IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

TCA.No.68 of 2018

N.Tamilselvi .. Appellant

Versus

The Deputy Commissioner of Income Tax,
Central Circle III,
Madurai 625 002. .. Respondent

PRAYER:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Bench D: Chennai, dated 31.08.2017 made in ITA No.I.T.(SS)A. No.01/Mds/2017, against the order passed by the Commissioner of Income Tax(Appeals)-19, 108, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034 made in ITA No.368/14-15 Dated 08.12.2016.

Against the order passed by the Deputy Commissioner of Income Tax, Central Circle-III, Madurai 625 002, made in PAN/GIR No.3012-T dated 29.05.2002.

For Appellant : Mr.G.Baskar

For Respondent : Mr.T.R.Senthil Kumar

JUDGMENT

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

An Assessee is the appellant. A perusal of the materials placed before this Court in the form of typed set of documents and additional typed set of documents would disclose the following facts.

2. A search under Section 132 of the Income Tax Act 1961 [in short "IT Act"] was conducted in the case of the husband of the

appellant / Assessee namely Mr.G.Narambulingam, on 18.01.2000 and during the course of search, certain investments in favour of appellant / assessee was found and the Block Assessment Proceedings had been initiated against the appellant / assessee as well as against her husband viz., Thiru.G.Narambulingam by issuing notice under Section 158BD of the IT Act on 31.01.2000 and 31.05.2000 respectively. The appellant / assessee has filed her return of Income on 28.02.2002, declaring Nil Income and the husband of the assessee has also filed his return of income on 31.01.2001.

3. The Deputy Commissioner of Income Tax / Assessing Officer, Madurai, after perusal and consideration of the relevant materials, computed the assessment years / block period of assessment years 1990 to 1991 and 1999-2000 and assessment year 2000-2001, part as follows:

> 8.7. Smt.Tamil Selvi, his wife, is a partner in the firm, M/s.Sakthi Wines, and her Capital account balance thereini as on 31.03.97, is shown at Rs.30,000/- only and there are no debits to cover the sum of Rs.3 lakhs referred to earlier. It is relevant to note here that in her sworn statement, she has clearly stated that she has no independent sources of income and even at the time of hearing, no evidence in this regard is produced. Consequently the conclusion to be reached here is that the credit of Rs.3 lakhs in the name of his wife is not genuine, and requires to be, and is assessed as his income from undisclosed sources for the Assessment year 2000-2001.

4. The appellant / assessee aggrieved by the said Assessment Order dated 29.05.2002, preferred an appeal before the Commissioner of Income Tax (Appeals) Chennai. It appears that the appellant / assessee did not appear before the said Appellate Authority on numerous occasions and the Appellate Authority, taking note of the evidence of the case as well as the written submissions, has dismissed the appeal, vide order dated 08.12.2016.

5. The appellant / assessee, challenging the legality of the said order filed further application before the Income Tax Appellate Tribunal (ITAT), Chennai in IT(SS) A NO.1 of 2017 and the Income Tax Appellate Tribunal, vide impugned order dated 31.08.2017, has partly allowed the appeal and aggrieved by the said order in rejecting the other plea, the assessee has filed the present appeal.

6. The appeal was entertained on 20.03.2018 and the following Substantial Questions of Law were raised:

i. Whether the Income Tax Appellate Tribunal substantially erred in law in confirming the addition of undisclosed income of the appellant assessee under Section 158 (b) of the Income Tax Act, 1961, without taking into consideration the total income in previous years, which had not exceeded the maximum exemption amount?

ii. Whether the Income Tax Appellate Tribunal substantially erred in law in confirming the additions in respect of the price of purchase of site and cost of construction, when the same had been added in the hands of the appellant's husband as total investment for purchase and construction?

iii. Whether the learned Tribunal substantially erred in law in confirming the addition of the amounts invested as capital in M/s.Sakthi Wines, a Partnership Firm, when the same has already been treated as undisclosed income in the hands of the firm, M/s.Sakthi Wines?

iv. Whether, in the facts and circumstances of the instant case, it was incumbent upon the Income Tax Appellate Tribunal to remand the issue of credit worthiness of the loan given by the appellant to her husband, when the same addition in the hands of the appellant's husband has been remanded to the Commissioner of Income Tax (Appeals) by a Bench of Co-ordinate strength?

