IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

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

Tax Case Appeal Nos.881 to 883
and 899 to 901 of 2017
and C.M.P.Nos.22424 & 22425
and 22619 & 22620 of 2017

Commissioner of Income Tax,
Chennai. ... Appellant in all TCAs'

-vs-

Dr.Akilan Ramanathan,
#9, State Bank Colony,
Shastri Nagar,
Adyar, Chennai-600 020.
PAN ACQPA 2957 G ... Respondent in all TCAs'

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal 'A' Bench, Chennai, dated 16.09.2016, in I.T.A.No.967/Mds/2016 968/MDS/2016, 969/MDS/2016, 964/MDS/2016, 965/MDS/2016, and 966/MDS/2016 for the assessment year 2009-10, 2010-11, 2011-12, 2006-07, 2007-08 and 2008-09.

against the Order of the Commissioner of Income Tax (Appeals)-15, Chennai-34, made in I.T.A.Nos.678/CIT(A)-15/13-14, 679/CIT(A)-15/13-14, 680 IT/(A)-15/13-14, 682/CIT (A)-15/13-14, 683/CIT (A)-1513-14, and 681/CIT (A)-15/13-14, order dated 11/03/2016 for the assessment Years 2009-10, 2010-11, 2011-12, 2006-07, 2007-08 and 2008-2009, respectively and against the order of the Joint Commissioner of Income Tax, Business Range III, Chennai - 34 in PAN/GIR ACQPA 2957G order dated 27/03/2013 for the assesment Years from 2006-2011.

For Appellant : Mr.T.R.Senthil Kumar,
(In all the Appeals) Senior Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar
(In all the Appeals)

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

These appeals, by the Revenue filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), are directed against the common order passed by the Income-tax Appellate Tribunal 'A' Bench, Chennai (for brevity “the Tribunal”), in I.T.A.Nos.964 to 966/Mds/2016, dated 16.09.2016, (T.C.A.Nos.899 to 901 of 2017) for the assessment years 2006-07 to 2008-09.

2.The second set of appeals filed by the Revenue are directed against the common order passed by the Tribunal in I.T.A.Nos.967 to 969/Mds/2016, dated 16.09.2016 (T.C.A.Nos.881 to 883 of 2017) for the assessment years 2009-10 to 2011-12.

3.The common question of law, which arises for consideration in all the assessment years, viz., 2006-07 to 2011-12 is regarding the unexplained cash credit in the bank account.

4.The substantial question of law raised therein is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition of unexplained credit made with respect to the amount deposited in the bank account.

5.The second question pertains to repayment of loan taken from the assessee's wife and assessee's father. This question arises only in one appeal, viz., T.C.A.No.900 of 2017 for the assessment year 2007-08, and the substantial question of law raised is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made on account of unsecured loan claimed to be received from the assessee's father and wife, which is in the nature of unexplained credit.

6.The third issue is relating to unsecured loan, which arises in four assessment years, viz., 2007-08, 2009-10 to 2011-12, i.e., in T.C.A.Nos.900, 881 to 883 of 2017. The substantial question of law framed is whether on the facts and in the circumstances of the case, the Tribunal was right in restricting the addition made on account of unsecured loan, which is in the nature of unexplained credit.

7.The next issue is with regard to the gift received from the co-brother of the assessee. This issue arises in two assessment years, viz., 2008-09 and 2009-10, subject matter of T.C.A.Nos.901 and 881 of 2017. The substantial question of law framed is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made on account of gift claimed to have been received from the co-brother of the assessee.

8.The next issue is with regard to the refund of loan from one Mrs.Kadambari. This issue arises in the assessment year 2010-11 relevant to T.C.A.No.882 of 2017. The substantial question of law, which has been raised, is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made on account of return of loan from Mrs.Kadambari, which is in the nature of unexplained credit.

9.The next issue is with regard to the loan taken from the father of the assessee, which arises in the assessment year 2011-12 subject matter of T.C.A.No.883 of 2017 and the substantial question of law raised is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made on account of unsecured loan claimed to be received from the father of the assessee, which is in the nature of unexplained credit.

10.The next issue is regarding refund of loan from Mr.R.Ragupathy, which arises in the assessment year 2011-12 subject matter of T.C.A.No.883 of 2017 and the substantial question of law raised is whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made on account of receipt claimed to have been received from Mr.R.Ragupathy, which is in the nature of unexplained credit.

11.The next issue is with regard to the restriction of disallowance of agricultural income, which arises in the assessment years 2008-09 to 2011-12 subject matter of T.C.A.Nos.901 and 881 to 883 of 2017 and the substantial question of law raised is whether on the facts and in the circumstances of the case, the Tribunal was right in restricting the addition made on account of unexplained agricultural income treated as other income on the mere ground that the assessee owns agricultural lands by erroneously estimating the agricultural income as Rs.7,41,500/- for the assessment year 2008-09 and Rs.15,72,500/- for the assessment years 2009-10 to 2011-12.

