IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM

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

Tax Case Appeal No. 1907 of 2008

M/s. Swathi Enterprises
20/1, Wason Street
T.Nagar, Chennai – 600 017 Appellant / Appellant

Vs.

The Deputy Commissioner of Income Tax
Central Circle (2)
Chennai – 600 034. Respondent//Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 31.07.2009 made in IT(SS)A No.28/MDS/2003.

For Appellant : M/s. A.S.Sriram
for S.Sridhar

For Respondent : Mr. T.R.Senthilkumar
K.G.Usha Rani
Senior Standing Counsel

J U D G M E N T

(Delivered by **DR.VINEET KOTHARI, J**)

The Assessee has filed this Appeal raising the purported substantial question of law arising from the order passed by the learned Income Tax Appellate Tribunal on 18th December 2003 whereby the learned Tribunal partly allowed the appeal of the Assessee but rejected the ground on which the present Appeal has been filed by the Assessee before this Court regarding the additions of Rs.14,65,500/- made by the CIT (Appeals) after giving notice of enhancement to the Assessee with regard to an alleged gift by a Non Resident India (NRI) to a partner of the Assessee Firm.

2. The present Appeal was admitted on 12.03.2009 on the following substantial questions of Law:

> *"1) Whether the Appellate Tribunal is correct in law in dismissing the miscellaneous petition filed in terms of Section 254(2) of the Act for the rectification of 'mistake of fact' as well as 'mistake of law' in the earlier order passed by them in overlooking the disclosure of the NRI Gifts in the regular return filed prior to the date of search for the Assessment Year 1994-1995?*

2) Whether the Appellate Tribunal is correct in law in concluding that the NRI Gifts received were correctly brought to tax as 'undisclosed income' within the scope of definition in Section 158B(b) of the Act read with Section 158BC of the Act while confirming the action of the First Appellate Authority even though the said NRI Gifts were disclosed in the regular return filed prior to the date of search for the Assessment Year 1994-95?"

3. A search was conducted at the business place of the Assessee on 10.01.2000. In the course of the statement recorded by the authorities concerned under Section 132(4) of the Act with regard to the said NRI gifts, the following statement of the Assessee was recorded:-

"Q.2 In the return of Income filed by you for the Ays 1994-95 in the case of M/s. Swathi Enterprises in the current account of Shri. V.Subramanian there is an NRI gift of Rs.2,02,500/-. In the case of Smt.S.Saraswathi, NRI gift of Rs.6,31,500/- and in the case of Ms. S.Shoba, there is an NRI gift of Rs.6,31,500/-. Kindly explain.

Ans. I state that I have brought my own moneies in the accounts of my son, my wife Saraswathi and my daughter Shoba styling them as NRI Gifts. I am not able to prove these amounts mentioned by you in this question as NRI gifts. As these amounts are out of my own income chargeable to tax, nor disclosed to the department, I am offering the total sum of Rs.14,65,500/- as my undisclosed income for tax."

4. The learned CIT (Appeals) made the said additions in the hands of the Assessee with the following findings recorded in his order dated 31.12.2002:-

*"**NRI gift remittances received by the Appellant: Rs.14,65,000/-***

10.15 Regarding NRI gift remittances amounting to Rs.14,65,000/-, the appellant reiterated the submissions made before the Assessing Officer vide its letter dated 23.10.2001 wherein it was explained with details of the donors and amounts gifted by them. It was further pointed out that since the gifts were confirmed by the accepted these NRI gift *remittances as genuine transactions. It was contended, purposes under Section 251(1) of the Income-Tax Act, 1961.*

10.16 I have carefully considered the submissions made by the appellant and in my opinion, they do not carry sufficient force. At the outset, it should be mentioned that these NRI gift remittances amounting to Rs.14,65,000/- have nothing to do with the total sale turnover of flats to the extent of Rs.4,00,78,555/- in lieu of which undisclosed income to the extent of Rs.79,68,000/- were declared in the block return filed on 20.10.2000. Secondly, the contention that the NRI gift transactions were proved by filing confirmation letters from the donors, etc., also cannot be accepted, in view of the clear cut confession made by Shri V.Subramanian in his answer to Question No.2 of his statement recorded under Section 132(4) on 10.01.2000. The question and answer are reproduced below:-

