

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE MS. JUSTICE J. UMADEVI**

+I.T.T.A.No.706 of 2016

% -04-2018

Between:

Pendurthi Chandrasekhar, Plot No.8-2-696/697,
Apartment S4-S5, La Creative Hegiths,
Road No.12, Banjara Hills, Hyderabad

... Appellant/Assessee

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-11, Hyderabad.

.. Respondent

! Counsel for the Appellant : Mr. K. Vasantha Kumar

^ Counsel for Respondent : Mrs. M. Kiranmayee

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE J. UMADEVI

I.T.T.A.No.706 of 2016

JUDGMENT: (V. Ramasubramanian, J)

The Assessee has come up with the above appeal under Section 260 A of the Income Tax Act, 1961, challenging an order of the Income Tax Appellate Tribunal. The assessment year to which the dispute on hand relates is 2007-08.

2. Though the appellant initially raised about six questions of law, the assessee came up with a memo seeking to reframe the substantial questions of law as follows:

- 1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal, while confirming the addition of Rs.3,40,000/- as unexplained credit under Section 68 of the Income Tax Act, is right in law in holding that there should be sufficient reasons for receiving gifts though it is from father-in-law and the gift is covered by the provisions of Section 56 of the Act?
- 2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the conclusion of the Assessing Officer and the learned Commissioner of Income Tax (Appeals) that undisclosed income has been brought in the form of gifts in spite of the fact that there was no income earning activity to the assessee?
- 3) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in ignoring the reference made by the Assessing Officer to the Foreign Tax Division of the Central Board of Direct Taxes requesting to verify the genuineness of the amounts received from UK and confirming the addition though no adverse communication is received as per records?

- 4) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal, while confirming the addition of Rs.30,38,589/- as interest income on mere ground of claiming credit for TDS on entire amount in utter disregard to the provisions of Sec.145 of the Act and method of accounting followed by the assessee?

3. Heard Mr. K. Vasantha Kumar, learned counsel for the appellant and Smt. M. Kiranmayee, learned senior standing counsel for the Department.

4. A search and seizure operation under Section 132 of the Income Tax Act was carried out in the group cases of M/s. Ambiance Properties Private Limited and its sister concerns. The assessee was a Director of one of those companies by name M/s. Dakshin Shelters Private Limited. Therefore, his residential premises was also subjected to search.

5. After issuing notice under Section 153 A and receiving the assessee's return of income on 02-02-2009, the Department issued notices under Sections 143 (2) and 142 (1) of the Act on 27-04-2009 and an order of assessment was passed on 24-12-2009 in relation to the assessment year 2007-08.

6. Two issues became the focal points in the order of assessment. The first related to a hand loan of Rs.1,52,00,000/- allegedly received by the assessee from his wife Smt. P. Shanti Chowdary and the gift of an amount of Rs.3,40,000/- allegedly made by the father-in-law of the assessee. The second related to the receipt of an amount of Rs.30,38,589/- as interest on the unsecured loans advanced to M/s. Dakshin Shelters Private Limited.

7. The Assessing Officer added the unsecured loan received by the assessee from Smt. Shanti Chowdary and the unexplained gift received by the assessee from his father-in-law, as unexplained cash credit under Section 68.

8. Similarly, the Assessing Officer added interest income as per the TDS Certificate, to the Income Tax return.

9. The Commissioner of Income Tax (Appeals) granted relief in so far as the unsecured loan received by the assessee from Smt. Shanti Chowdary, who was none else than the wife of the assessee. This was on the basis of the reasonings given by the CIT (Appeals) in the assessee's own case for the Assessment Year 2006-2007. But in so far as the gift received from the father-in-law is concerned, the CIT (Appeals) confirmed the order of the Assessing Officer.

10. On the second issue, the CIT (Appeals) held that the defence taken by the assessee that the amount was lying in the account could not be accepted, as the purpose was to keep the interest in the account in order to get interest on such interest. The CIT (Appeals) also pointed out that the assessee chose to claim TDS made on the interest income while filing the return, but failed to recognize the interest income on which TDS was made.

11. The assessee filed a further appeal before the Income Tax Appellate Tribunal in ITA. No. 2121/H/11. The revenue also filed an appeal in ITA No. 107/H/11, challenging the grant of relief in respect of the unsecured loan received by the assessee from his wife.

12. By an order dated 22-03-2013, the Income Tax Appellate Tribunal dismissed the assessee's appeal ITA No. 2121/H/11, but allowed the appeal of the revenue in ITA No. 107/H/11.

13. In other words, the Assessing Officer decided against the assessee, three issues namely (1) unsecured loan received from his wife; (2) unexplained gift received from his father-in-law and (3) interest accrued on the unsecured loans given to M/s. Dakshin Shelters Pvt. Ltd.,. But the assessee succeeded before the CIT (Appeals) in respect of the unsecured loan received from his wife. However this success was short-lived, as the same was reversed by the Income Tax Appellate Tribunal, in the appeal filed by the revenue in ITA No. 107/H/11.

