.No.971/Mds/2016 for the assessment year 2007-2008 and in I.T.A.No.972/Mds/2016 for the assessment year 2008-2009 and in I.T.A.No.974/Mds/2016 for the assessment year 2011-2012.

For Appellant
in all the Appeals : Mr.T.R.Senthil Kumar

For Respondent
in all the Appeals : Mr.M.P.Senthil Kumar

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J.)

These appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the common order passed by the Income Tax Appellate Tribunal Madras 'A' Bench, dated 12.04.2017 in I.T.A.Nos.970 to 974/Mds/2016 for the Assessment Years 2006-2007, 2007-2008, 2008-2009 and 2011-2012.

2. The appeals have been filed raising the following questions of law:-

> "1. Is not the finding of the Tribunal perverse when the CIT(A) admitted fresh evidences and deleted the additions by violating Rule 46A of the Income Tax Rules?
> 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal as right in deleting the additions made under Section 68 of the Income Tax Act?
> 3. Whether the ITAT was justified in accepting the explanation for cash deposits in bank account that the same were out of rental/agriculture income and to give credit for the same as the assessee had no proof of nexus for the same?"

3. The respondent/assessee is an individual stated to be engaged in consultancy services and also earning rental income from properties as well as agricultural income. The assessee filed her return of income for the assessment years 2006-2007 to 2011-2012. The returns were re-opened by issuing a notice under Section 148 of the Act on the ground that the income has escaped for the assessment years 2006-2007 to 2008-2009. The assessee filed a letter stating that the original return filed may be treated as a return in response to the re-opening notice.

4. The Revenue has given the issues involved for the respective assessment years in a tabulated form in their memorandum of grounds of appeal, which is quoted herein below:

No	Asst Year	Issue involved	Amount involved	ITAT's findings
1.	2006-07 & 2007-08	Disallowance of gift received from sister	5 lakhs each year	ITAT deleted the addition.
2.	2007-08	Received from her father in law	29,50,000/-	ITAT deleted the additions as properly explained.
3.	2007-08	Received from her husband	6,00,000/-	ITAT deleted the addition.
4.	2008-09	U/s 68 unexplained income	9,40,000/-	Assessee returned Rs.8,40,000/- to Mr.Netaji through bank, the same is deleted.

No	Asst Year	Issue involved	Amount involved	ITAT's findings
5.	2011-12	Unexplained credit	22,10,000/-	ITAT directed the AO to give credit to the extent of agricultural income available.

5. It is the case of the revenue that for the Assessment Years 2006-07 and 2007-08, the assessee received Rs.5 lakhs as gift from her younger sister even though her total income is Rs.5,16,339/-. When a remand report was called for from the Assessing Officer, the assessee could not produce bank statements but had given only confirmation letter that payments were made through cheques. The Commissioner of Income Tax (Appeals)[CIT(A)] confirmed the additions on this account. The Tribunal has deleted the additions stating that the genuineness of the gift cannot be doubted in the absence of any contrary evidence against the assessee. Challenging the said finding, the Revenue is before us by filing these appeals.

6. For the Assessment Year 2007-08, the assessee claimed that Rs.29.5 lakhs was received from her father-in-law out of Rs.36.5 lakhs. The remand report was called for from the Assessing Officer, but the assessee could not produce details as to when the money was paid, what is the mode of payment, etc., and consequently, CIT(A) has confirmed the additions. The Tribunal, by the impugned order has deleted the additions being satisfied that the assessee had explained the transactions, which were through banking channels.

7. For the Assessment Year 2007-08, the assessee had shown loan of Rs.22 lakhs from her husband in the cash flow statement but Rs.16 lakhs alone was reflected in the bank account. The Assessing Officer made an addition of Rs.6 lakhs as unexplained credit under Section 68 of the Act. When a remand report was called for by the Assessing Officer, the assessee could not produce bank statements or confirmation letter that payments were made through cheques. The CIT(A) therefore confirmed the additions on this account. The Tribunal deleted the additions on the ground that the transaction being between close relatives, cannot be doubted.

8. During the Assessment Year 2008-09, the Assessing Officer made an addition of Rs.9.4 lakhs as unexplained credit received from one Mr.Nethaji on the ground that the assessee had not furnished the details of the land for which advance was received and non-furnishing of confirmation letter. In the appeal before the CIT(A), remand report was called for by the

Assessing Officer and provided to the assessee, but no rebuttal was produced by the assessee. Therefore, the CIT(A) has confirmed the addition. The case of the Revenue is that before the Appellate Tribunal for the first time, the assessee produced records stating that Mr.Nethaji paid the amount of Rs.9.4 lakhs to purchase the land belonging to the assessee and the sale could not be completed and Rs.8.4 lakhs was repaid to Mr.Nethaji. The Tribunal being satisfied with the explanation, deleted the addition. The Revenue is before us in these appeals stating that records having been produced for the first time before the Tribunal, the same could not have been admitted in violation of Rule 46A of the Income Tax Rules, 1962.

9. For the Assessment Year 2011-12, the Assessing Officer made an addition of Rs.22.1 lakhs as cash deposit in bank account in Corporation Bank. These deposits were not reflected in the cash flow statement furnished by the assessee. Accordingly, the Assessing Officer treated the said amount as unexplained credit under Section 68 of the Act. Before the CIT (A), the assessee submitted that the cash are out of the rental income and agricultural income and for the same evidence was produced. However, the CIT(A) confirmed the addition. On appeal before the Tribunal, the Tribunal directed the Assessing Officer to give credit to the agricultural income available in the said assessment orders and the balance shortage to be confirmed as unexplained cash credit and thereby partly allowed the appeals.

