

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2020

Pronounced on : 16.10.2020

Coram

THE HONOURABLE **Mr. JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **Mrs. JUSTICE V.BHAVANI SUBBAROYAN**

T.C.A.Nos.1060 of 2019; 18 and 72 to 78 of 2020

T.C.A.No.1060 of 2019

Principal Commissioner of Income Tax
Central 2,
No.108, Mahatma Gandhi Road,
Chennai - 600 034

.. Appellant

Vs.

Shri. Rakesh Sarin
No.5-E, Mookambigai Complex,
Lady Desika Road,
Chennai - 600 004

..Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, is directed against the Common Order passed by the Income Tax Appellate Tribunal "D" Bench in I.T.(SS)A.No.66/Chny/2007 dated 11.03.2019 for the Block Period 1997-98 to 2002-03 and part of 2003-2004.

In all Tax Case Appeals

For Appellant : Mr.T.R.Senthilkumar
Senior Standing Counsel
Ms.K.G.Usha Rani

For Respondent : Mr.Mohan Parasaran
Senior Counsel for
Mr.A.V.Arun
Mr.Arunesha [TCA No.1060 of 2019]
Mr.K.Ravi [for other appeals]

COMMON JUDGMENT

T.S.SIVAGNANAM, J.

These Tax Case Appeals have been filed by the Revenue under Section 260-A of the Income Tax Act, 1961 [the 'Act' for brevity] challenging the orders dated 11.03.2019; 20.03.2019 and 12.03.2019 respectively in I.T.[SS]A.No.66/Chny/2007; I.T.(SS)A.No.17/Chny/2014; I.T.A.No.100/Chny/2013; I.T.A.No.864/Chny/2011; I.T.A.No.99/Chny/2011; I.T.A.No.866/Chny/2011; ITA No.15/Chny/2015; I.T.A.No.867/Chny/2011; I.T.A.No.865/Chny/2011 passed by the Income Tax Appellate Tribunal Madras 'D' Bench, Chennai [hereinafter referred to as 'Tribunal'] for the Block Period 1997-1998 to 2002-2003 and part of 2003-2004.

2. These appeals have been filed by the revenue. T.C.A.No.1060 of 2019 was admitted on 02.01.2020 on the following substantial questions of law:-

“(i)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in confirming the CIT(A)'s order even though the CIT(A) admitted additional evidence under Rule 46A without providing an opportunity of being heard to the Assessing Officer, while finalising the Block Assessment?

(ii)Whether on the facts and in the circumstances of the case, the ITAT was correct in confirming the learned CIT(A)'s order in giving relief on all the issues despite the fact that on certain issues relief has given by stating that after examining the books of accounts and verifying the facts it is concluded that the amounts were properly account in the books of accounts and on certain issues relief has given by stating that it is an admitted fact that the books of accounts of the assessee were incomplete and therefore proper opportunity ought to have been provided to the assessee for completing his books?

(iii)Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.1,97,00,000/- towards loan extended which was not account in the books of account even though the learned CIT(A) erred in law and on facts in admitting additional evidence under Rule 46A without providing an opportunity of being heard to the AO?

(iv) Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.98,25,000/- towards advance even though the learned CIT(A) erred in law and on facts in admitting additional evidence under Rule 46A without providing an opportunity of being heard to the AO?

(v) Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.1,26,73,370/- towards advances from consolidated account even though the CIT(A) erred in law in admitting additional evidence under Rule 46A without providing an opportunity of being heard to the AO? "

3. T.C.A.No.18 of 2020 was admitted on 22.01.2020 on the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in deleting the additions made on account of various undisclosed incomes when the assessee had not filed any return of income u/s.139 before the date of search?

(ii) Whether on the facts and in the circumstances of the case, the ITAT is correct in law in not appreciating that is the onus cast on the assessee to prove that when no money was advanced, why the pro-notes were found in her custody?

(iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing the claim of

the assessee towards undisclosed income from various modes without appreciating that the assessee was not able to explain the source for all those investments?

(iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing the claim of the assessee towards other additions while upholding the enhancement made by the CIT(A), which is completely contradictory?"

4. T.C.A.Nos.72 to 78 of 2020 was admitted on 12.02.2020 on the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal in confirming the CIT(A)'s order even though the CIT(A) admitted additional evidence under Rule 46A without, providing an opportunity of being heard to the Assessing Officer, while finalising the Block Assessment?

(ii) Whether on the facts and in the circumstances of the case, the ITAT was correct in confirming the learned CIT(A), in the Block Assessment Order, while giving relief on certain issues, relief has given by stating that after examining the books of accounts and verifying the facts it is concluded that the amounts were properly account in the books of accounts and on certain issues relief has given by stating that it is an admitted fact that the books of accounts of the assessee were incomplete and therefore proper opportunity ought to have

been provided to the assessee for completing his books, which is contradicting?'

5. With the consent of learned counsels on either side, T.C.A.No.1060 of 2019 is taken as a lead case where the assessee is Shri.Rakesh Sarin, who is also the respondent / assessee in T.C.A.Nos.72 to 78 of 2019. The respondent / assessee in T.C.A.No.18 of 2020 is the spouse of Shri.Rakesh Sarin. In this Common Judgment, we shall refer to Shri. Rakesh Sarin, as the 'assessee'.

