IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.4.2019

CORAM

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

Tax Case Appeal No.277 of 2019

Sunil Balasubramaniam Shankar ... Appellant

Vs.

The Income Tax Officer,
Non Corporate Ward 18(3)
Chennai ... 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, Chennai, dated 16.8.2018 made in ITA No.1682/Chny/2017 against the order of the Commissioner of Income Tax (Appeals-III) 121, Mahatma Gandhi Road, Chennai-600 034 dated 20/12/12 in ITA No.319/11-12 and Pan No.BBFPS4197B for the Assesment year 2009-10 and against the order of the Income Tax Officer Salary Ward III(3) Chenna-34 PAN/GIR No.BBFPS447B for the Assessment year 2009-10 previse year Assessment 2008-09

For Appellant : Mr. S.Sathiyanarayanan

For Respondent : Mr.T.R.Senthilkumar
Senior Standing Counsel assisted by
Ms.K.G.Usharani

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

The Assessee, Sunil Balasubramaniam Shankar has filed this Appeal under Section 260A of the Act raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal dated 16.8.2018 dismissing the Assessee's Appeal for the Assessment Year 2009-2010 upholding that the addition made by the Assessing Authority under Section 69 of the Act as unexplained investment in the 5 Credit Cards of the Assessee, which were allowed by the Assessee to be used by his friend Mr.Neelamegan and the total usage amount of RS.34,86,141/- was added as undisclosed income in the hands of the Assessee as unexplained income/expenditure:-

"i) Whether on the facts and circumstances of

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the case, was the Tribunal correct in upholding the decisions of the lower authorities especially when the opportunity of cross examination is not provided to the Assessee?

ii) Whether on the facts and circumstances of the case, was the Tribunal correct in upholding the assessment order when the same Deponent has reversed his version by filing an Affidavit before the Tribunal, while cross examination of such Deponent was denied by the Assessing Officer and CIT(A)?"

2. The relevant findings of the Tribunal in this regard are quoted below for ready reference:-

"6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. It is a second round of litigation. Vide order dated 27.11.2013 in I.T.A.No.1327/Mds/2013 & C.O.No.138/Mds/2013, the Tribunal directed the Assessing Officer to re-examine the explanation submitted before the learned CIT(A) that assessee's friend Shri.Neelamegan has used the credit cards and made payments and any other details as may be furnished. Accordingly, the Assessing Officer served notice on the assessee and called for details. The Assessing Officer also summoned Shri.Neelamegan under Section 131 of the Act. In his sworn statement, Shri.Neelamegan insisted that no credit cards can be used by a third party as signature of the card holder is mandatory while using credit card, and objected having used the credit card of the assessee and also emphasized that it is not all possible to use the credit card by a third party. Mr.Neelamegan also stated that he has no idea of four stores-namely Mls.Aakash Decors, Mls.C.R.Agencies, Mls.Jaya Medicals and Mls.Aruna Pharmacy, where the credit cards were used. Further, before the Assessing Officer, the assessee vide his letter dated 19.2.2015 stated that the credit card transactions are not real transactions of expenses and it is loan transactions. However, Mr.Neelamegan who is mentioned as agent in swiping credit card in various stores has refused having used assessee's credit card as well as having taken huge loan from the assessee and thus, the assessee's statement was not proved. Since the basic issue of the usage of credit cards by Shri.Neelamegan was not proved, the usage of credit card by the assessee for Rs.34,86,141/- was taken as unexplained expenditure and the Assessing Officer treated the same as deemed

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income as per section 69 of the Act and hence, assessed as income from other sources.

6.1 During the course of appellate proceedings, the learned CIT(A) called for the following details of M/s.Aakash Decors, M/s.C.R.Agenies, M/s.Jaya Medicals and M/s.Aruna Pharmacy, where the credit cards were stated to have used:

i. PAN of these four concerns.

ii. The copy of their ITR for the relevant period under consideration.

iii. The addresses of income tax office where they were filing their return of income.

iv. The copy of the ledger account of the appellant reflecting in their books of accounts for the relevant period under consideration.

v. The bank account statements of these four entities from which the funds were transferred to the account of the assessee. The address of the bank branches was also called for.

