IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.12.2022
Pronounced On	02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

T.C.A.Nos.768 of 2009 & 232 of 2011
and
M.P.Nos.1 of 2009 & 1 of 2011

S.P.Karthik ... Appellant in T.C.A.No.768/2009

1.S.P.Sanjai (Died)

2. S.S.Kaladevi

3.Balram Sanjai

4.Kannan Sanjai

5.S.P.Geetha ... Appellants in T.C.A.No.232/2011

(Appellants 2 to 5 in T.C.A.No.232/2011 brought on record as LRs.of the deceased first Appellant vide order dated 17.12.2020 made in CMP.No.13478/2020)

Vs.

The Commissioner of Income Tax,
Madurai. ... Respondents in both T.C.As.

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the orders of the Income Tax Appellate Tribunal, Chennai Bench 'C', dated 13.02.2009 in I.T.(SS) A.No.0044/Mds/2007 and dated 03.01.2011 in I.T.(SS)A.No.0043/Mds/2007 respectively.

For Appellants in both T.C.As. : M/s.T.N.Seetharaman

For Respondent in both T.C.As. : Mrs.V.Pushpa
Standing Counsel

COMMON JUDGMENT

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

By this common Judgment, both Tax Case Appeals are being disposed of.

2. These appeals arise out of the proceedings initiated against the respective appellants for the Block Assessment Years 1991-1992 to 2000-2001 and Assessment Year 2001-2002.

3. In these appeals, the respective appellants have challenged the following impugned orders passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai.

T.CA.No.	***Date of Order***	***I.T.(SS)A.No.***	***Block Assessment Years***
768 of 2009 (S.P.Karthick)	13.02.2009	0044/Mds/2007	1991-92 to 2000-01 & 2001-02 (Part)
232 of 2011 (S.P.Sanjai)	13.02.2009 (modified order dated 03.01.2011)	43/Mds/2007	1991-92 to 2000-01 & 2001-02 (Part)

4. During the pendency of these appeals, the sole appellant in T.C.A.No.232 of 2011 namely, S.P.Sanjai died. Therefore, the legal representatives of the said appellant were impleaded as the second to fifth appellants in T.C.A.No.232 of 2011 vide order dated 17.12.2020 in C.M.P.No.13478 of 2020.

5. The impleaded fifth appellant in T.C.A.No.232 of 2011 namely, Mrs.S.P.Geetha who is the mother of the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011, had also challenged the impugned order dated 13.02.2009 in I.T. (SS) A.No.0015/2007 in T.C.A.No.240 of 2011. T.C.A.No.240 of 2011 was allowed by this Court vide order dated 23.01.2019.

6. T.C.A.No.768 of 2009 was admitted on 31.08.2009 and the following questions were framed as substantial question of law to be answered:-

i. Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in reversing the order of the Commissioner of Income Tax (Appeals) and restoring the addition of Rs.9,27,676/- made as value of 'explained jewellery'?

ii. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in ignoring the documentary evidence available by way of entries in the books of account for purchase of jewellery and estate duty assessment and wealth tax statements of the appellant's ancestors and holding that the Commissioner (Appeals) had deleted the addition merely on the basis of averment but without any evidence which is not permissible under the law?

7. Thereafter, by an order dated 23.03.2021 in TCA.No.768 of 2009, the following two additional substantial questions of law were framed:-

i. Whether on the facts and in the circumstances of the case, the Finance Act, 2001, was applicable to 'Block Assessment' under Chapter XIV-B in respect of search carried out on January 5, 2001?

ii. Whether the proviso inserted in Section 113 by the Finance Act, 2002 is classificatory in nature?

8. T.C.A.No.232 of 2011 was admitted on 20.06.2011 and the following questions were framed as substantial question of law to be answered:-

i. Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in law in reversing the order of the Commissioner (Appeals) partly on assumptions and estimate and restoring the addition of the value of gold jewellery of 585.95 gms and 2.05 carats of diamond jewellery as unexplained?

ii. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in not accepting the claim of the assessee regarding ancestral gold and diamond jewellery evidenced by Wealth Tax and Estate duty assessment orders of the assessee's ancestors and holding that "probable

> disposal" of the ancestor's jewellery could not be ruled out?"

