

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case Appeal Nos.877 to 879 of 2017
and
C.M.P.Nos.22355 & 22357 of 2017

Hari Poddar
32, Ottukkaa Chinniah Street
Erode - 638 003
Chennai - 600 004. Appellant in all appeals

Vs.

The Assistant Commissioner of Income Tax
Central Circle-IV
Coimbatore. Respondent in all appeals

Tax Case Appeals in T.C.A.Nos.877 to 879 of 2017 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 24.05.2017 passed in I.T.(SS) A.No.166/Mds/2005, I.T.(SS) A.No.171/Mds/2005 and C.O. No.38/Mds/2006 in I.T.(SS) A.No.171/Mds/2005 respectively, against the Common appellate order passed by the Commissioner of Income Tax (A)-II, dated 31/08/2005 in I.T.A Nos.325-C/04-05, 326-C/04-05, 327-C/04-05 and against the Assessment order passed by the Assistant Commissioner of Income Tax Central Circle-IV, Coimbatore, dated 21/10/2004 made in PAN/GIR No.AATPH7611P for the Block Period of 1997-1998 to 2003-2004.

For Appellant : Mr.R.Venkata Narayanan
(in all) for M/s.Subbaraya Aiyar Padmanabhan
in all appeals

For Respondent : Mr.T.R.Senthil Kumar
(in all) Senior Standing Counsel
and Mrs.K.G.Usha Rani
Junior Standing Counsel
in all appeals

C O M M O N J U D G M E N T

(Delivered by M.DURAI SWAMY, J.)

The above appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 24.05.2017 passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, ('the Tribunal' for brevity) in I.T.(SS) A.No.166/Mds/2005, I.T.(SS) A.No.171/Mds/2005 and C.O. No.38/Mds/2006 in I.T.(SS) A.No.171/Mds/2005 for the Block Period 1997-98 to 2003-04 (upto 08.08.2002). The appellant/assessee has raised the following substantial questions of law in the above appeals:

"T.C.A.No.877 of 2017 :

1.Whether the Income Tax Appellate Tribunal was right in law in holding that the block assessment order passed on 21.10.2004 is within time limit as prescribed in Explanation 2 to Section 158BE(1) (b) of the Income Tax Act 1961 without appreciating that the last Panchanama in respect of execution of relevant warrant of authorization was drawn on 08.08.2002 and not on 03.10.2002?

2.Whether the Tribunal was right in law in following the Judgment in the case of VLS Finance Ltd. Vs CIT [384 ITR 1 (SC)] which has no application to the facts of the present case?

3.Whether the Tribunal was right in law in holding that block assessment is not barred by limitation without appreciating that in the present case, there was no subsequent search at all and only Panchanamas were prepared subsequently and that too, regarding the lifting of prohibitory orders?

4.Whether the Income Tax Appellate Tribunal was right in law in holding that the Panchanama drawn on 01.10.2002 (in the case of Hari Poddar the last Panchanama was drawn on 3.10.2002) in respect of all three assesseees consequent to physical seizure of the hard disk on the basis of the main warrant issued by the D.I.T Chennai has to be treated as Last Panchanama and therefore the assessment order passed on 21.10.2004 were within two years from the end of the month in which the last Panchanama was drawn.?

5. Whether the Tribunal was right in law in holding that the last Panchanama was drawn in relation to the appellant on 03.10.2002 and thereby upholding the block assessment without deciding on the legality of the conclusion of search with reference to the Panchanama dated 03.10.2002 ?

6. Whether the Income Tax Appellate Tribunal was right in law in sustaining the addition towards undisclosed turnover in the absence of any incriminating material or evidence found as a result of the search?

T.C.A.Nos.878 and 879 of 2017 :

1. Whether the Income Tax Appellate Tribunal was right in law in sustaining the addition towards undisclosed turnover in excess of Rs.22 crores in the absence of any incriminating material or evidence found as a result of the search?

