IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

TCA.Nos.139 & 150 of 2020

S.Suresh
.. Appellant in both appeals

Versus

The Assistant Commissioner of Income Tax,
Central Circle,
Salem 636 308.
.. Respondent in both appeals

COMMON PRAYER:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal ''B'' Bench dated 08.11.2019, 20/01/2020 and respectively made in M.P.No.290/Chny/2019 and ITA No.942/Chny/2019 against the order of the Income Tax Appellate Tribunal, Chennai, dated 08/11/2019 made in ITA No.942/Chny/2019, and against the order of the Appellate Tribunal, Chennai, dated 01/03/2019 made in PAN A22PS9875M against the Commissioner of Income Tax (A)-16, Chennai & (A)-18, dated 01/03/2019 & 12/01/2017 made in ITA No.06/2016-2017.

For Appellant in both appeals :Mr.G.Baskar

For Respondent in both appeals:Mr.T.R.Senthil Kumar

COMMON JUDGMENT
[Judgment of the Court was made by M.SATHYANARAYANAN,J.,]

The facts leading to these appeals are intertwined and therefore, the appeals are disposed of by this common judgment.

2. The appellant in both the appeals is the assessee and he is an individual. The assessee has filed his return of income dated 07.05.2017 for the assessment year 2009-2010, in response to the notice issued under Section 153-A of the Income Tax Act,

1961 [in short “IT Act”] dated 09.04.2015 declaring a total income of Rs.8,88,420/- and agricultural income of Rs.12,500/- and the said notice was proceeded by a Search under Section 132 of the IT Act, which was conducted in the business premises of the assessee on 22.05.2014 and during the course of search, the Executive Diary maintained by the assessee for the year 2008 was seized on 22.05.2014 and the relevant entries found are extracted below:

HOUSE			
MD		50,00,000	
BANK	34,00,000		
		7,00,000	
Total			91,00,000
Total Registration			90,00,000
Stamp & Registration			3,78,000
Bank Charges		50,000	
		94,28,000	
		91,00,000	

		3,28,000	

3. The voluntary statement under Section 132(4) of the IT Act was also recorded, wherein the assessee admitted the maintenance of the diary of the above said entries. The Commissioner of Income Tax (appeals) (in short hereinafter referred as ['CIT (Appeals)'] has taken into consideration the original voluntary statement given by the assessee under Section 132(4) of the ITAct as well as the restraction statement in the form of letter dated 26.10.2016 and also taken into consideration the various decisions rendered by the Division Bench of this Court in Thiru.S.Shyam Kumar Vs. Assistant Commissioner of Income Tax, Central Circle-III(3), Chennai ([2018] 99 taxmann.com 39 (Madras)), and confirmed the order of Assessment, vide order dated 01.03.2019.

4. The assesee, challenging the legality of the said order, preferred further appeal before the Income Tax Appellate Tribunal, Chennai (in short hereinafter referred as 'ITAT') and the ITAT, vide impugned order dated 08.11.2019 has taken into consideration that the only issue involved in the present appeal as to the addition of Rs.49,50,000/- on account of unexplained investment in the purchase of property and he had admitted undisclosed income in the form of on-money payment for purchase of property and further taken into consideration the retraction statement in the form of letter dated 26.10.2016 and also placing reliance upon [2018] 99 taxmann.com 39 (Madras) (cited supra), has confirmed the order of the CIT (Appeals).

5. The assessee, after the disposal of the appeal, filed M.P.No.290 of 2019 under Section 254(2) of the IT Act as to the non-consideration of Ground Nos.7 and 8 and the said Miscellaneous Petition has also ended in dismissal vide order dated 20.01.2020. The assessee aggrieved by the said order and making challenge to the same, had filed these appeals.

6. The assessee has raised the following Substantial Questions of Law:

Cryptic, non-considered & Perverse Order

a) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in passing a crptic, non-considered and perverse order?

validity of retracted confession obtained at odd hours:

b) whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not holding that the confession obtained at odd hours is not valid and cannot be relied on in evidence?

Diary Noting

C) whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in confirming the addition made under Section 69 of Income Tax, merely on casual diary noting without any corroborative material, more particularly when the appellant had explained the same to be projection?

Independent enquiry to ascertain Market Value

d) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not considering that independent enquiry should be made by the Department on the market value of the property to have corroborative material to substantiate the value arrived at by it more that fixed by the Statutory Authority?

Co-owner entitled to only 50% ownership

e) whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the entire addition of unaccounted investment under Section 69 of Income Tax Act in the hands of the appellant, when the appellant was only holding 50% interest as co-owner of the said house property?

Addition u/s 39

f)Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in upholding the addition of unaccounted investment u/s.69 of Income Tax Act, 1961 made without any corroborative evidences as brought out above?