9. The appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 herein are brothers. They had suffered similar adverse assessment orders along with their mother Mrs.S.P.Geetha, the impleaded fifth appellant in T.C.A.No.232 of 2011. The appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 and their mother Mrs.S.P.Geetha the impleaded fifth appellant in T.C.A.No.232 of 2011 therefore appealed before the Commissioner of Income Tax (Appeals) [hereinafter referred to as the "*Appellate Commissioner*"]. The explanation offered by them was accepted by the Appellate Commissioner.

10. The Income Tax Department thus filed separate appeals before the Income Tax Appellate Tribunal: B-Bench, Chennai [hereinafter referred to as "*Appellate Tribunal*"]. These Department's appeals were allowed and partly allowed by the Appellate Tribunal vide impugned common order dated 13.02.2009.

11. The Appellate Tribunal by its common order dated 13.02.2009 had partly allowed the appeals of the Revenue with the following observations:

> *"13. We have heard both the parties and perused the relevant records available with us. We have thoroughly gone through the orders of the Assessing Officer and as well as the impugned orders on this issue in dispute. We are of the considered opinion that as per the record the assessees have been changing their explanations quite often which is nothing but an after thought only. The Assessing Officer has called upon the explanations of the assessees at various times on the acquisition and nature of possession of the jewellery found during the block assessment proceedings which the assessees took all together a different stand. The assessees have also not filed any documentary evidence supporting the averment/explanation made by them, in spite of various opportunities given but the learned first appellate authority has wrongly restricted the addition towards unexplained jewellery to Rs.73,800/- as against Rs.9,27,676/- merely on the basis of the averment made by the assessee that the jewellery in dispute belongs to his ancestors. After thoroughly gone through the impugned order of the learned first appellate authority on the issue in dispute, he has given his findings at page 28 paragraph 41 which are reproduced as under:*
>
> > *"41. I have considered the submissions of the representative. The appellant has filed a detailed letter on 19.09.2002 with the Assessing Officer along with evidences for possession of jewellery*

by Smt.S.R.Thangamani Ammal and Shri.M.K.Rajagopalier and Shri.S.S.Rengachary. The Assessing Officer accepted the fact that there were evidences for possession of jewellery by these persons but did not give any credit for ancestral jewellery on the ground that there was no clinching evidence for receipt of jewellery from the above persons. He further held that if the appellant had received ancestral jewellery he would have admitted the same in the wealth tax return for assessment year 1992 to 1993. Admittedly, the appellant and his brother Shri S.P.Sanjai are the legal heirs and there is no necessity for any clinching evidence for accepting the jewellery from the forefathers. As wealth tax is not applicable after 01.04.1992 and the taxable wealth was below the exemption limit, the appellant did not file any wealth tax return after assessment year 1992-1993. As contended by the representative, the appellant's father Shri.S.R.Prem Mohan was alive as on 31.03.1992 and therefore, the jewellery left by him would have devolved on the appellant only after his death on 16.09.1992. Similarly, when the appellant's grandfather expired on 20.12.1998, the appellant would have received some share of ancestral jewellery. In the circumstances, the ancestral jewellery claimed by the appellant has to be duly considerd, especially when there was evidence for possession of jewellery by his grandmother and her father. At the same time, the appellant had added the jewellery of all the persons and claimed it as received by him and his brother. It is quite natural that only the jewellery owned by Shri.M.K.Rajagopalier and his wife Smt.M.K.R.J.Thulasiammal should have come to Smt.S.R.Thangamani Ammal and again *the same might have been received by Shri.S.S.Rengachari. In the circumstances, the entire claim of the appellant cannot be accepted. Having regard to the facts of the case and taking into account the status of the appellant and his forefathers,* ***I direct the Assessing Officer to accept the ancestral jewellery of 600 grams of gold jewellery and 12.75 carats of diamond jewellery as the appellant's share****. Further, the appellant has debited the capital account for purchase of diamond and gold jewellery whereas the Assessing Officer wrongly verified only the trial balance. As seen from the capital account, there are debits for Rs.2,72,000/- on 14.09.2000 and for Rs.50,000/- on 01.01.2001 for purchase of the gold and diamond jewellery by the appellant. As there are debit entries in the capital account of the appellant which was filed before the Assessing Officer, I direct the Assessing Officer to accept the claim of purchase of gold jewellery and diamond jewellery.* ***While doing so, the unexplained jewellery to be assessed is 164 gms. of gold jewellery [764 gms.(-) 600 gms] and the same is valued @ Rs.450/- per gm. which works out to Rs.73,800/-.*** *With the available ancestral diamond jewellery and the purchase of diamond jewellery, the appellant is able to explain the entire diamond jewellery. In the circumstances, the addition towards unexplained jewellery is restricted to Rs.73,800/- as against Rs.9,27,676/- in the assessment order."*

