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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A. No.23 of 2009

Thiru. A.J.Ramesh Kumar,
#162, Panagal Street,
Kaveripattinam,
Dharmapuri District.

... Appellant

Vs.

The Deputy Commissioner of Income Tax,
Special Investigation Circle,
Salem-636 007.

... Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 22.12.2006 made in ITA.No.1255(Mds)/2000 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 1995-96 against the order of the Commissioner of Income Tax (Appeals) No.121, Mahatma Gandhi Road, Chennai - 600 0034 dated 03.04.2000 made in ITA.No.671/1999-2000 for the Assessment Year 1995-1996 against the order of the Assistant Commissioner of Income Tax, Special Investigation Circle, Salem-636 007 dated 26/02/1997 made in PAN/GIR No.R-775/AC-SIC/SLM

For Appellant : M/s.Philip George

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
Mrs.V.Pushpa
Junior Standing Counsel

JUDGMENT

MOHAMMED SHAFFIQ, J.

The substantial questions of law that arise for consideration in this Tax Case Appeal are relating to the admissibility, relevance and evidentiary value of the statement



recorded at the time of search under Section 132(4) of the Income Tax Act, 1961, while making assessment by the assessing officer.

2. At the outset, it may be relevant to set out briefly the following facts:

2.1 The appellant is engaged in Jewellery and pawn brokerage business. While so, there was a search in his business and residential premises on 7th and 8th December, 1994, in the course of which, cash of Rs.2,28,975/-, excess stock of gold jewellery to the extent of 3838 grams and silver ornaments to the extent of 117.894 kgs and advance of Rs.1,50,000/- made to one K.C.Sampathkumar were recovered. The statement of the appellant was also recorded under section 132(4), during which, he admitted the unexplained income at Rs.2,00,000/-, excess stock of gold jewellery valued at Rs.15,35,000/-, silver articles and ornaments valued at Rs.5,75,266/- and also advance of Rs.1,50,000/- made to the said K.C.Sampathkumar.

2.2 The appellant filed his return of income on 24.08.1995 admitting a total income of Rs.10,24,170/-. After scrutiny of the same, notice under section 143(2) was issued. In response to the same, a representative of the appellant appeared and made a statement. In the return of income, the appellant admitted only the cash of Rs.43,134/- and the value of the gold & jewellery of 1305.3 grams. Besides that, he admitted the value of the silver items only at Rs.5,75,266/- and accounted the sum of Rs.1,50,000/- to Sakthi Finance at Rs.1,00,000/-, K.C.Sampathkumar at Rs.26,000/- and Sri Chinnaraj at Rs.24,000/- under the HUF status. Since the appellant did not explain the sources with material evidence, the assessing officer rejected the same as an afterthought and passed the order of assessment under section 143(3) levying tax on the unexplained income/investment to the tune of Rs.14,15,769/-.

2.3 Aggrieved by the order of assessment, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), who partly allowed the appeal by setting aside the assessment order, primarily on the ground that the differences noticed in the cash balance as well as gold jewellery and silver articles were explained by the appellant and in support of the same, an affidavit of the appellant's mother-in-law by name Amsa Boi was also filed.

2.4 Challenging the order of the Appellate Authority, the Revenue carried the matter by way of appeal before the Income Tax Appellate Tribunal, which allowed the said appeal. Therefore, this Tax Case Appeal by the assessee.