6. The assessee is an individual engaged in the business of financing. A search was conducted in the assessee's premises under Section 132 of the Act between 27.03.2003 and 28.08.2003. Thereafter, the block assessment was completed under Section 153BC read with Section 143 (3) of the Act on 30.06.2005. The assessing officer computed the total undisclosed income of Rs.23,40,15,480/- and calculated the income tax payable thereon at Rs.16,21,72,727/-. The assessee preferred appeal before the Commissioner of Income-Tax [Appeals] -X, Chennai. The appeal was allowed and all 28 additions made by the assessing officer were deleted. Aggrieved by the same,

the revenue preferred appeal to the Tribunal, which has been dismissed by the Impugned Order.

7. The Impugned Order has been passed by the Tribunal upon the matter being remanded to the Tribunal pursuant to the Judgment in T.C.A.No.677 of 2013 dated 21.10.2013. The assessee had filed a Writ Petition challenging the search operations and consequential proceedings in W.P.No.25078 of 2005, which was allowed by the learned Single Bench. Aggrieved over the same, the revenue preferred Writ Appeal before the Hon'ble Division Bench in W.A.No.874 of 2011, which was admitted by the Hon'ble First Bench on 23.06.2011 and an order of Interim Stay was granted. Subsequently, the Writ Appeal filed by the Revenue was allowed by Judgment dated 24.09.2013. Consequently, the proceedings had to be restored to the original position. In the interregnum, the Tribunal allowed the assessee's appeal by order dated 09.06.2011 on the ground that the Writ Petition filed by the assessee was allowed. As against the said order of the Tribunal, the Revenue preferred T.C.A.No.677 of 2013, which was disposed of by a Judgment dated 21.10.2013 after Writ Appeal 874 of

2011 was allowed by Judgment dated 24.09.2013. The Division Bench set aside the order passed by the Tribunal dated 09.06.2011 and remitted the matter back to the Tribunal for consideration on the merits of the matter other than the limitation issue, which was decided against the assessee. This was how the Tribunal reheard the matter and passed the impugned order.

8. Mr.T.R.Senthilkumar, learned senior standing counsel for the appellant / revenue submitted that the CITA grossly erred in allowing the assessee's appeal and deleting all the additions made by the assessing officer on the undisclosed income without considering the materials, which were available on the file of the assessing officer and without appreciating the reasons assigned by the assessing officer. Further, by relying upon the decision of the Hon'ble Supreme Court in Shibu Soren Vs. C.I.T. reported in [2016] 69 Taxmann.com 435 (SC), it was submitted that where an assessee had never filed their regular returns of income, mere statement recorded under Section 131 prior to search giving details of bank accounts would not amount to disclosure of income as to tax the said amount in regular assessment.

9. Further, by relying upon the decision of the Hon'ble Supreme Court in Assistant Commissioner of Income-Tax, Chennai V. A.R.Enterprises reported in [2013] 350 ITR 509, it is submitted that when the assessee did not file his return before the due date, and it was only after intimation of block assessment proceedings, the return was filed and in such case, mere payment of advance tax made earlier would not amount to disclosure of total income and consequently, the block assessment should have been upheld by the Tribunal.

10. It is further submitted that materials which have collected during survey can be utilised while making block assessment in respect of an assessee under Section 158BB read with Section 158BH of the Act, as the such material would fall within the ambit of "and such other materials or information as are available with assessing officer and relatable to such evidence" occurring in Section 158BB. In support of such contention reliance was placed on the decision of Hon'ble Supreme Court in the Commissioner of Income Tax Vs. S.Ajit Kumar reported in [2018] 93 Taxmann.com 294(SC).

11. Further, the learned counsel had in a great extenso took us through the findings recorded by the assessing officer while completing the assessment and making additions under 28 Heads of undisclosed income and correspondingly referring to the observations made by the CIT while allowing the assessee's appeal, submitted that none of the issues, which were taken note of by the assessing officer was considered by the CITA and the order suffers from perversity on the face of it.

12. It is also submitted that before the Tribunal, the revenue had placed all materials and prayed for sustaining the order of the assessing officer. However, the Tribunal also fell in error by giving a stamp of approval to the finding of the CITA. It is further submitted that the Tribunal has not recorded any reasons as to why the grounds raised by the Revenue before it are not sustainable, but merely endorsed the order passed by the CITA. Therefore, it is submitted that when the order passed by the CITA as well as the Tribunal suffers from errors on the face of it and when perversity is writ large on the face of the order, this Court would exercise its powers under Section 260A of the Act, as such issue would be a substantial question of law.

13. Per contra, Mr.Mohan Parasaran, learned senior counsel assisted by Mr.A.V.Arun and Mr.Arunesh, learned counsels for the respondents / assessee submitted that there is no perversity on the face of the impugned order. The Tribunal has appreciated the factual position and has recorded its finding by approving the finding rendered by the CITA. The CITA interfered with the order passed by the assessing officer, as it was found to be perverse and the CITA and the Tribunal concurrently rendered factual finding in favour of the assessee and this Court exercising power under Section 260A of the Act will not interfere with such a finding of fact, especially, when the order passed by the Tribunal as well as the CITA is not a cursory disposal, but a detailed order, considering all issues.