7. The learned counsel appearing for the appellant / assessee has invited the attention of this Court to the additional typed set of documents dated 01.12.2017, which pertains to the Assessment Order and other related proceedings of her husband namely, Thiru.G.Narambulingam (now changed his name as Mr.Vijay Balaji) and also a comparative sheet as to the assessment and related proceedings of the appellant / assessee as well as her husband and would submit that in respect of certain issues, the Income Tax Appellate Tribunal in the order dated 30.04.2008, filed by her husband, has remanded the matter to the Commissioner of Income Tax(Appeals), Madurai and during the course of arguments, it was also brought to the knowledge of Income Tax Appellate Tribunal and despite the fact, the said plea have not been properly considered by the Income Tax Appellate Tribunal and prays for remanding the matter to

Commissioner of Income Tax(Appeals) on the said issues.

8. Per contra, learned Standing Counsel appearing for the Revenue would submit that admittedly the appellant / assessee did not appear before the Commissioner of Income Tax(Appeals) on very many occasions and based upon the evidence available and written submissions / grounds, the Commissioner of Income Tax (Appeals) had dismissed the appeals and from the impugned order passed by the Income Tax Appellate Tribunal, it is not clear whether the entire contents of the order dated 30.04.2008 passed by the Income Tax Appellate Tribunal, with regard to the husband of the assessee, has been brought to the knowledge or not and therefore, the plea made by the learned counsel appearing for the appellant for remanding the matter for limited purpose to Commissioner of Income Tax(Appeals) cannot be termed as a Substantial Question of law and he would further add that the impugned order, which is the subject matter of this appeal, came to be passed on 31.08.2017, whereas, the Income Tax Appellate Tribunal has passed the order dated 30.04.2008 in respect of her husband. Although when opportunity was available to the appellant / assessee to put forth the same before the Commissioner of Income Tax(Appeals), she has failed to avail the same and she deliberately remained absent for very many hearings and as such this Court may not show any indulgence to the appellant / assessee and prays for dismissal of this Appeal.

9. This Court has carefully considered the arguments advanced by the learned counsel appearing for the appellant / assessee and the learned Standing Counsel appearing for the Revenue.

10. The Assessing Officer, in paragraph no.5 of the order dated 29.05.2002, had dealt with the investments relating to the purchase of an old theatre building along with land appurtenant to it at Ambasamudram through registered Sale Deed dated 15.07.1996 jointly in the name of the assessee and her husband viz., Mr.G.Narambulingam, wherein the husband of the appellant / assessee claimed as to the contribution made by the appellant / assessee herein to the tune of Rs.3,00,000/- as well as the demolition of the said building and construction of new theatre namely Durga Theatre and contribution of further sum of Rs.2,00,000/- from his wife.

11. In the appeal filed by the husband of the appellant, the Income Tax Appellate Tribunal had dealt with the said issue in the order dated 30.04.2008 at paragraph no.14 and in paragraph no.14.1, the Income Tax Appellate Tribunal had remanded the matter as to the contribution made by the appellant / assessee

to the tune of Rs.3,00,000/- and Rs.2,00,000/- respectively (with a total of Rs.5,00,000/-) to the Commissioner of Income Tax (Appeals) to give a proper order in this regard.

12. As regards the case of construction of residential building amounting to a sum of Rs.2,50,000/-, in paragraph no.8 of the Assessment Order, though it was observed that the said amount has been treated as an undisclosed income of the husband of the appellant, it was observed that no evidence has been furnished to establish the agricultural income earned by him and that apart, the appellant / assessee does not have any agricultural income on her own and citing the said reasons, the said amount has been included in her hands as her undisclosed income for the assessment year 1992-93.

13. It is the submission of the learned counsel appearing for the appellant / assessee that once it is included and treated as undisclosed income of her husband, it cannot be included as undisclosed income of the petitioner herein for the Assessment Year 1992-1993 and also prays for remand in respect of the said issue also.