14. It is not known whether the assessee has filed a separate appeal as against the order of the Income Tax Appellate Tribunal passed in ITA No. 107/H/11 filed by the revenue. If he has not, then the order of the Income Tax Appellate Tribunal passed in ITA No. 107/H/11 relating to the Assessment Year 2007-08 with regard to the unsecured loan of Rs.1,52,00,000/- received from his wife would have attained finality.

15. We are compelled to record the above in view of the fact that in relation to the Assessment Year 2006-07, an unsecured loan of Rs.14,50,000/- received by the assessee from his wife, became a contentious issue. Though the Tribunal held against the assessee, the same was reversed by this Court by a judgment dated 23-02-2018 passed in ITTA.Nos.701 and 702 of 2016. But the benefit of the said decision cannot be invoked by the assessee in the present

appeal, since the present appeal is confined only to ITA. No. 2121/H/11 filed by the assessee in relation to two issues alone namely (1) unexplained gift from the father-in-law and (2) interest accrued on the unsecured loan granted to a company. The reframed substantial questions of law are also confined only to these issues.

15. Though the learned counsel for the petitioner has submitted four reframed substantial questions of law, the first of three relate only to one issue namely the addition of Rs.3,40,000/- as unexplained credit under Section 68. The fourth question of law relates to the addition of interest accrued on the unsecured loan granted to M/s. Dakshin Shelters Pvt. Ltd. Therefore, we shall answer the questions of law category wise.

Substantial questions of law 1 to 3:

16. All these substantial questions of law revolve around the gift allegedly made by the father-in-law. The Income Tax Appellate Tribunal confirmed the addition, following the opinion rendered by them in ITA. No. 2119/H/11 in relation to the Assessment Year 2005-06. But this gift was obviously made after 01-04-2005, the date on which clause (v) of sub-section (2) of Section 56 was inserted. Therefore, the ratio laid down by this Court in its judgment dated 23-02-2018 passed in the assessee's own appeals in ITTA.Nos.701 and 702 of 2016 relating to a gift made by the very same father-in-law would squarely apply. As a matter of fact in respect of a gift made by the assessee's father-in-law before the insertion of clause (v) of sub-section (2) of Section 56, we have held against the assessee in ITTA.No. 703 of 2016 by a judgment rendered today,

distinguishing the decision dated 23-02-2018 passed in ITTA. Nos.701 and 702 of 2016. But in this case, the decision in ITTA.Nos.701 and 702 of 2016 squarely applies.

17. Therefore, the first three substantial questions of law are answered in favour of the appellant/assessee.

Substantial Question of law No.4:

18. This question revolves around the addition of interest income accrued to the assessee on the unsecured loan granted by him to a company. The addition was made on the ground that the assessee claimed credit for TDS on the entire amount.

19. This issue was taken up as reframed substantial question of law No. (vii) in ITTA.No.701 of 2016 by another Bench of this Court, in relation to the Assessment Year 2006-07. In its decision rendered on 23-02-2018, this Court answered the very same question in favour of the assessee, in paragraphs 40 to 42 to the following effect:

"40. It is evident from the above extracted statutory provision that the assessee shall be free to follow either cash or mercantile system of accounting. Perhaps the only condition to be fulfilled by an assessee in this regard is whatever method he follows must be consistently followed without switching over from one method to the other frequently. It is not in dispute and cannot also be disputed that unlike mercantile system, in cash system of accounting return is filed based on actual receipt basis. The Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (TPL Division) vide Circular No.10/2017, dt.23.3.2017 has issued clarifications to various questions. Question No.13 and the answer, which are relevant for the present purpose, read as under:

Question 13: The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non-recovery in either cases can be claimed as deduction in view of amendment to S.36(1)(vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS."

41. In his order, the AO has proceeded on the assumption that since interest has accrued in the account books of M/s. Dakshin Shelters Private

Limited, there is no prohibition on the assessee to withdraw the amounts from the unsecured loan amount in the books of M/s. Dakshin Shelters Private Limited. He has further observed that in the instant case, the assessee has received the interest income, but chose to keep it in the account in order to get interest on such income also.

42. As regards the first mentioned aspect, it defies any logic for, crediting of interest in account books does not enable the assessee to withdraw the amount as the same was not physically made available by M/s. Dakshin Shelters Private Limited for the assessee to make such withdrawal. The finding that the assessee has received interest income but chose to keep it in the account in order to get interest, is in conflict with his previous observations that there is no prohibition for the assessee to withdraw the interest on the unsecured loan in the books of account of the company. Indeed, the Revenue has not disputed the claim of the assessee that the loanee company converted the unsecured loan and unpaid interest into equity shares during the year 2011-12 and accordingly issued equity shares certificates in lieu of repayment of unsecured loans and unpaid interest thereon. As submitted by the learned counsel for the assessee, the AO could have at best directed to restrict the claim of TDS in proportion to the income admitted and to allow the balance in the year in which interest income is admitted on receipt basis."

20. Therefore, following the above, the fourth substantial question of law is also answered in favour of the assessee. Accordingly, the appeal is allowed and all the four substantial questions of law are answered in favour of the assessee.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No costs.

V. RAMASUBRAMANIAN, J

J. UMADEVI, J

Date: -04-2018.

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE J. UMADEVI

I.T.T.A.No.706 of 2016
(per VRS, J.)



April, 2018.
(Ksn)