14. Also, it is submitted that though the revenue has raised a substantial question of law referring to Rule 46A by contending that the CITA had permitted the assessee to produce documents without opportunity to the assessing officer, such is not the factual position, as no such record was admitted by the CITA, without notice to the assessing officer. Therefore, the said issue regarding the applicability

of Rule 46A would not arise in the instant case. Further, on facts, the Tribunal has given independent reasons and in doing so, referred to the various material, which was taken note of by the CITA. Such finding would not be interfered in an appeal under Section 260A of the Act. In support of his submissions, the learned counsel placed reliance on the decision of the Division Bench of this Court in T.C.A Nos.249 and 250 of 2019 dated 01.04.2019 in the case of Commissioner of Income Tax, Madurai Vs. T.Ani Chandra Kala.

15. The facts in T.C.A.No.18 of 2020, wherein the respondent / assessee is the spouse for the respondent in T.C.A.No.1060 of 2019 are identical and it was also a block assessment and the assessing officer completed the assessment by order dated 23.12.2005 by holding that Rs.2,65,51,725/- is the undisclosed income of the assessee and demanded a sum of Rs.1,84,00,345/- as tax, surcharge and interest.

16. The assessee, Smt.Renu Sarin, filed an appeal before the Commissioner of Income Tax [Appeals] (C)-II, Chennai [CITA], which was dismissed and the proposal for enhancement which was made

during the pendency of the appeal proceedings was allowed and the undisclosed income of the assessee was enhanced. Aggrieved by the same, the assessee preferred appeal to the Tribunal, which was allowed by order dated 20.03.2019.

17. The T.C.A.Nos.72 to 78 of 2019 have been filed by the Revenue where the respondent / assessee is Shri. Rakesh Sarin. The assessments were completed on various dates computing the total undisclosed income. Aggrieved by the same, the assessee preferred appeals to the Commissioner of Income Tax Appeals – II (CITA), which were allowed consequent upon the order passed by the CITA dated 04.01.2017 in the assessee's case, which is subject matter of T.C.A.No.1060 of 2019. Aggrieved by such order passed by the CITA, the revenue preferred appeal before the Tribunal, which was dismissed by order dated 12.03.2019 by following the decision in I.T.SS.A.No.66/Chny/2007 dated 11.03.2019, which is impugned in T.C.A.No.1060 of 2019.

18. Heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usha Rani, learned counsel for the appellant and Mr.Mohan Parasaran, learned Senior Counsel for Mr.A.V.Arun, learned counsel for Mr.Arunesha [TCA No.1060 of 2019], learned counsel and Mr.K.Ravi [for other appeals], learned counsel for the respondent / assessee.

19. Before we list out the substantial questions of law, which have to be answered in these appeals, we considered the submissions made on either side as to whether at all the issue pertaining to the applicability of Rule 46A would arise in the instant cases.

20. The revenue cannot dispute the fact that the CITA before passing the order dated 04.01.2007, did not admit any fresh evidence, but proceeded to consider the correctness of the findings of the assessing officer. Therefore, in our considered view such question would not arise for consideration, therefore, we re-frame the substantial questions of law in these appeals as follows:

(i) Whether on the facts and in the circumstances of the case, the ITAT was correct in confirming the learned CIT(A)'s order in giving relief on all the issues despite the fact that on certain issues relief has given by stating that after examining the books of accounts and verifying the facts it is concluded that the amounts were properly account in the books of accounts and on certain issues relief has given by stating that it is an admitted fact that the books of accounts of the assessee were incomplete and therefore proper opportunity ought to have been provided to the assessee for completing his books?

(ii) Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.1,97,00,000/- towards loan extended which was not accounted in the books of account.

(iii) Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.98,25,000/- towards advance.

(iv) Whether, on the facts and in the circumstances of the case, the ITAT was correct in confirming the CIT(A)'s order in deleting the addition of Rs.1,26,73,370/- towards advances from consolidated account.

(v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in deleting the additions made on account of various undisclosed incomes when the assessee had not filed any return of income u/s.139 before the date of search?

(vi) Whether on the facts and in the circumstances of the case, the ITAT is correct in law in not appreciating that is the onus cast on the assessee to prove that when no money was advanced, why the pro-notes were found in her custody?

(vii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing the claim of the assessee towards undisclosed income from various modes without appreciating that the assessee was not able to explain the source for all those investments?

(viii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing the claim of the assessee towards other additions while upholding the enhancement made by the CIT(A), which is completely contradictory?"

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21. A perusal of the assessment order dated 30.06.2005, order of the CITA dated 04.01.2007 and order of the Tribunal dated 11.03.2019 shows that they are all running to several pages. However, that by itself

cannot go to prove that an order is detailed and reasoned order, for which we are required to examine the orders and ascertain as to whether though the order runs to several pages, whether reasons have been assigned and if reasons have been assigned, whether the reasons are sustainable in law and on facts.