14. After going through the aforesaid conclusion of the learned first appellate authority, we are of the considered opinion that the learend first appellate *authority has deleted the addition in dispute merely on the basis of explanation given by the assessee but without any evidence which is not permissible under the law.* ***Therefore, keeping in view the facts and circumstances of the present case, we are of the view that the learned first appellate authority has wrongly deleted the addition in dispute. Therefore, the orders of the first appellate authority on this issue in dispute deserve to be cancelled and we cancel the same and we are decide this issue in favour of the Revenue and against the assessees.***

15. The last issue involved in the present appeal is regarding the levy of surcharge which was deleted by the learned first appeallate authority.

16. At the time of hearing, both the parties agreed that this issue has been decided against the assessees by the Honble Supreme Court of India in the case of **CIT** *Vs.* **Suresh N.Gupta** *reported in 297 ITR 322 (SC). Keeping in view statement of both the parties on the issue of levy of surcharge, we decide this issue against the assessees by respectfully following the decision of the Hon'ble Supreme Court of India in the case of* **CIT** *Vs.* **Suresh N.Gupta** *(2008) (supra) . Accordingly, the Revenue succeeds on this ground.*

17. In the result, the appeals of the Revenue are partly allowed."

12. Mrs.S.P.Geetha, the impleaded fifth appellant in T.C.A.No.768 of 2009, the mother of appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 had filed an appeal in

T.C.A.No.240 of 2011 before this Court. T.C.A.No.240 of 2011 filed by the said Mrs.S.P.Geetha was successful as the said appeal was allowed by a Division Bench of this Court on 23.01.2019. Thus we are not concerned with the case of Mrs.S.P.Geetha, the impleaded fifth appellant in T.C.A.No.768 of 2009, the mother of the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011.

13. As far as the deceased first appellant in T.C.A.No.232 of 2011 namely, S.P.Sanjai, is concerned, the said appellant had filed a Miscellaneous Application after the Appellate Tribunal passed the impugned order dated 13.02.2009. The Appellate Tribunal modified its common order passed in I.T.A.(SS) No.43 of 2007 in the case of S.P.Sanjai, the deceased first appellant in T.C.A.No.232 of 2011 and passed thus impugned order dated 03.01.2011 which has been now impugned in T.C.A.No.232 of 2011. The operative portion of the aforesaid order impugned in T.C.A.No.232 of 2011 reads as under:-

> “*7. We have perused the orders and heard the rival submissions. AO after examining assessee’s explanation for 1751.95 grms, of gold jewellery and 35.05 ct. of diamond jewellery, as belonging to his wife Smt.Kaladevi, had accepted such explanation to the*

extent of 1000 gms, and 23 ct. respectively, leaving a balance of 751.95 grms. of gold and 12.05 ct. of diamond jewellery. As per the CIT(A), the quantum of jewellery to be explained was 1035.95 gms, of gold and 17.05 carets of diamond against 751.95 gms and 12.05 carets, respectively considered by the AO. For this, he aggregated 284 gms. gold jewellery and 5 carets of diamond jewellery earlier claimed to be that of assessee's mother Smt.S.P.Geetha but later considered as part of the jewellery belonging to the assessee. The AO made the addition for a reason that there was no clinching evidence regarding jewellery received from various persons mentioned by the assessee. ***Further according to him, for the purchase of 300 gms. there was no evidence whatsoever. There is no dispute that the assessee had filed before the AO, Estate Duty assessment of Sri.M.K.Rajagopaliar and Wealth-tax assessment of Smt.S.R.Thangamani Ammal. The lineage of the assessee which has not been disputed by the Revenue, runs as under:***

"M.K.Rajagopaliar (Husband) – M.K.R.J.Thuasiammal (Wife)

?