14. In the original Assessment Order at paragraph no.11, the claim of the appellant / assessee that she had joined M/s.Sakthi Wines as a partner on 02.04.1995 was taken into consideration and it was found that from capital account of M/s.Sakthi Wines, there was no evidence as to the drawings made by the appellant / assessee as a partner. That apart, the Assessing Officer has also recorded the finding that the assessee does not have any other agricultural income and in the absence of any record of the investment in her name, all the investments have to be included in the corresponding assessment years and no set-off will also be made available towards the said year. Insofar as the husband of the assessee is concerned, the Commissioner of Income Tax(appeals) in paragraph no.13 of the order dated 31.01.2006, had dealt with the said issue wherein a finding has been recorded that the appellant therein namely, Mr.G.Narambulingam, at the time of search, admitted that except Smt.Rajam, others are only his benamis, and the other partners did not make any capital contribution and even in the case of Tmt.Rajam, her husband was only an employee of Mr.G.Narambulingam and she acted as a benami of him and therefore the entire capital contribution in the firm of M/s.Durga Wines and M/s.Sakthi Wines has been treated as undisclosed income at the hands of Mr.G.Narambulingam.

15. In sum and substance, in the light of the fact that the issue relating to contribution of Rs.3 lakhs and Rs.2 lakhs respectively has been remanded by the Income Tax Appellate Tribunal in the order dated 30.04.2018 in the appeal filed by her husband, in respect of cost of construction of residential building for Rs.2,50,000/- and capital contribution in respect of firms namely, M/s.Durga Wines and M/s.Sakthi Wines, which have been treated as undisclosed income at the hands of her husband, this Court may remand the appeal in respect of those three issues are concerned.

16. The learned standing counsel appearing for the Revenue strongly opposed the said plea for the reason that the appellant / assessee has lost the opportunity before the Commissioner of Income Tax(Appeals) and in the light of the long passage of time between the order of the Income Tax Appellate Tribunal dated 30.04.2008 pertaining to the husband of the assessee and the present impugned order dated 31.08.2017, pertaining to the appellant / assessee, there is no need or necessity to remand the matter.

17. In the considered opinion of this Court, the plea made by the learned counsel appearing for the appellant / assessee merits acceptance for the reason that admittedly, search and seizure operations were carried out under Section 132 of the IT Act in the residential premises of the husband of the appellant viz., Mr.G.Narambulingam on 18.01.2000 and notice under Section 158BD of the IT Act were issued to the appellant and her husband on 31.05.2000 and 31.01.2020 respectively. No doubt, in the appeal filed before the Commissioner of Income Tax(Appeals), challenging the order of assessment dated 29.05.2002 passed by the Assessing Officer, the appellant did not appear and based on the materials available, the Commissioner of Income Tax (Appeals) had dismissed the appeal, vide order dated 08.12.2016. However in the appeal filed before the Income Tax Appellate Tribunal, a specific ground as to the inclusion of certain income at the hands of her husband and remanding of the matter had been raised and in fact the Income Tax Appellate Tribunal in the impugned order dated 31.08.2017 in paragraph no.9 though referred to the order of remission passed by the Income Tax Appellate Tribunal, as regard her husband, proceeded to dispose of the appeal.

18. It is also brought to the knowledge of this Court that after the order of remission passed by the Income Tax Appellate Tribunal, vide order dated 30.04.2008, as to the husband of the appellant / assessee, the proceedings are not yet completed.

19. In the considered opinion of this Court, once certain portion of the undisclosed income are added to the husband and that in respect of certain issues, the Income Tax Appellate Tribunal in the order dated 30.04.2008, filed by her husband, has remanded the matter to the Commissioner of Income Tax (Appeals), Madurai and during the course of arguments, it was also brought to the knowledge of Income Tax Appellate Tribunal, it should have been remanded to the Commissioner of Income Tax (Appeals) for adjudication.

20. In the result, the Substantial Questions of Law raised by the appellant / assessee, answered in her favour.

21. In the result, the present Tax Case Appeal is partly allowed and the impugned order of the Income Tax Appellate Tribunal dated 31.08.2017, is set aside, insofar as the findings given in paragraph nos.7.2, 8, 9.3 and 8 and the said issues are remanded to the jurisdictional Commissioner of Income Tax (Appeals) for further consideration and adjudication and the appellant / assessee is directed to extend their maximum cooperation to the jurisdictional Commissioner of Income Tax (Appeals) in this regard and the said official may accord priority and give disposal to the said appeals as expeditiously as possible.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal
''D'' Bench, Chennai.

2.The Commissioner of Income Tax,
Nungambakkam, Chennai-600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle III, Madurai-625 002.

4.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.G.Baskar, Advocate SR.19002
+1cc to Mr.TR.Senthilkumar, Advocate SR.18940

AK(CO)
CB(19/06/2020)