Q.2 In the Return of Income filed by you for the Ays 1994-95 in the case of M/s. Swathi Enterprises in the current account of Shri V.Subramanian there is an NRI gift of Rs.2,02,500/-. In the case of

Smt.S.Saraswathi, NRI gift of Rs.6,31,500/- and in the case of Ms.S.Shoba, there is an NRI gift of Rs.6,31,500/- kindly explain.

Ans. I state that I have brought my own monies in the accounts of my son, my wife Saraswathi and my daughter Shoba styling them as NRI gifts. I am not able to prove these amounts mentioned by you in this question as NRI gifts. As these amounts are out of my own income chargeable to tax, nor disclosed to the department, I am offering the total sum of Rs.14,65,500/- as my undisclosed income for tax.

As already observed, the NRI gift transactions aggregating to Rs.14,65,500/- were in no way connected with the total sales turnover of Rs.4,00,78,555/- in lieu of which the appellant declared the undisclosed income to the extent of Rs.79,68,000/-. More often, it is found that gift transactions from the NRIs are nothing but a colourable device. As observed by the Foreign Exchange Regulation Appellate Board in the case of Smt. Shanthi Devi Jain vs. Director of Enforcement, reported in 89 Taxman 197 "making of gifts in foreign exchange is a common mode of money *laundering". Having regard to the fact that these alleged NRI gifts were not forming part of the total sales turnover of flats and keeping in view the confession made by Shri V.Subramanian, it is held the NRI gifts amounting to Rs.14,65,500/- should be treated as part of undisclosed income in the hands of the Appellant. To this extent, the assessment is enhanced."*

5. On further Appeal, the said addition made by CIT (Appeals) was upheld by the learned Income Tax Appellate Tribunal, with the following findings:-

"11. With regard to NRI gifts amounting to Rs.14,65,000/- assessee vide its letter dated 23.10.2001 reiterated the submissions made before the Assessing Officer and it was explained that since the gifts were confirmed by the donors along with their bank accounts, passport etc., the Assessing Officer should have accepted these NRI gifts as genuine. Therefore, it was contended that there was no scope for taking up this issue once again for enhancement under sef.251(1) of he Act. For this, the C.I.T.(Appeals) referred the Question No.2 and its answer as found in pages 22 7 23 are as follows:- (already quoted above)

The C.I.T. (Appeals) found that these NRI gift transactions aggregating to Rs.14,65,500/- were in no way connected with the sales turnover of Rs.4,00,78,555/- in lieu of which the assessee declared the undisclosed income to the turn of Rs.79,68,000/-. According to the C.I.T. (Appeals), the gift transactions from the NRIs are nothing but a colourable device. He, following the decision in the case of Smt.Shanthi Devi Jain vs. Directors of Enforcement reported as 89 Taxman 197 wherein it was held by the Foreign Exchange Regulation appellate board that making of gifts in foreign exchange is a common mode of money laundering, held that these alleged NRI gifts were not forming part of the total sales turnover of flats. Therefore, keeping in view, the confession made by Sri V.Subramanian, the C.I.T. (Appeals) held that the NRI gifts amounting to Rs.14,65,500/- should be treated as part of undisclosed income in the hands of the assessee. To this extent, the assessment is enhance by the C.I.T. (Appeals).

11. We have considered the submissions of the learned representatives of the parties and the materials placed before us. We have already decided the issue of addition of Rs.4,00,000/- being the amount realised on *scrap sales which is in favour of the Revenue and against the assessee. Regarding the enhancement of Rs.14,65,000/- to the assessment, in respect of NRI gifts, we see that these transactions are not disclosed and they were in no way connected with the total sales turnover in lieu of which the assessee declared undisclosed income. This point is not denied by the assessee, during the hearing before us. In our view, the findings of the C.I.T. (Appeals) that it is a colourable device, has to be accepted. We, therefore, uphold the enhancement on this issue."*

6. The Assessee not being satisfied with the said findings of the learned Tribunal preferred a Miscellaneous Petition before the learned Tribunal which came to be rejected order dated 31.07.2008. Aggrieved by the same, the Assessee preferred the present Appeal before this Court raising the aforesaid purported substantial questions of law.

