IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).No.1019 of 2009

M/s.Sri Kavitha Jewellers,
340, Cutchery Street,
Erode. .. Appellant

Vs

The Deputy Commissioner of Income Tax
Special Investigation Circle
Erode. .. Respondent

Prayer : Tax Case (Appeal) is filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 26.09.2008 passed in I.T.(SS)A.NO.94/Mds/2001 for the Block Assessment Period 01.04.1987 to 27.11.1997 against the order of the Commissioner of Income tax (Appeals), XII, Chennai, order dated 20/03/2001 made in IT/WT/GT/Appeal No.364/99-00 for the Assessment Years 1988-89 to 97-98 and against the order of the Assistant Commissioner of Income Tax, Special Investigation circle, Erode order dated 25.11.99 made in PAN/GIR No.S-3599(262) for the Block Assessment for block period 01.04.87 to 27.11.97.

For Appellant : Mr.R.Sivaraman
for Mr.C.V.Rajan

For Respondent : Mr.T.R.Senthikumar
Sr.Standing counsel
Ms.K.G.Usharani

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Assesee has filed this appeal under Section 260 A of the Income Tax, 1961 raising the substantial questions of law arising from the order of the Income Tax Appellate Tribunal, dated 26.09.2008 in respect of IT(SS) A No.94/Mds/2001 for the Block Assessment Period 01.04.1987 to 27.11.1997.

2. This Appeal was admitted by a Co-ordinate Bench of this Court on 02.11.2009 on the following substantial questions of law:

> "1. Whether the Income Tax Appellate Tribunal was right in law and had valid material to hold that an amount of Rs.3,00,000/- has to be added as undisclosed income on account of excess stock of jewellery for the assessment year 1998-99 in the block assessment under section 158 BC of the Income Tax Act, 1961?
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> 2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in estimating the undisclosed income at Rs.3,00,000/- in the absence of any seized material, which is a condition precedent for computation of undisclosed income under section 158 BB of the Income Tax Act, 1961?

3.The relevant portion of the order passed by the Tribunal is quoted below for ready reference :

> "4. We have heard both the parties and perused the material available on record. We have thoroughly gone through the order passed by the id.first Appellate authority. No doubt the Id. first Appellate authority passed a very detailed order and allowed the appeal of the assessee by the accepting the contention raised by the Authorized Representative of the assessee. The ld. first Appellate authority has examined the seized material especially a notebook (MD/S/B&D/34) in which the assessee has explained about the excess jewellery found during the search and deleted the entire addition in dispute. But, after going through the order passed by the Assessing Officer as well as the order passed by the ld. first Appellate authority, we find that at the time of search, the excess stock of jewellery weighing around 3372 gms over and above the stock found and seized, which was also admitted by one of the partners Shri Tamilarasu, who was examined on oath on the date of search, offered to admit a sum of Rs.13,50,000/- as undisclosed income being value of 3372 gms of gold at the rate of Rs.390/- per gram. He also stated that it is true that

there is some excess stock but this included some jewellery belonging to the partners for which they have no evidence to prove and the ld. first Appellate authority after appreciating the seized material MD/S/B&D/34 in the form of notebook is totally ignored in the findings of the Assessing Officer. He has not appreciated the elaborate finding of the A.O. The assessee has not produced any evidence supporting their contention. We should not forget that the statement of one partner Shri Tamilarasu who has been examined on oath at the time of search and he stated it is true there is some excess stock for which they have no evidence to prove their stand. In the present case, the total addition for undisclosed income of Rs.80,000/- for the assessment year 1997-98 and consequent disallowance of interest of Rs.14,400/- and Rs.9,600/- for the assessment year 1997-98 and 1998-99. Secondly, a sum of Rs.7,62,190/- being the excess stock of gold jewellery treated as undisclosed income for the assessment year 1998-99 and lastly, undisclosed income of Rs.74,864/- being the value of 9358 gms of jewellery as excess stock for the assessment year 1998-99.

5.As regard to these two additions on account of undisclosed income of Rs.80,000/- for the assessment year 1996-97 and disallowance of interest of Rs.14,400/- and Rs.9,600/- for the assessment years 1997-98 and 1998-99 and undisclosed income of Rs.74,864/- being the value of 9358 gms of silver in the excess stock for the assessment year 1998-99, we fully agree with the findings of the Id.CIT(Appeals). We hold that no interference is called in the well-reasoned order passed by him in his order. But, in regard to addition of 7,62,190/- being the value of excess stock of gold jewellery treated as undisclosed income for the assessment year 1998-99, we specifically direct the ld. counsel for the assessee to offer some undisclosed income on account of excess stock of gold jewellery for the assessment year 1998-99 out of Rs.7,62,190/- . The ld. counsel for the assessee relied on by the order passed by first Appellate authority,but, he agreed for the addition of Rs.3,00,000/- out of Rs.7,62,190/- as undisclosed income for the assessment year 1998-99. The learned D.R. raised no objection. Therefore, keeping in view of the facts and circumstances of the present case and in the interest of justice, we are of the considered opinion that an amount of Rs.3,00,000/- on account of excess stock of gold jewellery to be treated as undisclosed income for the assessment year 1998-99. The Assessing Officer is directed accordingly and modify the assessment order."

