

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ I.T.T.A.No.700 of 2016

% 26-4-2018

Pendurthi Chandrasekhar, Plot No.8-2-696/697,
Apartment S4-S5, La Creative Heights,
Road No.12, Banjara Hills, Hyderabad-500 034
... Appellant/Assessee

Vs.

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

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

Counsel for Respondent: Ms. M.Kiranmayee,
Senior Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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I.T.T.A.No.700 of 2016

Judgment: (per V.Ramasubramanian, J.)

The assessee has come up with the above appeal under Section 260A of the Income Tax Act, 1961, challenging a common order passed by the Income Tax Appellate Tribunal in a batch of Income Tax Appeals. This appeal is confined to I.T.A.No.2122/H/2011, relating to the Assessment Year 2008-09.

2. Heard Mr. K.Vasanthkumar, learned counsel appearing for the appellant and Smt. M.Kiranmayee, learned Senior Standing Counsel appearing for the Department.

3. The substantial questions of law with which the appellant came up before this Court, were later sought to be reframed. We permitted the questions to be reframed.

The reframed substantial questions of law are as follows:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in confirming the addition of Rs.23,35,000/- being cash found during the course of search on the basis of statement at the time of search holding subsequent explanation as afterthought without appreciating the fact that at the time of search one would not be conscious enough about the facts?

2. Whether the on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not directing to verify the claim made with regard to availability of cash of Rs.23,35,000/- instead of confirming the addition as unexplained? and

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal while confirming the addition of Rs.38,74,350/- as interest income on mere ground of claiming credit for

TDS on entire amount in utter disregard to the provisions of Section 145 of the Act and method of accounting followed by the assessee?

BRIEF FACTS:

4. A search and seizure operation under Section 132 of the Income Tax Act, 1961, was carried out in the group cases of M/s. Ambiance Properties Private Limited and its sister concerns. The assessee is one of the Directors of a company by name Dakshin Shelters Private Limited. His residential house was also searched on 09-10-2007.

5. Thereafter, notices under Section 153A dated 20-10-2008 were issued, in relation to the Assessment Years 2002-03 to 2007-08. For the Assessment Year 2008-09, the assessee filed his return of income on 02-02-2009.

6. Subsequently, notices under Sections 143(2) and 142(1) were issued on 27-4-2009. The assessee filed his response and after giving an opportunity of hearing, the Assessing Officer passed an order on 24-12-2009.

7. In the order of assessment, the focus of attention was on three items. One was unexplained cash of Rs.23,35,000/- found in the residential premises in the course of search and seizure operation. Out of the said amount, Rs.22,50,000/- was seized as unexplained. The Assessing Officer rejected the explanation offered by the assessee and made an addition of Rs.23,35,000/- to the income returned by the assessee.

8. The second item which became the focus of attention in the order of assessment was an interest income to the tune

of Rs.38,74,350/-. The Assessing Officer added this amount to the income returned by the assessee on the ground that this represented interest on the unsecured loans advanced to Dakshin Shelters Private Limited and that as per the TDS Certificate, this income had to be added back. It is these two issues viz., (i) unexplained cash found in the residence at the time of search and seizure and (ii) interest income, that form the subject matter of the present appeal.

9. As against the order of assessment, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals) upheld the order of the Assessing Officer insofar as the second aspect viz., the interest income is concerned. But insofar as the first aspect is concerned, the CIT (Appeals), even while confirming the addition, directed the Assessing Officer to verify the exact amount found during the search, since there was a discrepancy as to whether it was Rs.23,35,000/- or Rs.23,35,500/-.

10. As against the order of the CIT (Appeals), the assessee filed an appeal in I.T.A.No.2122/H/2011 before the Income Tax Appellate Tribunal. The Tribunal took the appeal along with a few other appeals filed by the assessee and a few other appeals filed by the Revenue. By a common order dated 22-3-2013, the Income Tax Appellate Tribunal dismissed I.T.A.No.2122/H/2011 forcing the appellant/assessee to come up with the above appeal.

11. It can be seen from the substantial questions of law that we have extracted earlier that the first two questions revolve around the unexplained cash found in the residence of the assessee at the time of search. The third substantial question of law revolves around the interest income.

12. Insofar as the third substantial questions of law is concerned, it is admitted by the learned Senior Standing Counsel for the Department that the same is covered by the decision of this Court in I.T.T.A.Nos.701 and 702 of 2016, dated 23-02-2018. Reframed substantial question No.7 in I.T.T.A.No.701 of 2016, as recorded in the judgment of this Court, dated 23-02-2018, reads as follows:

“7. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal while confirming the addition of Rs.3,05,713/- 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?”

13. The answer to the above question is found to be in paragraph-42 of the judgment dated 23-02-2018, which reads as follows:

“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.”

14. Therefore, the third substantial question of law is answered in favour of the assessee, following the decision in I.T.T.A.Nos.701 and 702 of 2016, dated 23-02-2018.

15. Insofar as the substantial questions of law 1 and 2 are concerned, there is no dispute about the fact that the unexplained cash was recovered at the time of search. When the cash was seized during search, the assessee was questioned about its source. The questions put to him and the answers given by the assessee at that time are reproduced in the order of assessment. They read as follows:

“Q.16 An amount of Rs.22.50 lakhs was found in your bank locker which was brought in the house. Explain the sources of the said amount?