7. The learned counsel for the Assessee Mr.A.S.Sriram urged before us that the learned Tribunal has clearly erred in upholding the said additions of Rs.14,65,500/- made in the hands of the Assessee by the learned CIT (Appeals) after giving an enhancement notice to the Assessee. It was pointed out that the Assessee had already disclosed the said gifts in the returns of income filed by him during the Assessment Year 1994-1995, produced before the Assessing Authority. The confirmation by the donors (NRI) was also produced. Hence, there was no addition of undisclosed income was made in the hands of the Assessee at that point of time and such returns filed by the Assessee was also accepted by the Assessing Authority.

8. It was also urged that the learned CIT (Appeals) could not give an enhancement notice to the Assessee and make the aforesaid additions after the search at the business place of the Assessee had taken place and the same could not have formed part of the block period at all. He has further submitted that the learned Tribunal has erred in not correcting the said mistake upon the Miscellaneous Petition filed by the Assessee under Section 254 of the Act.

9. The learned counsel for the respondent/Revenue however submitted that the enhancement notice was given by the learned CIT (Appeals) on various issues as would be clear from his notice dated 29.10.2002 which, inter alia, included at Sl. No. 4 the alleged NRI gifts of own money to the extent of Rs.14,65,500/- and even though the Assessee filed his reply to the said enhancement notice and contested the said issue, he has never raised the said defence that the alleged gifts NRI have been accepted by the Assessing Authority in the returns filed by the Assessment Year 1994-1995.

10. The learned counsel for the Assessee has also relied upon the decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner of Income Tax Vs. A.R. Enterprises*** reported in ***[2013] 29 taxmann.com 50 (SC)*** in which the Hon'ble Supreme Court has observed that an Assessee can rebut the Assessing Officer's finding of undisclosed income by showing that such income was disclosed in the return of income filed by him before the commencement of search or the requisition under Section 132 of the Act.

11. Having heard the learned counsels for the parties, we are of the opinion that as a matter of fact, no substantial questions of law arises in the present case. The findings on facts about the alleged NRI gifts which the Assessee in the present case specifically admitted in the statements recorded under Section 132(4) of the Act at the time of search that it was his own money routed back to his own family members who were the partners of the firm through an alleged NRI and was undisclosed income. There can be no better evidence than the said specific admission of the Assessee. Never, gifts have been accepted by any Assessing Authority by treating the explanation and confirmations given by the Assessee as sufficient and never was the NRI Donor produced and found to be genuine by the Assessing Authority. The CIT (Appeals) has discussed all these aspects after the specific enhancement notice was given by him and thereafter giving the cogent findings of the facts.

12. We hold that on the admission of the Assessee himself that such money was his own undisclosed income brought back in the country through alleged NRI gifts was the best evidence and in our opinion was sufficient to bring it to tax in the hands of the Assessee Firm, and the learned CIT (Appeals) cannot be said to have faulted in any manner in serving an enhancement notice, inter alia, on the said issue and making the additions in the hands of the Assessee Firm. In our opinion, the Tribunal was justified in rejecting the Miscellaneous Petition of the Assessee also under Section 254 of the Act as there was no mistake apparent in the original appeal order passed by the Tribunal. Therefore, we do not find any substantial question of law arising in the present case and we do not find any merit in the appeal filed by the Assessee. Accordingly, the Appeal is dismissed and the questions of law as framed above are answered against the Assessee and in favour of the Revenue. No costs.

(V.K., J.) (C.V.K.,J.)
08.03.2019

Index : Yes/No
Internet : Yes/No

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