4. The learned counsel for the Assessee Mr.R.Sivaraman, submitted that though the learned CIT (Appeals) had deleted the additions made on account of alleged undisclosed income to the extent of Rs.7,62,190/- on the basis of the details of jewellery belonging to the partners of the firm, the Tribunal while concluding that the order passed by the CIT (Appeals) is well reasoned, but it still directed the learned counsel for the Assessee to make concession with regard to some amount for addition as undisclosed income on the alleged excess stock of gold jewellery and, though no such concession was made by the learned counsel for the Assessee, still recording such a concession, albeit wrongly the learned Tribunal made an addition of Rs.3,00,000/- as against Rs.7,62,150/- addition made by the Assessing authority, which was completely deleted by the CIT (Appeals) and modified the order illegally.

5.The relevant portion of the order passed by the CIT (Appeals) is extracted hereunder:

"7. I have carefully considered the submissions made on behalf of the appellant. Under Sec.158 BB(1) of the Act., undisclosed income of the block period is to be determined on the basis of the evidence found as a result of search. The A.O.,was, therefore, not justified in ignoring the notebook (MD/S/B&D/34) which was seized during the course of search on 15.12.97. In the said note-book, details of jewellery belonging to the partners are stated to be as under:

Name	quantum of gold (gms.)
1. S.Tamilarasan	298.520
2. P.Susila Devi	265.190
3. T.Jayalakshmi	489.150
4. V.B.Ponnusamy	274.290
5. C.Chandrasekaran	116.900
6. N.Palanisamy	423.000
7. S.Rajamanickam	337.960
8. C.Sivakumar	365.910
Total	2570.920

6. The learned counsel for the Revenue Mr.T.R.Senthikumar was also unable to support the Impugned Order of the Tribunal to this extent.

7. Having considered the rival submissions we are constrained to observe that the learned Tribunal being a fact finding body has failed to discharge its duty in an appropriate manner by recording the findings of facts on the basis of materials on record. We find that the learned CIT (Appeals) by giving an acceptable finding as quoted above on the basis of the seized material during the course of search, found that the alleged excess jewellery belonged to the partners of the Assesee firm and therefore the addition made in the hands of the Assessee firm to the extent of Rs.7,62,190/- towards 1859 gms jewellery was not justified. Though the learned Tribunal had no contra material before it, but for the reasons best known to the learned members of the Tribunal, they stated in paragraph 5 that "We specifically direct the ld. counsel for the assessee to offer some undisclosed income on account of excess stock of gold jewellery for the assessment year 1998-99 out of Rs.7,62,190/-". Thereafter, the learned Tribunal proceeded to state that "The ld. counsel for the assesee relied on the order passed by the first Appellate authority but, he agreed for the addition of Rs.3,00,000/- out of Rs.7,62,190/- as undisclosed income for the assessment year 1998-99."

8. We are unable to reconcile ourselves with the doubtful observations made by the learned Tribunal in the aforesaid manner. It was not at all open to the learned Tribunal to seek for any concession from the Assessee much less direct the learned counsel to make any such concession. No such concession is said to have been made by the learned counsel for the Assessee. We are rather pained and surprised at the aforesaid tenor of the order passed by the learned members of the Income Tax Appellate Tribunal. We do not want to say anything more on the same. We are unable to find any relevant material or basis on which the said addition of Rs.3,00,000/- was made by the learned Tribunal.

9. Accordingly, while allowing the present Appeal of the Assesee and answering the aforesaid questions against the Revenue, we set aside the order passed by the learned Income Tax Appellate Authority dated 26.09.2008 and restore the order of the learned CIT (Appeals) dated 20.03.2001,on the aforesaid issue.

10. In the result, this Tax Case Appeal of Assessee is allowed. No order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
Chennai 'D'Bench.

2.The Commissioner of Income Tax(Appeals-XII),
chennai.

3.The Assistant Commissioner of Income Tax,
Special Investigation Circle,
Erode.

+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.21905

+1cc to Mr.R.Sivaraman, Advocate, SR.No.21825

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Kak(23/04/2019)