3. Heard both sides and perused the materials available on record.

4. In this case, the assessing officer, while computing the assessment under section 143(3), made the following additions:

(a) Cash balance	-	Rs. 1,63,524/-
(b) Value of unexplained gold jewels (2533g & Rs.400/-)	-	Rs.10,13,200/-
(c) Value of unexplained silver Articles (117.894 kgs)	-	Rs. 79,045/-
(d) Advanced alleged to have been made to Sampathkumar	-	Rs. 1,50,000/-
(e) General addition in jewellery business	-	Rs. 10,000/-
Total	-	Rs.14,15,769/-

On appeal, the Appellate Authority modified the cash balance and value of silver articles and deleted the value of gold jewellery and advance made to Sampathkumar, as unwarranted. In the appeal filed by the Revenue, the Tribunal set aside the order of the Appellate Authority and restored the order of assessment. For better understanding, the findings rendered by the Tribunal read as follows:

a. Cash balance: There was no mention while recording the statement either under Section 132(3) or under Section 131 of the Income Tax Act, 1961 that fund was transferred from the appellant's wife's account or HUF account to the appellant. Further, at the time of search, the business cash was verified and inventorised. Hence, the plea of the appellant that it belonged to the business, cannot be appreciated. The assessing officer has already given credit to the availability of cash as per books of accounts at Rs.22,319/- and therefore, the CIT(A) was not justified for deleting the addition.

b. Gold Jewellery: In the sworn statement recorded on 07.12.1994 and 08.12.1994, the appellant stated that his wife was owning 100 sovereigns of gold and he was owning 30 sovereigns. However, later, he claimed 1,210 gms belonging to his wife. To support this, the appellant filed affidavit of his mother-in-law. There was no evidence found during the course of search that the jewellery belongs to the appellant's wife and the affidavit filed by the appellant from his mother-in-law was a self-serving document. Therefore, no credence can be given to this document, since it is not supported by any corroborative evidence.



It was further observed that the statement of the appellant was not given by any force nor on any mistaken fact and no evidence was let in by the appellant to rebut the statement recorded under Section 132(4). The appellant should produce cogent evidence and mere assertion was inadequate to displace the strong evidentiary value attached to a statement recorded under section 132(4) of Income Tax Act, 1961. Similarly, regarding son's jewellery, the appellant in his statement recorded under Section 132(4) did not produce anything, but he later stated that his son's jewellery was kept in business and there was no record to substantiate the same. Therefore, credit cannot be given.

Regarding HUF jewellery, the seized material did not reflect the transfer of HUF jewellery to the business of the appellant. The presumption under Section 132(4A) stands against the appellant. It should be presumed that jewellery found during the course of search belongs to the appellant. It was found that even the order passed under Section 171(3) of the Income Tax Act, 1961 on 23.01.1996, which was after the date of search, cannot come to the rescue of the appellant since there was no seized material representing transfer of HUF jewellery to the business of the appellant and he did not establish that the same HUF jewellery which were reflected in the order under Section 171(3) was available with the appellant. Therefore, there was no iota of evidence available in the seized material regarding the transfer of HUF jewellery to the business of the appellant.

c. Silver Articles : There was no entry representing the transfer of silver belonging to the appellant's wife or silver belonging to HUF. Hence, no reliance was placed on the documents.

d. Amount advanced to K.C.Sampath Kumar: According to the appellant's statement, he gave Rs.1,00,000/- on 04.07.1994 vide cheque drawn on Indian Bank, Kaveripattinam to Sampathkumar and another Rs.50,000/- by way of cash. This amount was drawn from SB Account No.77, held in State Bank of India, Kaveripattinam. Now, the appellant stated that the amount was advanced by HUF, though he confirmed that this SB account belongs to him, this is not the correct position. As per the record, the amount was drawn from the individual account. Hence, there was no evidence to show that the amount was given from HUF account.

5. At this juncture, it would be appropriate to refer to Sections 132(4) and 132(4A) of the Income Tax Act, 1961, which read as under:

"(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any



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books of account, documents, money, bullion, jewellery to other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income tax Act, 1922 or under the Income tax Act, 1961.

Explanation. - For the removal of doubts, it is hereby declared that the examination of any person under this sub section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income tax Act, 1922 (11 of 1922) or under this Act."

"(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

that the contents of such books of account and other documents are true; and

that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested."