22. We have perused the assessment order and we find that the assessee had been given sufficient opportunity by the assessing officer on each and every head of undisclosed income. After the search, the assessee had filed a return offering Rs.18,50,000/- as undisclosed income, which was taken note of, after the assessee filed break up details and the said sum was treated as 'undisclosed income'.

23. By way of illustration, we take up the discussion in Paragraph No.4.1 of the assessment order where there was a discrepancy in cash to the tune of Rs.2,40,102/-, which was found in the residence of the assessee. The assessing officer by letter dated 28.10.2004 called upon the assessee to explain whether the cash found at the business premises and his residence were reflected in his books of accounts.

The assessee by letter dated 03.12.2004 stated that the cash of Rs.2,43,200/- found at his residence, a sum of Rs.1,56,200/- belong to his family members, namely his sisters and brother-in-law.

24. The assessing officer considered his submission and agreed that the total sum of Rs.87,000/- belong to the three persons and not the assessee. The assessee by letter dated 11.01.2005 stated that his family members have admitted the cash balance of Rs.2,09,922/- as on 31.03.2003 in the return of income filed for the assessment year 2003-2004 on 16.02.2004 [after the search operations]. It was stated that Rs.1,56,200/- belong to the assessee and his family members and it is from out of the cash balance of Rs.2,09,922/-. The account books and the computer, which was found in the business premises of the assessee during search, showed credit balances of Rs.12,52,900/- in the name of the assessee, Rs.7,68,000/- in the name of Ms.Aashana Sarin, Rs.4,72,330/- in the name of M/s Rakesh Sarin & Sons and Rs.2,86,313/- in the name of Ms.Renu Sarin.

25. The assessing officer examined the aspect and held that the evidence found during search indicates negative cash balance where the assessee has filed the return of income for the same period after the

date of search showing positive cash balance. Therefore, assessee was requested to prove the cash balance as shown by him in the return of income filed after the date of search by producing books of accounts by order dated 18.02.2005. The assessing officer specifically records that in response to the said order, the assessee has not furnished any reply. Therefore, the assessing officer concluded that the sum of Rs.1,56,200/- is treated as 'undisclosed income'.

26. In paragraph No.4.3, the assessing officer considers about the unexplained cash of Rs.2,40,102/- found in the business premises. The assessee by letter dated 03.12.2004 stated that the cash belongs to M/s Akshya Mercantile Private Limited and they have disclosed the same in the return of income filed on 18.02.2004 [after search]. The assessing officer pointed out that at the time of search, books of accounts maintained by M/s Akshaya Mercantile in the computer was found and as per the cash book, the company had a credit balance of Rs.84,742/- as on the date of search and the return of income filed by M/s Akshya Mercantile was after the date of search. Further, the assessee is the Managing Director of M/s Akshya Mercantile and the return of income filed after the date of search has not been proved by

production of books of accounts and accordingly, the explanation offered was rejected, a sum of Rs.2,40,102/- was treated as 'undisclosed income'.

27. With regard to several pronotes and cheques which were kept in a safe custody by the assessee were found and seized during search operations. Some of the pro-notes did not contain the name of the lender and date of payment and assessee was requested to furnish the details of the name of the lender and the date of advancing loan. In respect of pronotes, which did not contain the name of the lender, however, the assessee did not furnish the details.

28. By letters dated 28.10.2004 and 10.02.2005, the assessee was asked to explain whether the pronotes are accounted in his books of accounts. The assessee by reply dated 25.02.2005 stated that he has not lent any money in respect of the pro-notes and does not have the name of lender, mode of payment, cheque number and other information and explained their line of business, especially, in film financing. By letter dated 09.05.2005, the assessee was requested to

explain the circumstances under which the persons have signed the pronotes. The assessee by reply dated 27.05.2005 once again stated that he has not financed any amount on such pronotes and those the documents are null and void in the eye of law.

29. After examining the facts, as set out by the assessee in his reply, the assessing officer found the explanation is not acceptable that the assessee used to obtain pronotes in advance was held to be not established. Further, the assessing officer came to a reasonable conclusion by observing that if the assessee has not advanced any loan on pronotes, he ought to have destroyed them or returned it to the person, who has signed the pronotes and the very fact that the pronotes were kept in safe custody by the assessee would show that the assessee had in fact, lent the said amount.

30. The assessing officer then proceeded to list out the details of the loan advanced on pronotes that did not contain the name of the person and details are in the form of Annexure I to the assessment order to the tune of Rs.5,59,98,709/-. The assessing officer further found that only three transactions were accounted for by the assessee

in the books of accounts maintained in the computer and accordingly, the assessing officer held that only three pronotes can be taken as transaction effected to the assessee as they were reflected in the books of accounts and the remaining pronotes to the tune of Rs.1,97,00,000/- was treated as 'undisclosed income'.

31. During the search operations, laptop was recovered, wherein the assessee had entered the names of the borrowers, the amount advanced, date of loan, due date for returning the loan, date of receiving the loan advance and the name of the person concerned, who has advanced the loan. The assessee by letter dated 09.05.2005 was asked to explain as to whether the amounts advanced, as per the accounts maintained in the laptop were accounted in the regular books of accounts. The assessee replied stating that the list furnished is full of duplicates. The stand was tested for its correctness after once again refiling the computer printouts and it was found by the assessing officer that the loans were renewed on the due date, if they were not repaid within the due date and some of the borrowers have repaid loans after renewals and accordingly, the assessing officer proceeded to treat thirty

seven such transactions as 'undisclosed income' to the tune of Rs.98,25,000/-.