S.R.Thangamani Ammal (Wife) – Shri S.S.Rangachari (husband)

?

Shri Prem Mohan – Smt.S.P.Geetha (w/o Prem Mohan)

?

Sons-Shri S.P.Sanjai and Shri S.P.Karthik".

Claim of the assessee was that 2432.46 grams of gold jewellery and 40.75 carets of diamond jewellery were *received from the above persons Ld.CIT(A) accepted 600 gms. of gold jewellery and 15 ct. of diamond jewellery therefrom. The question is whether Estate Duty assessment of M.K.Rajagopaliar and Wealth-tax assessment of S.R.Thangamani Ammal were sufficient to come to a conclusion that jewellery owned by them were all received by the assessee. Gold jewellery of 2432.46 gms diamond jewellery of 40.75 carets were reflected in the Estate Duty and Wealth-tax assessments of the mentioned persons, which position is mentioned by the CIT(A) at page 24 of his order and not rebutted by the Revenue.* ***However, in our opinion, just because the forefathers of the assessee were having jewellery in their custody, it could not mean that all such jewellery would have been received by the assessee and his brother. Assessee along with his brother could have in all probability received some part thereof, but to presume that the whole of it would have come to them is fallacious. Even, if we presume that the forefathers all along held all the jewellery and gave it away to the assessee and his brother, they could have received is 1216.23 grams gold jewelery and 20.375 ct. of diamond each. In our opinion, CIT(A) had considerd almost 50% of the above as received by the assessee. Taking into account the lapse of time in between the various generations involved, we are of the opinion that probable disposal of jewellery by the forefathers of the assessee could never be ruled out. At the best the assessee would have received 1/4th of the total possible quantity of 1215.20 gms. of gold jewellery and 20.375 ct. of diamond jewellery. In the circumstances of the case, we are of the opinion that the ancestral gold jewellery which assessee could have received could be estimated at 300 gms of gold jewellery and 10 ct. of diamond jewellery.***

8. Vis-à-vis the purchase of jewellery of 300 gms. claimed to be made out of balance money with the assessee from advance of Rs.50 lakhs received earlier by him from the proposed sale of property, we find that the assessee has not been able to produce any evidence for the purchase. Nevertheless, in our opinion, in the circumstances of the case, we can consider that 150 grms. of gold jewellery to have been purchased by the assessee out of the balances available with him. Thus, out of the total gold jewellery of 1035.95 gms. we can consider 450 gms. to have been explained by the assessee, leaving a balance of 585.95 gms. as unexplained. Similarlyagainst 12.05 ct. of diamond jewellery we can consider 10 ct. as explained, leaving a balance of 2.05 carets as unexplained. ***AO is directed to make additions on these linese based on the same method of valuations as done earlier.*** *Ordered accordingly, Ground No.3 of the revenue is allowed to the extent cited above.*

9. In the result, appeal of the Revenue is partly allowed."

15. Brief facts of the case are that a search and inspection was conducted at the premises of one R.V.Deshmuk. A copy of Sale Agreement entered between the appellants herein and Mrs.Manjula, w/o Mr.R.V.Deshmuk and Mr.K.S.Shanmugam is said to have been found during search.

16. Based on the information gathered at the residence of the said

R.V.Deshmuk, the Income Tax Department conducted a further search on 05.01.2001 at the residences of the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 viz. S.P.Karthik and S.P.Sanjai.

17. The appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 appeared to have sold an extent of 1.077 acres (46,915 sq.ft) of land in 160A, Kamarajar Salai, Madurai to the said Mrs.Manjula. w/o. Mr.R..Deshmuk and one Mr.K.S.Shanmugam from Madurai.

18. As per the recital of the Sale Agreement, a sum of Rs.50,00,000/- was said to have been paid to the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011, out of which, a sum of Rs.4,50,000/- was received as advance. There is no dispute as far as receipt of the aforesaid amounts.

