IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.573 of 2018

Principal Commissioner of Income Tax
Central 1
No.108, Mahatma Gandhi road
Chennai ...Appellant/Respondent

-vs-

M/s.Dilip & Sons (HUF),
No.102, Eldams road,
Teynampet, Chennai-600 018
PAN:AAD HD 6701 N
...Respondent/Appellant

Tax Case Appeal under Section 260-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal, Madras “C” Bench, Chennai in I.T.A No.2718/Mds/2016, dated 11.01.2017 for the assessment years 2013-14, preferred against the order dated 01/08/2016 made in ITA.NO.47/2015-16 on the file of the Commissioner of Income Tax (Appelas)-18, Chennai filed against the Assessment order dated 31.03.2015 for the Assessment year 2013-14 by the Deputy Commissoner of Income Tax Central Circle1(2) Chennai.

For appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel

For Respondent: Mr.A.S.Sriraman

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

This Tax Case Appeal by the Revenue, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal, Madras “C” Bench, Chennai in I.T.A No.2718/Mds/2016, dated 11.01.2017 for the assessment years 2013-14.

2.The above Tax Case Appeal has been filed raising the following substantial questions of law:-

> "(i) Whether the Appellate Tribunal is right in deleting the addition towards unexplained investment in jewellery pertaining to 11065 grams on the basis of certain affidavits obtained by the assessee from relatives/family members, is not perverse when the asseessee in his sworn statement has admitted excess jewellery found of 16619.500 grams as his own undisclosed jewellery and accepted unexplained investment in the same and later in sworn affidavit dated 20.12.2012 has reiterated regarding such undisclosed jewellery?
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> (ii) Whether the Appellate Tribunal in right in deleting the addition towards unexplained investment in jewellery pertaining to 11065 grams, on the basis of affidavits obtained by the assessee from his relatives/family members, is not perverse when the same was obtained by the assessee after a year of the search, and moreover the list of such jewellery allegedly given to the assessee have not been mentioned in the concerned affidavits, thereby making in difficult for identification of the same?
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> (iii) Whether on the facts and circumstances of the case the learned Income-tax Appellate Tribunal is correct in law in deleting addition towards unexplained investment in jewellery to the extent of 11065 grams out of the total addition made by the AO towards unexplained investment in jewellery in the assessment in the case of assessee for the AY 2013-14?
>
> (iv) Whether on the facts and circumstances of the case and when in the affidavits obtained and filed by the assessee from the six gold smiths, the list of jewellery allegedly given by the concerned gold smith to the assessee have not been mentioned, the Ld ITAT is correct in law in directing the Assessing Officer to examine and verify the same?

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/revenue and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

4. The revenue is on appeal challenging the order passed by the Tribunal, which granted relief to the assessee. A search was conducted on 21.11.2012 in the business premises and residence of the assessee, who are engaged in gold jewellery business. During the course of search 21,456.550 grams of gold and jewellery were seized. The question is as to whether the

assessee was able to substantiate by producing the details as regards the gold and jewellery, which were seized. The assessee filed affidavits from 15 persons to substantiate his case. The Assessing Officer and CIT(A) rejected the affidavits on the ground that they were stereo-type affidavits. The Tribunal went into the matter and found that the assessee produced affidavits and explained the gold deposits as that of his relatives and those relatives numbering 15 persons produced their PAN numbers as well as the Wealth Tax returns and VDIS returns. The evidence produced by the assessee before the Assessing officer was held to be sufficient to explain the gold and jewellery which were seized at the time of search in assessee's premises. The following is the finding of the Tribunal on the factual issue:

> "8. We have considered the rival contentions and perused the orders of the authorities below. Jewellery found at the time of search was 21456.550 grams. One of the claim of the assessee was that such jewellery was of low purity and after excluding stones and conversion to 91.6% purity, its equivalent weight would be 18,302.790 grams only. However, neither ld. Assessing Officer nor ld. Commissioner of Income Tax (Appeals) had dealt with the correctness of this claim and why it could not be accepted. Coming to the variation in quantity out of gold jewellery deposits totalling to 15502 grams claimed to have been received from relatives, ld. Assessing Officer had accepted 4437 grams but rejected 11065 grams. Reason for accepting 4434 grams is presumably based on a reply give to question No.7 recorded from the assessee at the time of search which has been reproduced by us at para 5 above. Contention of the assessee however was that it had actually received more than what was mentioned in the statement and this was supported by affidavits received from respective relatives. Details of the claim of gold deposits from relatives and the extent to which it was accepted and extend to which it was supported by the Wealth Tax and VDIS returns of respective persons. Where the assessee asserts that it had received as gold deposits from its family members/relative more than what it was stated at the time of search and such assertion is supported by affidavits and corroborative evidences likes VDIS declaration of the giver/creditor and copies of Wealth Tax returns of the giver/creditors, in our opinion it was incorrect to brush it aside. Lower authorities

simply went by a presumption that the claim was an after thought. Gold deposits agreements stipulates a return on investments to the credit and therefore this cannot be deemed gratuitous transactions."

5. With regard to the claim of the assessee in respect of 1042 grams of gold jewellery belonging to the gold-smith, since the Tribunal has remanded this issue for fresh consideration to the Assessing Officer, we find there is no ground to interfere with the same.

6. Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for appellant/revenue referred to Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax (Central)-1 Vs. NRA Iron & Steel (P). Ltd. reported in [2019] 412 ITR 161(SC). We find that said decision can be of no assistance to the revenue in this appeal on account of the factual position therein. In the said case the assessee has received share capital/premium. However, the assessee was unable to establish the creditworthiness of investors-companies and they were found to be bogus. In such factual situation, t`he Hon'ble Supreme Court held that the Assessing Officer was justified in passing the Assessment Order making additions under Section 68 of the Act. As observed by us, this decision can be of no assistance to the case of the revenue. We find that factual details have been reappraised by the Tribunal to come to the conclusion as held in the impugned order.

7. Thus, we find there is no question of law much less substantial question of law arises for consideration. For the above reasons, the appeal filed by the revenue is dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ska/mp

TO:

1.The Registrar,
Income Tax Appellant Tribunal,
Madras "C" Bench

2.The Commissioner of Income Tax,
Appeals-18, Chennai-34.

3.The Deputy Commissioner of Income Tax,
Central Circle I(2), Chennai.

4.The Principal,
Commissoner of Income Tax,
Central I No. 108,
Mahatma Gandhi Road,
Chennai.

+1cc to M/s.T.R.Senthil Kumar, Advocate sr.54853
+1cc to M/s.S.Sridhar, Advocate sr.54326

Tax Case Appeal No.573 of 2018

rsi(co)
nr 07/08/2019