32. Similarly, there were other details, which were found in the laptop which could not be explained by the assessee and accordingly, a sum of Rs.1,85,65,000/- was treated as 'unaccounted income'. From the books of accounts, which were seized at the time of search, which was maintained in the computer in a tally package were verified, which shows credit to the tune of Rs.1,28,78,370/-, from twenty nine entities.

33. The assessee by letter dated 27.05.2005 stated that except for one such party, no one is his creditor and no loan is borrowed from them and all the other parties appearing in the list are his debtors and the credit in the account represents the repayment of the loan made by them to the assessee as well its group concerns. The assessing officer on perusal of the books of accounts found that the parties accounts were credited and there is no opening debit balance outstanding in the books of accounts and found that the assessee did not disclose the advances made to them in his books and hence, repayment of loan

made by the said persons was treated as 'undisclosed income' to the tune of Rs.1,26,73,370/-

34. With regard to the deficit in cash, which was culled out from the computer statement, the assessee was asked to explain and the correctness of the explanation was considered by the assessing officer, who found upon perusal of the cash book that all the debts and credits in the cash book are only withdrawals and deposits in bank account and the debits were not reflected in the bank statement and the assessing officer found that the assessee had increased his cash balance without withdrawing the cash from the bank. This was to the tune of Rs.11,46,000/- and Rs.4,19,250/-

35. The assessing officer found that the cash books show a deficit cash balance Rs.12,52,900/- and the deposit in the bank account was not reflected in the cash book and the fictitious cash withdrawals from the bank were treated as undisclosed income of the assessee. Totally, Rs.35,86,150/- [Rs.12,52,900/- Plus Rs.11,46,000/-, plus Rs.4,19,250/- Plus Rs.7,68,000/-]. On verification of the accounts, the assessing

officer found that the assessee had a suspense account where credit of Rs.18,59,513/- was mentioned. The assessee minor daughter's books of accounts show credits in suspense account totalling Rs.20,59,313/-. The assessee was called upon to explain, however, he did not produce the books of accounts that are completed showing the entries in the suspense account are entered in the proper account, accordingly, explanation was rejected and a total amount of Rs.39,18,826/- was treated as 'undisclosed income' of the assessee.

36. During search, it was found that the assessee and his minor daughter had invested in various bonds Kisan Vikas Patra etc., The assessee could not explain the investments by producing the books of accounts and after considering all aspects, a sum of Rs.26,80,565/- was treated as 'undisclosed income'.

37. Further, during search it was found that there were fixed deposits receipts in the names of 28 persons, who are all close relatives and was available with the assessee. After taking note of, all the explanation offered by the assessee and taking note of the sworn

statement recorded from Shri. Rajprith and Shri. Bushan Sharma, who stated that he is not aware of the transaction in his bank account. Mr. Shiv Bushan Sharma in his sworn statement stated that the capital of his sons were given to the assessee without any interest. Accordingly, the sum of Rs.6,32,80,053/- was treated as 'undisclosed income' of the assessee.

38. There was an addition of Rs.41,00,000/- on the ground of unaccounted bank account. A sum of Rs.1,34,445/- being the undisclosed income earned by way of bank interest. The other advances were verified and additions were made. The deposit shown to have been made in the name of Shri. Bhushan Arora, who is a NRI and could not establish that the deposits were made from out of the withdrawals from the NRI Account of Shri. Bhushan Arora. Accordingly, a sum of Rs.38,87,751/- was added as 'undisclosed investment' of the assessee. A sum of Rs.17,73,000/- was found to be an investments in M/s Aasana Investments Private Limited, which was not disclosed by the assessee and accordingly, made as 'undisclosed income'.

39. The investment shares, the demat account of the assessee were taken note of and a sum of Rs.20,00,000/- was treated as undisclosed income under the said head. The investments made in the name of assessee's minor daughter was analysed and a sum of Rs.1,59,777/- was added as undisclosed income and the discussion on this aspect is at Paragraph Nos.20 and 20.1 of the assessment order and the assessing officer has given due credit to the investments, which have been accounted for.

40. A sum of Rs.20,00,000/- was treated as undisclosed income of the assessee in respect of an investment in a bungalow at Mumbai. The investments in Andhra Bank by way of fixed deposits were analysed and wherever the assessee was able to explain, the assessing officer had taken note of the same and those fixed deposits not reflected in the books of accounts maintained by the assessee and his relatives in the tally package were added as undisclosed income to the tune of Rs.2,17,610/-. The investment by way of fixed deposits to the tune of Rs.3,00,000/- was found to be not undisclosed and accordingly, held to be investment by way of unaccounted money. Thus, the assessing

officer by a very detailed order completed the total undisclosed income under 28 heads at Rs.23,40,50,480/-

41. The CITA has also done a exercise by referring to the various grounds raised by the assessee. On a cursory reading of the order passed by the CITA, one gets an impression that it is a speaking and reasoned order. However, when we closely examine the same, we found it to be totally devoid of reasons.