Ans. The amount was given partly by my partner Sri K.Srinivasarao, partly by brother Mr. Chandramohan and partly belongs to my mother who sold her house property at Gollapudi Village, Vijayawada, about a year back.

Q.17 Can you prove the receipt of the above amount as replied by you?

Ans. My brother and my partner brought parties willing to buy my lands at Vattinagulapally, who paid these advances through them. However, the persons who paid advance were reluctant to take back the

advances in view of rise in prices. I shall confirm the transactions in a couple of days.”

16. But subsequently in the course of assessment proceedings, the assessee came up with a completely different story, which is reproduced by the Assessing Officer in the following words:

“1. Mrs Anantha Lakshmi has given him an amount of Rs.25,00,000/- on 18-9-2007 for purchase of the land at Nanakramguda to the extent of Ac.0.05 gts out of total consideration of Rs.40,00,000/- vide agreement of sale dated 18-9-2007.

2. Further, he has claimed that Smt. Anantha Lakshmi W/o Ramachander Rao, A-5, Prajashakti Nagar, Vijayawada has advanced the said amount of Rs.25,00,000/- out of sale proceeds of her agriculture land situated at Penamaluru village vide agreement of sale with possession dated 21-7-2007.

3. In this connection the assessee has submitted a confirmation letter allegedly signed by Smt. Anantha Lakshmi dated 13-10-2009 along with the above said documents.”

17. The Assessing Officer as well as the CIT (Appeals) refused to buy this theory. The Tribunal concurred with the Assessing Officer and the Appellate Authority.

18. Assailing the decision of all the three authorities, it is contended by Mr. K.Vasanthakumar, learned counsel for the appellant –

(i) that an answer provided by an assessee at the time of a raid, when he will be in a state of shock, cannot be held against him especially when his subsequent claim was evidenced by documents;

(ii) that at the time when the search was conducted, Section 269SS had not been amended, but was applicable only to loans and advances and not sales;

(iii) that when admittedly the assessee had no source of income, the explanation offered by him had to be accepted;

(iv) that in support of the explanation offered by the assessee later, he had not only produced the sale agreement with Anantha Lakshmi, but the Assessing Officer also got a letter of confirmation from Anantha Lakshmi and that therefore the Tribunal committed a serious error in law in confirming the addition.

19. We have carefully considered the above submissions. We fail to appreciate the contention that an assessee will be in a state of shock at the time of the raid. A person who had done no wrong, cannot be shaken by a search and seizure operation. The search admittedly took place on 09-10-2007. The alleged agreement with Smt. Anantha Lakshmi had been entered into by the assessee, according to his subsequent theory, on 18-9-2007. In other words, the assessee, even according to his story, had received the said cash towards part of the sale consideration, just 21 days before the date of conduct of the search. It is quite strange that such a huge amount was kept in the house for nearly 20 days and the assessee, in a state of shock, had forgotten, to recall how he received the said cash, when questioned during the search operations.

20. The learned counsel for the appellant invited our attention to a letter of confirmation allegedly given by Smt. Anantha Lakshmi, the agreement purchaser, to the Deputy Commissioner of Income Tax. This letter is dated 13-10-2009. The learned counsel for the appellant also drew our attention to a copy of the agreement of sale purportedly entered into between the assessee and Smt. Anantha Lakshmi on 18-9-2007. But the agreement of sale is hardly reliable, on account of the following:

(i) It is typed on Non-Judicial Stamp Paper of a value of Rs.100/-, issued by a stamp vendor on 05-5-2006 and the agreement itself is dated 18-9-2007.

(ii) In the first two pages of the agreement of sale, the signature of the agreement vendor viz., the assessee alone is found. It is only in the last page that the signature of Anantha Lakshmi, the vendee, is found.

(iii) The agreement was purportedly for the sale of half undivided share that the assessee had in an agricultural land. The property sought to be sold under the said agreement is described throughout as agricultural land. But in the last clause in the agreement of sale, it is stated that if the vendor failed to obtain clearance from Urban Land Ceiling authorities, the agreement would stand cancelled.

21. Therefore, if the authorities failed to take note of such an agreement of sale, they cannot be found fault with.

We have now taken into account the agreement and it does not inspire the confidence of this Court.

22. It is true that at that time when the assessment was completed, Section 269SS was confined only to loans and advances. But the authorities did not invoke Section 269SS to disbelieve the claim of the assessee. The authorities went by the statement of the assessee at the time of the raid and the explanation offered by him subsequently as an after thought and disbelieved the story with which he came up later.

23. Therefore, in our considered view, the reframed substantial questions of law 1 and 2 are liable to be answered against the assessee. Accordingly, they are answered against the assessee.

24. In fine, the appeal is partly allowed, answering the reframed substantial question No.3 in favour the appellant/ assessee and answering the reframed substantial questions of law 1 and 2 against the assessee. The applications, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

26th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

I.T.T.A.No.700 of 2016
(per VRS, J.)



26th April, 2018.
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