

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

ITTA.No.447 of 2018

JUDGMENT: {Per Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri D.Manmohan, learned counsel appearing on behalf of the appellant, and Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax, and, with their consent, the appeal is disposed of at the stage of admission.

The appellant herein is an assessee on the rolls of the Deputy Commissioner of Income Tax, Circle-2(1), Vijayawada. The assessing authority, during the course of assessment proceedings, noted certain unexplained unsecured loans and, therefore, treated the alleged unsecured loans in the names of two individuals totalling to Rs.1,16,50,000/- as unproved cash credits, liable to be disallowed under Section 68 of the Income Tax Act, 1961 (for short "the Act"), and as liable to brought to tax as the assessee's income from other sources. The Authorised representative of the assessee was given an opportunity to file their objections, if any. As no such objections were filed by the assessee, the unexplained cash credits were added as the income of the assessee and treated as income from other sources.

Aggrieved thereby, the assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) who, in his order dated 30.08.2016, considered the explanation of the assessee, and the returns filed by the creditors on 19.12.2015 subsequent to the completion of assessment of the assessee on 30.03.2015, and deleted the additions made by the assessing officer. Aggrieved thereby, the revenue carried the matter in appeal to the Tribunal.

It was contended before the Tribunal that the assessee did not file details such as the identity of the parties, and the creditworthiness and genuineness of the transactions; the Commissioner of Income Tax (Appeals) was not justified in deleting the additions made by the assessing officer based on the returns filed by the creditors on 19.12.2015 subsequent to completion of the assessment of the assessee, as these details were not available with the assessing officer; the conditions stipulated in Rule 46A of the Income Tax Rules, 1962 (for short “the Rules”) had not been complied with; the Commissioner was therefore not justified in entertaining these documents, for the first time, in appeal; the Commissioner of Income Tax (Appeals) was also not justified, in examining the assessee’s claim without calling for a remand report from the assessing authority; though the assessing officer had asked the assessee to file details of the loan creditors and bank statements, no such details were filed before him; simply because the amounts were received through banking channels did not mean that the transaction was genuine unless the identity and creditworthiness of the parties, and the genuineness of the transactions, was proved; the assessee did not prove the identity and creditworthiness of the creditors or the genuineness of the transaction; and the assessee had failed to discharge the burden cast upon them by filing necessary evidence before the assessing officer. The Tribunal held that the assessing officer had rightly disallowed the amounts, which the assessee had claimed to have borrowed from the loan creditors, under Section 68 of the Act; and had rightly added the said amount as the income of the assessee from other sources.

Before us Sri D.Manmohan, learned counsel for the appellant, would submit that, of the four grounds urged by the revenue before the

Tribunal, grounds 1 and 2 were dismissed as not pressed; what remained were only grounds 3 and 4; the Tribunal has faulted the assessee solely on the ground that these documents were not produced before the assessing officer; on fulfilment of the conditions stipulated in Rule 46A of the Rules, it was open to the assessee to produce these documents even before the appellate authority; failure on the part of the Commissioner of Income Tax (Appeals) to call for a remand report, from the assessing authority, does not justify the assessee being penalised for no fault of theirs; if the Commissioner of Income Tax (Appeals) had failed to comply with the requirements of Rule 46A of the Rules, in not calling for a remand report, the Tribunal ought to have set aside the order of the Commissioner of Income Tax (Appeals), and remanded the matter for his consideration afresh after calling for a remand report from the assessing officer; and the Tribunal has grossly erred in setting aside the order of the Commissioner of Income Tax (Appeals) merely on the ground that the assessee had failed to produce evidence, before the assessing authority, in support of their claim that the amounts, treated as unexplained cash credits, were in fact unsecured loans obtained from the named individuals.

On the other hand Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax, would submit that the Tribunal is the final Court of fact; the Tribunal is entitled to re-appreciate the evidence before it to determine whether or not the amounts, which the assessee claimed were unsecured loans, were in fact unexplained cash credits liable to be treated as income from other sources in the assessee's hands; while power is no doubt conferred on the Commissioner of Income Tax (Appeals) to consider documents which were not presented before the Assessing Officer, he can receive such documents only in the

circumstances mentioned in Clauses (a) to (d) of Rule 46A(1); the conditions stipulated in Clauses (a) to (d) of Rule 46A(1) of the Rules have not been fulfilled in the present case; the Commissioner of Income Tax (Appeals) could, therefore, not have entertained these documents for the first time; even otherwise, Rule 46A(3) of the Rules requires the Commissioner of Income Tax (Appeals) to give the assessing officer a reasonable opportunity to examine the evidence or documents submitted by the assessee, and to produce any evidence in rebuttal thereto; this requirement has also not been complied with; no useful purpose would be served in sending the matter back to the Commissioner of Income Tax (Appeals), since the Tribunal can also examine whether or not the requirements of clauses (a) to (d) of Rule 46A(1) and 46A(3) are fulfilled; and it is open to the Tribunal, if need be, to call for a report from the assessing authority to adjudicate the assessee's claim that these amounts represented unsecured loans, and were not unexplained cash credits. Learned Senior Standing Counsel would further submit that, under Section 255(6) of the Act, the Tribunal has all the powers, which are vested in the income tax authorities, for the purpose of discharging its functions.

As noted hereinabove, in cases where the relevant documents are not produced before the assessing authority, despite the assessing authority having given the assessee an opportunity to do so, such documents can be produced, before the Commissioner of Income Tax (Appeals), only if the conditions stipulated in Clauses (a) to (d) of Rule 46A(1) of the Rules are fulfilled. It was imperative, therefore, both for the Commissioner of Income Tax (Appeals) and the Tribunal to consider whether failure of the assessee to produce these documents before the assessing officer, and in producing it for the first time before the

Commissioner of Income Tax (Appeals), was saved by the provisions of Clauses (a) to (d) of Rule 46A(1) of the Rules. In case they were satisfied that such documents could have been entertained, then the Commissioner of Income Tax (Appeals) or the Income Tax Appellate Tribunal was obligated, in terms of Rule 46A(3) of the Rules, to call for a report from the assessing officer, and give him an opportunity to rebut the evidence placed for the first time before the appellate authority by the assessee concerned.

While we find considerable force in the submission of Sri D.Manmohan, learned counsel appearing for the appellant, that failure on the part of the Commissioner of Income Tax (Appeals) to call for a report from the assessing officer may justify the order of the Commissioner of Income Tax (Appeals) being set aside, and the matter being remanded for his consideration afresh, the fact remains that, in terms of Section 255(6) of the Act, the Tribunal, in discharge of its functions, has all the powers as are available to the Commissioner of Income Tax (Appeals); and, consequently, the Tribunal can as well examine whether the requirements of Rule 46A(1) of the Rules have been complied with; and, if so, to call for a report from the assessing officer under Rule 46A(3) of the Rules.

We see no reason, therefore, to remand the matter to the Commissioner of Income Tax (Appeals) for his consideration. Instead, the order under appeal is set aside, and the matter is remanded to the Tribunal for its consideration afresh, and in accordance with law, after giving both parties a reasonable opportunity of being heard. Needless to state that, since the order under appeal is set aside and the matter is remanded, it is open to parties on either side to advance all such contentions, as are available to them in law, before the Tribunal.

The ITTA is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

18th September, 2018
JSU



**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



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Date: 18.09.2018

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