42. The learned senior standing counsel for the revenue as well as the learned senior counsel for the respondent had drawn our attention to Paragraph Nos.4 and 7. It is the submission of the learned senior standing counsel that no cogent reasons were assigned by the CITA for reversing the well considered order of the assessing officer, whereas the learned senior counsel by referring to paragraph no.4.3 had submitted that the cash found attributable to the assessee and other family members was also accepted and not seized considering their explanation. Therefore, it is submitted that the order passed by the CITA is a very detailed and reasoned order, which was confirmed by the Tribunal.

43. We have carefully gone through the findings rendered by the CITA on each of the grounds. The CITA in Paragraph No.4.3 has criticized the conduct of the search party and considered the status of the assessee and his family members and therefore, held that the cash cannot be treated as undisclosed income. We do not approve of this finding. In Paragraph No.5.3, the CITA held that having regard to the volume of transaction of the company, the income returned as also the amount involved cannot be treated as undisclosed income. This finding is also not borne out by any records.

44. With regard to the pronotes, which do not have the name of the person, the CITA held that the amounts represented by the Pronotes should be treated as bad debts, to be set off against the assessee's pronotes advances and income there for. This appears to have never been the assessee's case and it is a finding rendered by the CITA on presumptions and assumptions, because the assessee did not furnish the details, when called upon to do so by letter dated 25.01.2005. In his subsequent reply dated 25.02.2005, the assessee

stated he has not claimed any money in respect of the pronotes. Therefore, finding in Paragraph No.6.3 is wholly erroneous.

45. The finding in Paragraph No.7.3, the CITA faults the assessing officer for not having made verifications with the borrowers, who are all assessees and accordingly, deleted the addition. This conclusion has been arrived at by the CITA without noting that it is for the assessee to establish by producing books of accounts.

46. The Paragraph No.8.3.1 is absolutely without any reasons. the CITA states that the assessee has flatly denied having any unaccounted transactions and faulted the assessing officer for not bringing on record any material, though the CITA states that the assessing officer proceeded on assumptions and presumptions, we find it is CITA which proceeded on assumptions.

47. In Paragraph No.9.3, the CITA records the submissions of the assessee that the said addition of Rs.1,26,73,370/- is more comical than illegal. Without taking note of the fact that upon considering the

explanation, the assessing officer found that except transaction with M/s Akhand Pharma represented by its proprietor, Dr.Shivbushan Sharma, the assessee stated that no one is his creditor and no loan has been borrowed from him. The CITA ought to have seen that the assessee should have established the same. Therefore, we do not approve the finding in Paragraph No.9.3.

48. With regard to ground nos.9, 10 and 11, the CITA held that they are interconnected and brushed aside the findings rendered by the assessing officer under each of these heads separately and held that there was no fresh materials referred to or relied upon by the assessing officer for the impugned additions.

49. With regard to the investments to the tune of Rs.26,80,565/-, the CITA proceeded to accept the explanation given by the assessee before the assessing officer without taking note of the discussion contained in Paragraph Nos.10.1 and 10.2 of the assessment order, therefore, we hold that the finding in Paragraph No.14.3 is unsubstantiated and without reasons.

50. With regard to the findings in Paragraph No.15.3, the CITA held that additions were baseless and this finding is rendered based on written submissions filed by the assessee. If in the opinion of the CITA, there was no adequate material or no proper verification was done by the assessing officer, then, he ought to have called for a remand report or remanded the matter for fresh consideration and that could not be the reason to delete the addition, which has been made by the assessing officer after recording reasons. Paragraph No.16.3, in our opinion, is a presumptive statement and personal opinion made by the CITA and could not have lead to deletion of the addition.

51. The observations in Paragraph No.17.3, 18.3, 19.3, 20.3 are almost on the same lines, all finding fault with the assessing officer without holding that the finding of the assessing officer is factually incorrect or legally erroneous. Equally the finding in Paragraph No.21.3, 22.3 is also on presumptions and assumptions.

52. In Paragraph No.23.3, the CITA comes to a conclusion that some of the shares have been repeated by the assessing officer and

has not listed out which are those shares, but given only a few illustrations and such observation, cannot automatically lead to the deletion of the addition of Rs.20 Lakhs. The said finding is wholly erroneous.

53. With regard to the addition in the name of the assessee's minor daughter, the assessing officer in Paragraph No.20 has analysed the entire submission made by the assessee as to how his daughter inherited more than of Rs.43 Lakhs from the assessee's mother, who passed away in the year 1991 and after considering all aspects, made the addition. However, the CITA held that assessing officer has disregarded all evidence and proceeded on the basis of conjunctures and surmises. In fact, the order passed by the CITA is based on conjunctures and surmises because he has not recorded any reasons as to why the finding of the assessing officer in Paragraph No.20 is factually incorrect.