On a conjoint reading of the aforesaid provisions, it is manifest that the statement recorded on oath carries a significant evidentiary value, which may be used by the assessing officer during the course of assessment proceedings as a corroborative evidence along with documentary evidence material unearthed during the course of search and seizure action. Further, there is a statutory presumption with regard to books of accounts, documents, money, bullion, jewellery or other valuable article or thing found in possession or control in the course of the search that the same belong to such person.

6. On a careful reading of the findings rendered by the Tribunal, it could be seen that the assessing officer did not

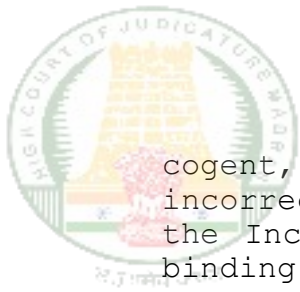


make assessment solely on the basis of the statement recorded under Section 132(4) of the Income Tax Act, 1961, but also placed reliance on the material evidence seized during the course of search as well as at the time of assessment. After having found that the appellant gave different explanations at different stages, none of which was supported by any cogent material evidence to dislodge the presumption under Section 132(4) and 132(4A) of the Income Tax Act, 1961, the Tribunal rightly set aside the order of the First Appellate Authority and restored the order of the assessing officer. Therefore, the plea of the appellant that assessment was made solely on the basis of the statement obtained under Section 132(4) of the Income Tax Act, 1961, cannot be accepted by this court, as it is contrary to the facts of the case.

7. Coming to the substantial questions of law relating to admissibility, relevancy and evidentiary value of statement obtained under Section 132(4) of the Income Tax Act, 1961, this court is of the view that the same are no longer res integra. In the decision of the Supreme Court in the case of Banalal Jat Constructions Private Limited v. Assistant Commissioner of Income-Tax reported in 106 Taxmann.com 128, after referring to the judgment of Pullangode Rubber Produce Co. Ltd. v. State of Kerala reported in [1973] 91 ITR 0018, the legal position in relation to a statement under Section 132(4) of the Income Tax Act, 1961 was set out as under:

- a. An admission is an extremely important piece of evidence though it is not conclusive.
- b. A statement made voluntarily by the appellant could form the basis of assessment.
- c. The mere fact that the appellant retracted the statement could not make the statement unacceptable.
- d. The burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for appellant to make such statement.
- e. However, a bald assertion to this effect at much belated stage cannot be accepted.

Applying the aforesaid legal proposition herein, we are of the opinion that once a statement is recorded, it is open to the assessing officer to rely and proceed on the basis that such statement is correct and represents the true state of affairs and the burden is on the deponent to demonstrate by letting



cogent, convincing and material evidence that the statement was incorrect. Therefore, the statement made under Section 132(4) of the Income Tax Act, 1961 has a strong evidentiary value and is binding on a person, who makes it.

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8. Pertinently, the Tribunal after recording the explanations, affidavit and other documents filed by the appellant in support of his case, found that the same were not acceptable as the retraction was in the form of mere assertion and also belated. It was further pointed out by the Tribunal that there was no material evidence let in by the appellant to retract the statement made under section 132(4) and the affidavits of his mother-in-law were unreliable as they were interested and self-serving testimonies. We are of the view that any retraction by the appellant should be made at the earliest point of time with sufficient, credible and corroborative evidence to support his claim and not by mere assertion as done in this case. Therefore, we do not find any reason to differ with the findings so rendered by the Tribunal.

9. In view of the above discussion, we have come to a conclusion that the case projected by the appellant is only on the facts and the same does not give rise to any question of law much less substantial question of law. Hence, the substantial questions of law that have been admitted, are decided against the appellant.

10. In fine, the Tax Case Appeal deserves to be dismissed and is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Assistant Commissioner of Income Tax,
Company Circle-IV(1),
Coimbatore.



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

3. The Commissioner of Income Tax (Appeals)
No.121, Mahatma Gandhi Road,
Chennai - 600 0034.

+1cc to Mr.M.P.Senthil Kumar, Advocate, S.R.No.2852
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.3273

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