Miscellaneous Petition

g) whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in dismissing the Miscellaneous Petition filed for rectification of mistake apparent on record u/s.254(2) of Income tax Act, 1961 for want to adjudication of the Grounds of Appeal raised in appeal?

h) whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not recalling its non-considered cryptic order without adjudicating the Grounds of Appeal raised in appeal?

7. The learned counsel appearing for the appellant / assesee has invited the attention of this Court to the typed set and additional typed set of documents and would submit that before the Assessment Order was completed, the appellant / assessee retracted his alleged voluntary statement under Section 132(4) of the Income Tax Act, vide letter dated 26.10.2016 and though he admitted the contents of particular entry, the fact remains that the Sale Deed came into being on 16.04.2008 and whereas the diary entry preferably dated 10.01.2008 entering the sale of the property and for the purpose of making improvement to the property being purchased, only entry was made actually and it was not even paid to the seller of the property. It is the further submission of the learned counsel appearing for the appellant / assessee that except the diary entry, no tenable or supporting material whatsoever has been collected except by recording statement and though in the grounds of appeal before the CIT (Appeals), specific ground has been raised as to the adjudication done under Section 47 (A) (1) of the Indian Stamp Act, the said issue have not been dealt with at all and it is also the submission of the learned counsel appearing for the appellant that it is also open to the Revenue to make an independent assessment of the immovable property purchased by the assessee, by the valuers and even the said exercise has not been done and hence prays for interference.

8. The learned Standing Counsel appearing for the Revenue would submit that admittedly the appellant / assessee did not dispute the maintenance of the diary as well as particular entry made in the diary and the only requirement is the voluntary statement given under Section 132 (4) of the IT Act as well as retraction statement in the form of letter, have to be taken into consideration and the Assessing Officer has also done that exercise and even in the retraction letter dated 26.10.2016, the adjudication done under Section 47 (A) (1) of the Indian Stamp Act have not been specifically raised or stated and burden lies heavy on the assessee in the light of the presumption cast upon him under Section 134(A) of the IT Act and the petitioner has

failed to discharge the presumption and would further add that since the findings are concurrent in nature, there are no Substantial Questions of Law raised for consideration in these appeals and prays for dismissal of these appeals.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. A perusal of the order passed by the CIT (Appeals) dated 01.03.2019 as well as the original order dated 08.11.2019 passed by the Income Tax Appellate Tribunal did not deal with the aspect as to the adjudication done under Section 47 (A) (1) of the Indian Stamp Act. It also appears from the materials placed in the form of additional typed set of documents dated 04.03.2020 filed by the appellant / assessee that challenging the adjudication done by the Special Deputy Collector, Salem, dated 19.08.2011, further appeal was filed under Section 47 (A) (5) of the Indian Stamp Act before the Chief Commissioner (Stamp), Salem and the value of the site fixed at Rs.545 per sq.ft has been increased to Rs.600 per sq.ft and it was also complied with.

11. In the considered opinion of this Court, the said order passed by the statutory authority would definitely have a bearing on the adjudication done by the authorities below and despite the fact that specific ground has been raised before the CIT (Appeals) as well as before the ITAT, the said grounds have not been considered and adjudicated. Therefore, the following substantial question of law raises for consideration:

> Whether the order of CIT (appeals) dated 01.03.2019, as confirmed by the impugned order of ITAT dated 08.11.2019, as to the non consideration of adjudication done under Section 47 (A) (1) of the Indian Stamp Act as well as adjudication done by the Chief Revenue Officer / Inspector General of Registration, Chennai 28 in the appeal filed under Section 47 (A) (5) of the Indian Stamp Act, is sustainable in law?

12. In the considered opinion of this Court, the Substantial Question of Law framed is answered in affirmative in favour of the appellant / assessee, in the light of the reasons assigned above.

13. In the result, T.C.No.150/2020 is partly allowed and the impugned order dated 08.11.2019 passed by the Income Tax Appellate Tribunal is set aside and the matter is remanded to the Income Tax Appellate Tribunal 'B' Bench for fresh consideration as to the order of the Chief Revenue Officer / Inspector General of Registration, Chennai 28 dated 11.02.2013

in Pa.Mu.No.59078/N2/2010 and as a consequence of allowing T.C.A.No.150/2020, no orders are necessary in T.C.A.No.139/2020 and as a result, the said appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Income tax Appellate Tribunal,
   "B" Bench, Chennai

2.The Assistant Commissioner of Income Tax,
Central Circle,
Salem 636 308.

3.The Commissioner of Income tax (A)-16, Chennai.

+1cc to Mr.G.Baskar, Advocate SR.No.20038

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.No.19614

TCA.Nos.139 & 150 of 2020

EV(CO)
GMY(01/07/2020)