Before the learned CIT(A), on 1.2.2017, the AR furnished the addresses of these four parties. However, he failed to furnish the confirmation from these parties. Since the assessee could not furnish any other details before the learned CIT(A), the learned CIT(A) confirmed the addition. 6.2 It is the contention of the assessee that Shri.Neelamegan has used his credit card, but during the de novo assessment proceedings, the Assessing Officer examined Shri.Neelamegan under Section 131 of the Act, who has categorically denied that he has used the credit card of the assessee and moreover, he has stated that he has no idea of four stores-namely: M/s.Aakash Decors, M/s.C.R.Agencies, Mls.Jaya Medicals and Mls.Aruna Pharmacy, where the credit cards were used. So far as credit card transactions, Shri.Neelamegan has denied the entire transaction. Since the assessee failed to establish that Shri.Neelamegan used assessee's credit card and repaid the amount, we find that the addition made by the Assessing Officer was rightly confirmed by the learned CIT(A). We do not find any infirmity in the order passed by the learned CIT(A). Accordingly, the ground raised by the assessee stands dismissed."

3. Learned counsel for the Appellant-Assessee, Mr.Sathyanarayanan has submitted before the Court that the Original Assessment Order was passed by the Assessing Authority on 28.12.2011 for the Assessment Year 2009-2010 making some addition and disallowing the credit card payments to the tune of Rs.34,86,141/- and the Appeal filed by the Assessee before the

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Commissioner of Income Tax (Appeals) came to be allowed by order dated 20.12.2012, however, the Tribunal, in the first round of litigation, remanded the case back to the Assessing Authority vide its order dated 27.11.2013. Upon remand, the learned Assessing Authority, again made the same additions by making the following observation:-

> "The main contention of the assessee before the CIT(A) was that his credit cards were mainly used by his friend Mr.Neelamegan and repaid the amount to the assessee through fund Transfer/Direct deposit in assessee's account, cheque and cash modes just before the credit card due dates.
>
> The ITAT has appropriated the issue to the Assessing Officer stating that in course of scrutiny, the assessee had failed to provide the details of the expenses, usage of credit cards by his friend Shri.Neelamegan and payment thereof.
>
> During the course of assessment proceedings, the assessee produced only a statement showing a complete chart for each credit card with details of when swiped and repayment from which bank account and particulars of deposit into the Bank account for the purpose of repayment.
>
> The assessee did not provide provide details or prove that said credit cards were used by Mr.Neelamegan and repayment also made by him. Summons was issued to Mr.Neelamegan, however it returned unserved with a remark "LEFT'. Summons u/s. 131 was served to Mr.Neelamegan through affixture in the address. A sworn statement was recorded from Mr.Neelamegan, wherein he insisted that no credit cards can be used by a third party as signature of the card holder is mandatory while using credit card. Hence he objected having used the credit card of the assessee and also emphasized that it is not all possible to use the credit card by a third party. Mr.Neelamegan also stated that he has no idea of four stores-namely: M/s.Aakash Decors, M/s.C.R.Agencies, M/s.Jaya Medicals, M/s.Aruna Pharmacy, where the credit cards were used.
>
> The records of Mr.Neelamegan (AJBPM9737C) was collected from the concerned Jurisdictional officer.
>
> The Neelamegan's Bank account statement of HDFC account and ICICI Bank account statements, which was available in the Miscellaneous record were verified. It is seen from ICICI bank account of Mr.Neelamegan that only 3 cheques were issued by Mr.Neelamegan to the assessee:

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Date	Cheque No.	Amount
01.12.2008	372214	1,90,000
01.12.2008	372213	2,00,000
20.12.2008		1,00,000
Total		4,90,000

Mr.Neelamegan replied that those cheques were issued to the assessee for the repayment of loan taken by him from the assessee.