12.The last issue is with regard to the consultancy services, which arises in the assessment year 2011-12 subject matter of T.C.A.No.883 of 2017 and the substantial question of law raised is whether on the facts and in the circumstances of the case, the Tribunal was right in restricting the addition made towards unexplained credit with respect to consultancy services/salary to Rs.4.8 lakhs as against the addition of Rs.6,66,900/-.

13.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.M.P.Senthil Kumar, learned counsel for the respondent/assessee.

14.If we had taken up each of the appeals individually, all the appeals cannot be pursued by the Revenue on account of low tax effect. Nevertheless, we took up for consideration the submissions made by Mr.T.R.Senthil Kumar, learned Senior Standing Counsel stating that the assessments were re-opened under Section 147 of the Act and therefore, we have heard the learned counsels on merits.

15.Before we go into the correctness of the orders passed by the Tribunal, it would be first necessary to examine as to whether any substantial question of law arises for consideration in any of these appeals. If the answer to the question is in the negative, we may not be required to examine the matter on merits. Thus, we have to see as to whether the finding recorded by the Tribunal is so palpably illegal or that no reasonable person can come to such a conclusion for us to interfere under Section 260A of the Act. The statute mandates that the appeal be decided on substantial questions of law. We have to examine the findings of the Tribunal on the issues, which we have pointed out arising in each of the appeals. In fact, the issue relating to cash deposit in bank account arises for all the assessment years. We have to examine the orders passed by the Tribunal dated 16.09.2016, and in paragraph 11 of the order, the Tribunal has recorded its finding relevant for the assessment year 2006-07. The finding is to the following effect:-

> "11.We have considered the rival contentions and perused the orders of the authorities below. Copy of the SBI bank account placed at page 9 of the paper book shows that assessee had withdrawn Rs.2 lakhs on 21.10.2005 and made a deposit of Rs.1 lakhs on 27.12.2005. Observation of the lower authorities was that the assessee being not in the business or profession as such, there is no need for keeping so much cash in his hands. In our opinion, this is only a surmise and could not be a valid reason for making the addition. Assessee has a choice of keeping the money personally with him or in the bank. Just because assessee is not a businessman or professional would not be a reason to disentitle him from claiming the benefit that would otherwise be available. Assessee could have myriad of reasons for keeping the cash in hand with him. We cannot say that assessee could not have shown the source as withdrawal made by him from the bank

account. We are of the opinion that addition was not justified. Such addition is deleted."

16.On a perusal of the above finding, it is evidently clear that the Tribunal has re-appreciated the facts, which were available on record, and formed an opinion that the stand taken by the revenue is only a surmise and cannot be a valid reason for making the addition. Likewise, for the assessment year 2007-08, the finding rendered by the Tribunal is in paragraph 21 of the order. Insofar as the said issue is concerned, the Tribunal has granted partial relief to the assessee and the assessee is on appeal as against that portion of the order, which went against him. The finding rendered by the Tribunal reads as follows:-

> "21......The last of the deposits made with Indian Overseas Bank, Adyar considered for the addition was Rs.2,75,000/- dated 28.2.2007. Thus, the time gap between the earliest withdrawal and last of the deposits was less than 11 months. Assessee had given explanation as to why he was withdrawing the amounts. As per the assessee, he was engaged in house construction in State Bank Colony, Shastri Nagar, Adyar and was negotiating for a property at UK through an Indian real estate agent. Just because there was a gap of about 11 months, we are of the opinion that the cash withdrawals made by the assessee prior to the date of the deposits ought not to have been disbelieved."

17.For the assessment year 2008-09, the findings rendered by the Tribunal are in paragraphs 54 and 56.

18.In the other set of cases, viz., T.C.A.No.881 to 883 of 2017, this finding has been dealt with by the Tribunal in paragraphs 13, 43 and 53 respectively. After going through the findings recorded by the Tribunal, we are fully satisfied that the entire issue/dispute revolves on factual details, which were appreciated by the Tribunal to render a finding. Likewise, the other issues, viz., unsecured loan, the gift received from the co-brother of the assessee, the refund of loan by Mrs.Kadambari, the loan received from the father of the assessee, the refund of loan from one Mr.R.Ragupathy, restriction of disallowance of agricultural income and consultancy services are all revolving around the factual matrix, which were taken note of by the Tribunal.

19.In our considered view, the Tribunal has done a thorough exercise to examine each and every aspect and rendered its finding on each issue separately. Thus, we are of the considered view that no substantial question of law arises for consideration in these appeals.

20.Accordingly, the appeals filed by the Revenue fail and the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income-tax Appellate Tribunal 'A' Bench,
Chennai.

2.The Commissioner of Income Tax (Appeals)-15,
Chennai-34.

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

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.88709
+1cc to Mr. Philip George, Advocate, S.R.No. 88846

T.C.A.Nos.881 to 883
and 899 to 901 of 2017

GN(23/01/2019)