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54. The assessing officer in Paragraph No.21.1 has made a addition of Rs.5,00,000/- on the ground that the investment is not

reflected in the books of accounts of the assessee or in the books of Akshya Mercantile. However, CITA says it is reflected in the balance sheet of Akshya Mercantile and it is not clear as to how he came to such a conclusion whether at all he had verified those documents etc., therefore, the finding is perverse.

55. With regard to the investment in the Bungalow in Mumbai, the CITA in Paragraph No.26.3 holds that the assessee does not own any such bungalow. It is not clear as to where from he came to such a conclusion, when the assessing officer has recorded that in Page 95 of the seized documents shows that assessee entered into an agreement for purchase of Bungalow at Mumbai, therefore, the finding is perverse.

56. With regard to the fixed deposits, the assessing officer found that the fixed deposits are not reflected in the books of accounts maintained by the assessee and his relatives in the tally package and hence, the fixed deposits mentioned in Paragraph No.22 of the assessment order except that of Akshay Sarin was assessed as undisclosed income. The CITA states that considering the status of the assessee and the other relatives, the amount of deposits there is no

warrant to treat them as undisclosed income, this finding is utterly perverse.

56. The Tribunal in Paragraph No.2 has extracted the grounds raised by the Revenue. In Paragraph No.3 it narrates briefly as to how the assessments were concluded after the search operations. From Paragraph No.5, various grounds have been dealt with. Once again as observed in the order passed by the CITA, on a cursory reading of the order of the Tribunal, one gets an impression that the order is a very detailed order. However, on a closure reading, we find all that the Tribunal has done is to endorse the stand taken by the CITA and none of the grounds raised by the revenue had been dealt with nor reasons assigned to show as to why the ground canvassed by the Revenue is not tenable. Thus, we find though the impugned order runs to 158 pages, it is an order devoid of reason and merely making an endorsement what the CITA has held, which we have held suffers from gross illegality and perversity, writ large on the face of the order.

57. In Paragraph No.29 of the impugned order, the tribunal records that the revenue has relied on various decisions and it finds that they are relevant to the assessee's case because facts are not identical. The Tribunal did not even mention what are the decisions referred to by the revenue. It does not state as to how those decisions are factually distinguishable, therefore, the finding in Paragraph No.29 is untenable and other observations are absolutely vague. In fact, Paragraph No.29 can be fitted into any order passed by the Tribunal where they want to confirm the order passed by the CITA.

58. The decision in the case of CIT Vs. D.K.Gupta reported 308 ITR 230 (Delhi) relied on the Tribunal mentions that the Tribunal is final fact finding authority, there can be no quarrel to such proposition. However, in the instant case, the Tribunal abdicated its responsibility as a final fact finding authority. The Tribunal is required to examine the facts available before the assessing officer, the conclusion arrived at by him, the grounds raised before the CITA and the conclusion arrived at by the CITA. If the conclusion arrived at by one of the authorities is not

relatable to the factual position or the legal position, the finding is required to be rendered.

59. In the instant case, the Tribunal has not given any independent finding on the correctness of the order of the assessing officer, but merely goes by the observations rendered by the CITA, which we have found to be erroneous, therefore, the decision relied on by the Tribunal can in no manner help the assessee's case. The Tribunal has also referred to a decision of this Court in ACIT V. Kences Foundation Private Limited reported in 289 ITR 509 [Madras] for the proposition that documents seized from the premises of the assessee at the time of search were not conclusive proof to arrive at the undisclosed income. Admittedly, in the instant case, the search was concluded between 27.03.2003 to 28.08.2003, the assessing officer had issued several letters, collected the response of the assessee and then proceeded to decide the matter. In several places, it was found that the assessee attempted to buttress his case based on records / returns submitted after the search. These issues were never considered by the Tribunal. Thus, we find that the impugned order passed by the Tribunal is wholly unsustainable without noting the factual and legal position.

60. In so far as the impugned order in TCA Nos.72 to 78 of 2019, it appears that the Tribunal was not clear as to whose appeal it was dealing with. The Tribunal has referred to the grounds as assessee's appeal in more than one place, whereas it was a revenue's appeal, this also according to the learned senior standing counsel for the appellant shows non-application of mind.

61. In T.C.A.No.18 of 2020, the appeal was by the assessee and a reading of the order passed by the CITA dated 31.03.2014, shows it is a reasoned and detailed order, which notes the factual position as well as the legal position. While dealing on this issue, it is relevant to point out that when the assessee has not filed return of income by the due date and it was only after initiation of block assessment proceedings, assessee filed its return for the period, the assessing officer was justified in assuming the assessee would not have disclosed its total income. This decision of the Hon'ble Supreme Court in A.R.Enterprises fully supports the case of the revenue.

62. In the case of S.Ajit Kumar, the Hon'ble Supreme Court pointed out the method of calculating the undisclosed income of the block period, as provided under Section 158BB of the Act and held that it can be calculated only on the basis of the evidence found, as a result of search or requisition of books of accounts and other documents, which are available with the assessing officer and Section 158BB prescribes the boundary, which has to be followed and the power of survey has been provided under Section 133A of the Act and any material or evidence found / collected in a survey, which has been simultaneously made at the premises of a connected person can be utilised while making block assessment in respect of the assessee under Section 158 BB read with 158 BH of the Act. In fact, these decisions were noted by the CITA in its order dated 31.03.2014. Therefore, we find that the order passed by the Tribunal impugned in TCA No.18 of 2020 also suffers from the same errors and lacuna, as pointed out by us in TCA No.1060 of 2019.