The assessee in his letter dated 19/02/2015, had stated that the credit card transactions are not real transactions of expenses, it is loan transactions. However, Mr.Neelamegan who is mentioned as agent in swiping credit card in various stores has refused having used assessee's credit card as well as having taken huge loan from the assessee, the assessee's statement was not proved. The assessee's statement of having used credit card as loan transactions cannot be accepted.

As the basic issue of the usage of credit cards by Mr.Neelamegan was not proved, the usage of credit card by the assessee for Rs.34,86,141/- is taken as unexplained expenditure. The unexplained expenditure for Rs.34,86,141/- is deemed income as per section 69 and hence, assessed as income from other sources."

4. The learned counsel submitted that the Assessing Authority took a Sworn Statement of Mr.Neelamegan without affording the Assessee an opportunity of cross-examining the said person viz., Mr.Neelamegan, who was his friend and colleague in the Insurance Company in which the Assessee was serving as Legal Officer and the Credit Cards were allowed to be used by his friend Neelamegan. All the credit entries came through NEFT Transfers from various Firms viz., M/s.Aakash Decors, M/s.C.R.Agencies, M/s.Jaya Medicals, M/s.Aruna Pharmacy as repayment of loans taken by Mr.Neelamegan from the Assessee by usage of his Credit Cards. The Assessing Authority, however, disbelieved the said version on the basis of the Affidavit given by Mr.Neelamegan that he never used the Credit Cards and took loan from the Assessee. In the absence of the said credit entries in the Bank having been proved by the Assessee, the Assessing Authority has made the additions in the hands of the Assessee and the submission of the Appellant in the second round also came to be disbelieved by the Commissioner of Income Tax (Appeals) vide order dated 10.2.2017 and by the learned Tribunal, by the impugned order passed on 16.8.2018.

5. Having heard the learned counsel for the parties, we are

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satisfied that no substantial question of law arises in the present Appeal requiring our further consideration under Section 260A of the Act. The very nature of the transactions involved in the present case by allowing usage of 5 Credit Cards by the Assessee to his alleged friend Mr.Neelamegan and the credit entries given through various Firms named above, in the bank account of the Assessee, created suspicion in the mind of the Assessing Authority and therefore, they called upon the Assessee to prove such credit entries. Despite the opportunity, by way of second round of litigation, provided by the learned Tribunal, it appears that the Assessee failed to prove the credit entries.

6. We are also unable to appreciate the usage of credit cards in the name of the Assessee by third party, which requires signatures of the person concerned using such Credit Cards. Apparently, therefore, all those transactions were undertaken by the third parties on behalf of the Assessee himself and therefore, the defence pleaded by the Assessee that they were allegedly loan taken by Mr.Neelamegan and repayments made by him to the Bank account of the Assessee does not inspire any confidence. In our opinion, therefore, the fact finding Body below have rightly added the said amount in the hands of the Assessee as unexplained income/expenditure of the Assessee. Such addition does not appear to be perverse requiring our consideration under Section 260A of the Act. The Appeal is devoid of merits and is liable to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

ssk.

To

1. The Income Tax Officer,
   Non Corporate Ward 18(3)
   Chennai

2. Income Tax Appellate Tribunal,
   Madras 'B' Bench, Chennai

3. The Commissioner of Income Tax
   121, MG Road, Chennai-600 034.

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4. The Income Tax Officer
Salary Ward III(3), Chennai - 600 034.

+1cc to Mr.TR.Senthilkumar, Advocate SR.No.37853

+1cc to Mr.S.Sathiyanarayanan, Advocate SR.No.42809(31/07/2019)

TCA No.277 of 2019

AD(CO)
GMY(30/05/2019)

HIGH COURT OF JUDICATURE MADRAS
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