10. We have heard Mr.T.R.Senthil Kumar, learned counsel appearing for the appellant/Revenue and Mr.M.P.Senthil Kumar, learned counsel appearing for the respondent/assessee.

11. The first issue is whether the transactions by the assessee with her father-in-law and Mr.Nethaji were properly explained and whether those records which are produced by the assessee were produced before the Tribunal for the first time. The answer to this question is found in the order passed by the Tribunal in paragraphs 13 and 25. For easy reference, the same is quoted hereunder:-

> "13. Before the CIT(Appeals), the assessee submitted that Rs.29,50,000/- was returned by her father-in-law out of Rs.36,50,000/- given to him. However, the assessee could not substantiate the mode of payment and receipt before the CIT(Appeals) also. However, the assessee submitted that full address, PAN and copy of return was given and transactions are through banking channels. The AO in his remand report dated 25.01.2016 has stated that the addition should be confirmed and the copy of the same was given to the assessee,

who has not furnished further submissions. No details, regarding dates of such advance given and received were not given and the assessee was not able to prove that such advances were through transfer/account payee cheques only. Therefore, the CIT(Appeals) confirmed the addition of Rs.29,50,000/- made by the AO. Against this, the assessee is in appeal before us.

....

25. The CIT(Appeals) observed that the assessee furnished confirmation letter from Mr.Netaji. However, the CIT(Appeals) observed that the AO in his remand report dated 25.01.2016 has stated that the addition should be confirmed. A copy of the remand report was given to the assessee, who has not furnished further submissions. Since, the assessee could not substantiate the same with her Bank account, the CIT(Appeals) confirmed the action of the AO. Aggrieved, the assessee is in appeal before us."

12. From the above order passed by the Tribunal, it is evidently clear that the records pertaining to the payment received by the assessee from her father-in-law was placed before the CIT(A) and he had called for remand report and Assessing Officer had submitted his report on 25.01.2016 stating that the addition should be confirmed. Similarly, the documents relating to the transactions with Mr.Netaji was placed before the CIT(A) and a remand report was called for and the Assessing Officer submitted his report on 25.01.2016 stating that the addition should be confirmed. Therefore, the Revenue is not correct in their stand that the documents pertaining to Mr.Netaji was produced before the Tribunal for the first time.

13. The factual aspect of the matter has been culled out by the Tribunal in its order as referred above and we cannot take a different stand in the absence of any valid document produced by the Revenue to show that what has been recorded by the Tribunal is factually erroneous. Thus, the substantial question of law stating that there has been violation of Rule 46A of the Income Tax Rules stands rejected.

14. The other issues are gift from the sister of the assessee which arises in the AY 2006-07(T.C.(A).No.447 of 2018) and in the AY 2008-09(T.C.(A).No.449 of 2018). The next issue is regarding the disallowance of agricultural income which arises in all the four assessment years i.e., AY 2006-07(T.C.(A).No.447 of 2018), AY 2007-08(T.C.(A).No.448 of 2018), AY 2008-09(T.C.

(A).No.449 of 2018) and AY 2011-12(T.C.(A).No.450 of 2018). With regard to the amount received from father-in-law, this issue arises in the AY 2007-08(T.C.(A).No.448 of 2018). With regard to the unsecured loan from Shri Akilan Ramanathan, this issue arises in the arises in the AY 2007-08(T.C.(A).No.448 of 2018). With regard to the amount received from Mr.Netaji, this arises in the AY 2008-09(T.C.(A).No.449 of 2018). With regard to the unexplained credit - deposit into savings bank account, this issue arises in the AY 2008-09(T.C.(A).No.449 of 2018) and in 2011-12(T.C.(A).No.450 of 2018).

15. We have heard the submissions of the learned counsel for both sides.

16. The Tribunal has done a fact finding method. As the tribunal being the last fact finding authority in the hierarchy provided under the provisions of the Income Tax Act, it has given reasons as to why the additions could not be made. The revenue is not entitled to re- agitate the factual issues before us as this Court exercising its appellate power under Section 260A of the Income Tax Act, 1961 will decide only the substantial question of law, which will be framed for consideration.

17. We find that the questions raised are entirely factual and if we embark upon to examine the correctness of the questions framed, we would be compelled to go into the factual thicket, which is impermissible. Thus, we find that no substantial question of law arises for consideration on the above issues as all of them are factual.

18. In the result, the appeals filed by the revenue fails and the accordingly, the same stands dismissed and the substantial question of law No.1 pertaining to violation of Rule 46A of the Income Tax Rules, 1962, is answered against the revenue. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd/svki

To

1. The Income-tax Appellate Tribunal Bench “A” Chennai.

2. The Joint Commissioner of Income Tax,
Business Range III, Chennai-34

3. The Commissioner of Income Tax (Appeals)-15.
Chennai 600 034.

+1cc to M/s.Philip George.P, Advocate, S.R.No.81254
+1cc to Mr.M.P.Senthil Kumar, Advocate, S.R.No.81297

VSNII(CO)
CS/07/01/2019