IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.240 of 2011 and
M.P.No.1 of 2011

S.P.Geetha ...Appellant

-vs-

The Commissioner of Income Tax,
Madurai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 03.01.2011 in IT (SS) A No.0015/Mds/2007 for the assessment years 1991-92 to 2001-02, against the proceedings of the Commissioner of Income Tax(Appeals)-II, Madurai in ITA No.199/2005-06 dated 13/10/2006 against the Deputy Commissioner of Income Tax Central Circle -II, Madurai dated 21/01/2003 for the assessment year 91-92 to 2000-01 and 2001-02 (part0 in PAN/GIR No:-ABAPG23681.

For Appellant : Mr.T.N.Seetharaman

For Respondent : Mrs.V.Pushpa
Standing Counsel

J U D G M E N T

(Delivered by T.S.Sivagnanam, J.]

This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 03.01.2011 in IT (SS) A No.0015/Mds/2007.

2. Heard Mr.T.N.Seetharaman, learned Standing Counsel for the appellant and Ms.V.Pushpa, learned junior Standing Counsel for the respondent/Revenue.

3. This Appeal has been admitted on the following Substantial Questions of Law:-

> "1.Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in law in reversing the order of the Commissioner of Income Tax (Appeals) partly and restoring the addition of the value of gold jewellery of 250 gms as unexplained?
>
> 2.Whether on the facts and circumstances of the case, the Appellate Tribunal was right in not accepting the claim of the assessee regarding purchase of gold jewellery merely because of the absence of purchase bill and denial by the jeweller, when the assessee had proved and the Appellate Tribunal had accepted the source of moneys for purchase of the gold jewellery?"

4. The issue involved in this case lies in a very narrow compass. We are called upon to decide as to whether the Tribunal was right in rejecting the asssessee's contention with regard to the purchase of 250 gms of gold jewellery and whether the said jewellery can be termed to be "unexplained jewellery". We need not adjudicate the factual thicket except to note that sale of the property by the assessee to a dealer in Madurai resulted in search operation, which ultimately led to the impugned block assessment. Gold Jewellery said to have been found in the premises of the assessee and her sons and after thorough enquiry, the assessee was able to explain the source of the jewellery as well as her sons. However, in respect of 300 gms of gold jewellery, it appears that there was no purchase bills. This led to treating the said gold jewellery as unexplained gold jewellery.

5. The assessee carried the matter by way of appeal before the Commissioner of Income Tax (Appeals) II, Madurai. The CIT (A) had called for remand report and considered the factual matrix and held that the assessee has established the source of funds for the purchase of gold jewellery to the tune of Rs.2 lakhs. Further, the CIT(A) discredited the statement of one N.S.R.Mohan, gold merchant, who admittedly had transactions with the family members of the assessee and it is his own statement that he had sold gold jewellery without bills. At this juncture, it will be worthwhile to take note of the following finding recorded by the CIT(A):-

> " 14.2 I have considered the submissions of the representative. The assessing officer is not correct in stating that the sons of the appellant

never claimed during the search and post search enquires that they had paid money to the appellant. Shri.S.P.Sanjal submitted letter dated 28.9.2002 before the assessing officer and in para 4 of the above letter it is clearly mentioned that he had paid his mother Rs.1 lakhs during July to September, 2000. Similarly, in the copy of account of the appellant in the books of Shri S.P.Karthick, there were entries for payment of Rs.1 lakh on various dated from 14.7.2000 to 11.08.2000. Thus, the contention of the appellant that she received Rs.2 lakhs from her sons is correct and it was claimed so even at the time of recording sworn statement on 27.2.2001. The assessing officer has not established that the sworn statement given by the appellant on 27.2.2001 is wrong by bringing cogent materials on record. The mere fact that there was no purchase vouchers for the jewellery cannot be the ground for making addition. As contended by the representative the jewellery could be purchased in the market without bills. The statement from Shri N.S.R.Mohan cannot be relied upon as he ad sold jewellery without bills to the appellant and, therefore, it is natural that he would say that he did not sell any jewellery to the appellant. As there is source for purchase of jewellery, I direct the assessing officer to delete the addition on the value of __ grams gold jewellery. Thus, the entire addition of Rs.3,64.705/- on account of unexplained jewellery is deleted."

6. From the above finding, it is clear that the CIT (A) had analysed the entire factual matrix and found that the assessee had received Rs.2 lakhs from her sons. Further, the CIT(A) after considering the conduct of the said N.S.R.Mohan held that his statement cannot be relied. When the Department filed the appeal before the Tribunal, the Tribunal examined the matter and granted partial relief to the assessee to the extent of 50 gms as there were purchase bills produced by the assessee in respect of 250 gms. The Tribunal solely relied upon the statement of N.S.R.Mohan stating that he had no transaction with the assessee and in the absence of purchase bill treated the same as unexplained jewellery. In our considered view, the approach of the Tribunal is incorrect because the statement of N.S.R.Mohan was that he did not sell any gold jewellerry to the assessee and it was the said N.S.R.Mohan has accepted the fact that the had more than seven transactions with the family members of the assessee. Furthermore, the CIT(A) found that

N.S.R.Mohan sold gold jewellery without bills and that is why he had stated that there were no transaction between himself and the assessee. Thus, if the Tribunal was of the view that the statement of N.S.R.Mohan should not be discredited, then it should have remanded the matter to the authority but could not have taken a contrary view based on the statement which was appreciated by the CIT(A) and factual finding was recorded. That apart, the Tribunal should have held that the interpretation given by the CIT(A) is either perverse or unsustainable. In the absence of any such finding, we are of the considered view that the Tribunal was not justified in interfering with the order passed by the CIT(A). That apart, the Tribunal also found that the assessee had sufficient funds and had proved the source of funds. In such circumstances, merely because gold merchant stated that he has no transactions with the assessee could not have been a reason to disbelieve the claim of the assessee. This is more so because admittedly N.S.R.Mohan had more than seven transactions with the family members of the assesssee and whenever he sold gold jewellery, it was without bills. Thus, for the above reasons, we find that the Tribunal erred in interfering with the order passed by the CIT (A).

7. For the above reasons, the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

svki

To

1. The Income Tax Appellate Tribunal Madras 'B' Bench.

2. The Commissioner of Income Tax (Appeals) II, Madurai

3. The Deputy Commissioner of Income Tax Central Circle -II, Madurai.

+1cc to Mr.T.N.Seetharaman, Advocate SR.No.5636

+1cc to Mr.M.Swaminathan, Advocate SR.No.5195

T.C.A.No.240 of 2011

RK(CO)
GMY(18/03/2019)