63. The Impugned order in TCA Nos.72 to 78 of 2019 dated 12.03.2019, does not contain any independent reasons, but on account of the order passed in the assessee's case by the Tribunal, the same

has been allowed, as we have held that order impugned in TCA No.1060 of 2019 is wholly unsustainable, the order impugned in TCA Nos.72 to 78 of 2018 have also to be held wholly unsustainable.

64. Under Section 260A, the Court has to decide the substantial questions of law, word substantial questions of law, means, a question of law having greater importance and the Hon'ble Supreme Court in several decisions, one of which, is in Santhosh Hazari Vs. Purushotaman Tiwari reported in 251 ITR 84 [SC] laid down the test that can be applied to determine whether the substantial question of law is involved. One of the test is, does it directly or indirectly affects substantial rights of the parties.

65. In our view, this test stands fulfilled in the cases on hand, because the finding of the tribunal, directly and substantially interferes in the interest of revenue and the finding are not based on the evidence brought on record by the assessing officer and the order of the Tribunal suffers from material irregularities without any independent reasons, it has glossed over the relevant facts, which were brought on record by the assessing officer and therefore, the impugned orders are perverse and undoubtedly, perversity can be taken up in an appeal under

Section 260A of the Act. A finding on a question of fact can be challenged as being erroneous in law, when there is no evidence to support it or when it is based on surmises and conjunctures. The order of the CITA suffers from perversity, which has travelled up to the Tribunal, which confirmed the order of the CITA. Therefore, the argument that generally, the Court under Section 260A would not interfere with the Tribunal's finding of fact cannot be applied to the facts of this case because the Tribunal did not record any finding of fact that the finding of fact recorded by the assessing officer is erroneous and not borne out by records.

66. Thus, for all the above reasons, the Revenue has to succeed in these Appeals, accordingly, the tax case appeals are allowed and the impugned orders passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the Revenue. No costs.

(T.S.S.J.)

(V.B.S.J.)

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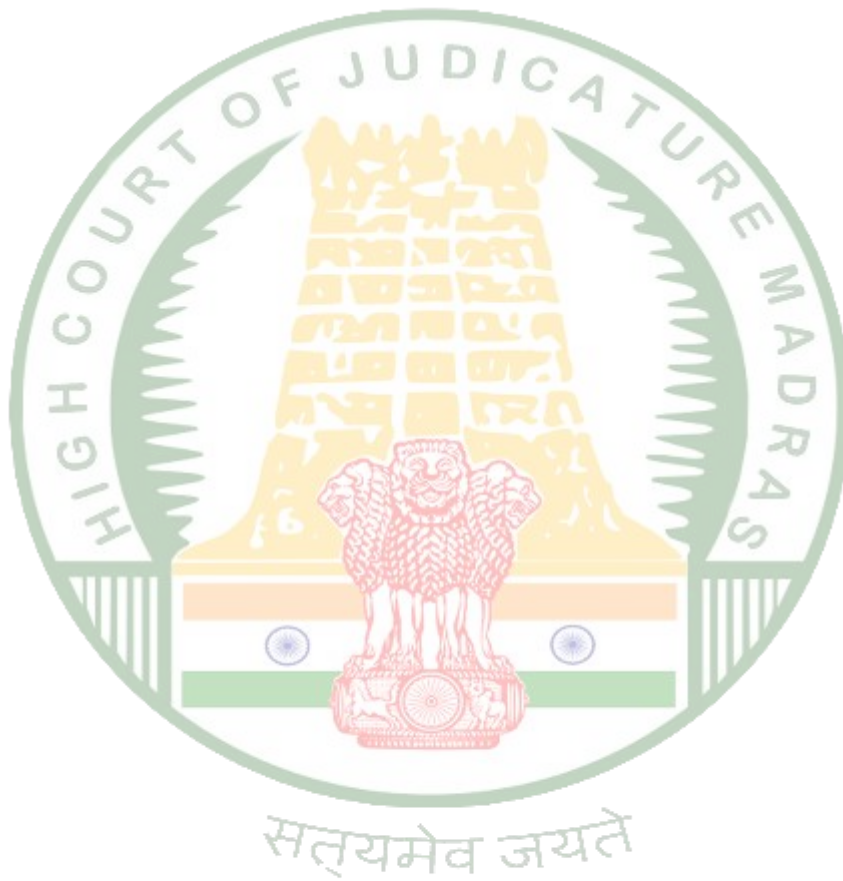
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Speaking Judgment / Non Speaking Judgment

To

The Income Tax Appellate Tribunal “D” Bench
Chennai



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T.C.A.Nos.1060 of 2019 & 18, 72 to 78 of 2020

T.S.SIVAGNANAM,J.,
AND
V.BHAVANI SUBBAROYAN, J.,

ssd



Pre-delivery Common Judgment in
T.C.A.Nos.1060 of 2019; 18 and 72 to 78 of 2020

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