2. Whether the Tribunal was right in law in restoring the addition of Rs.33.89 Lakhs as unexplained cash credits under Section 68 of the Act without appreciating that this amount was recorded in the books of account regularly maintained by the appellant and that these amounts were received from the parties for supply of goods?

3. Whether the Tribunal was right in law in restoring the addition of Rs.24,44,835/- on account of unaccounted purchases without appreciating the fact that this amount was received from the parties for supply of goods and hence it could not be treated as cash credit for the purpose of Section 68 of the Income Tax Act 1961.

4. Whether the Income Tax Appellate Tribunal was right in law in restoring the addition of Rs.1.80 Crores made on account of unaccounted purchases without appreciating that this amount was already considered as undisclosed turnover of Rs.22 crores of the appellant?

5. Whether the Tribunal was right in law in holding that u/s.68 of the Act entire unexplained credit to be considered as income of the assessee and there is no question of estimation of GP on

unexplained credit so as to determine the undisclosed income."

2. We have heard Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the appellant/ assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Mrs.K.G.Usha Rani, learned Standing Counsel for the respondent/Revenue.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 29.03.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the above appeals.

5. In view of the submission made by the learned counsel for the appellant/assessee, the above Tax Case Appeals stand dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Chennai "A" Bench, Chennai.

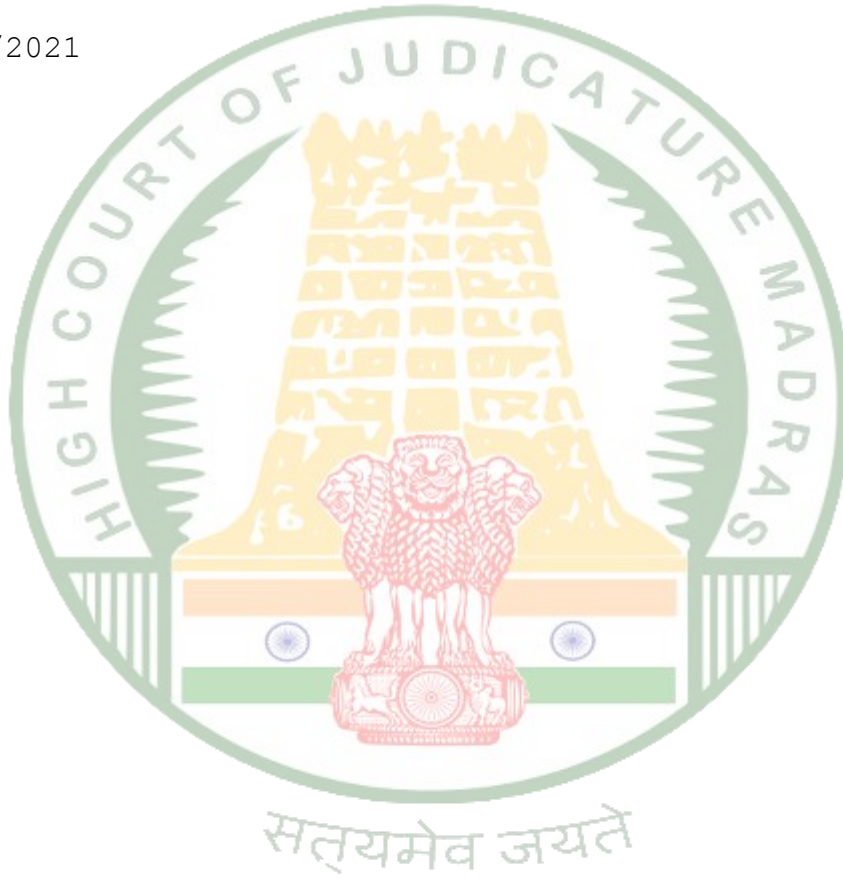
2.The Assistant Commissioner of Income Tax
Central Circle-IV
Coimbatore.

3.The Commissioner of Income Tax (A)-II,
Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.25240

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srg 29/06/2021



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