19. It was found that the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 along with their mother

Mrs.S.P.Geetha the fifth impleaded appellant had undisclosed income in the form of unaccounted jewelries with them. The details of the jewellery seized on the date of seizure are as under:-

Appellant	*Date of seizure*	*Gold (in Grams)*	*Diamond (in caret)*
SP.Sanjai	05.01.2001	3139.900 grams	35.05 carets
SP.Karthick	05.01.2001	1686 grams	30.00 carets

20. The appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 tried explaining to the authorities that out of the total jewelries seized were:-

(a) a part of the Jewelry s were a share ancestral from the ancestory.
(b) certain quantity of gold were purchased out of the sale consideration, i.e., received pursuant to the sale agreement with R.V.Deshmuk's Wife and Shanmugam; and
(c) part from the marriage gifts; and
(d) remaining from their in-laws during the birthday of their respective children.

21. The appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011 along with their mother the impleaded fifth appellant in T.C.A.No.232 of 2011 had suffered adverse Assessment

Orders dated 31.01.2003, 20.01.2003 and 21.01.2003 respectively under Section 158BD read with Section 158BC and 143(3) of the Income Tax Act, 1961, as detailed below:

T.C.A.No.	***Assessment Order dated***	***Assessment Year***	***Previous Year***	***Section under which the assessment is made***
768 of 2009 (S.P.Karthick)	31.01.2003	Block 1991-92 to 2000-01 and A.Y. 2001-02 (Part)	Block 1991-92 to 2000-01 and A.Y. 2001-02 (Part)	158BD r.w.s. 158BC & 143(3) of the Income Tax Act, 1961.
232 of 2011 (S.P.Sanjai)	20.01.2003	Block Period 01.04.1991 to 05.01.2001 relevant for the assessment years 91-92 to 2000-01 and 2001-02 (Part)	Block Period 01.04.1991 to 05.01.2001 relevant for the assessment years 91-92 to 2000-01 and 2001-02 (Part)	158BC r.w.s. 143(3) of the Income Tax Act, 1961.
240 of 2011 (S.P.Geetha)	21.01.2003	-Do-	-Do-	-Do-

22. Against the aforesaid Assessment Orders dated 31.01.2003, 20.01.2003 and 21.01.2003, the appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011, filed appeals before the Appellate Commissioner, vide separate appeals in I.T.A.No.216/2005-

06 and I.T.A.No.201/2005-06. The Revenue's appeals were partly allowed as mentioned above.

23. The mother of appellant in T.C.A.No.768 of 2009 and the deceased first appellant in T.C.A.No.232 of 2011, i.e. Mrs.S.P.Geetha also filed I.T.A.No.199/2005-06 before the Appellate Commissioner. The said appeal was partly allowed by the Appellate Commissioner vide order dated 15.11.2006. Aggrieved by the same, the Income Tax Department filed an appeal before the Appellate Tribunal as detailed above.

24. The total jewelry recovered from the respective appellants and the quantum of unexplained jewels of the respective appellants which are subject matter of the present appeals are as under:-

	TCA. No 768 of 2009 (S.P Karthick)			TCA No 232 of 2009 (S.P Sanajai)		
Gold Seized on 05.01.2001	1686 grams			3139 grams		
	Total (Questioned)	Explained	Un-explained	Total (Questioned)	Explained	Un-explained
As per Assessment Order	1686 grams	436 grams	1250 grams	1751 grams	960 grams + 40 grams	751 grams

As Per Order of CIT	764 grams	600 grams	164 grams	1035 grams (751 grams+284 grams)	900 grams	135 grams
As per ITAT	Order of the First Appellate Authority(CIT) was set aside			1035 grams	450 grams	585.95 grams
Diamond Seized on 05.01.2001	30 carat			35 carat		
	Total (Questioned)	Explained	Un-explained	Total (Questioned)	Explained	Un-explained
As per Assessment Order	30 carat	12 carat	18 carat	35.05 carat	23 carat	12.05 carat
As Per Order of CIT	18 carat	18 carat	Nil	17.05 carat ***(12.05 carat + 5 Carat)***	15.00 carat	2.05 carat
As per ITAT	Order of the First Appellate Authority(CIT) set aside			12.05 carat	10 carat	2.05 carat

25. A reading of the impugned orders of the Appellate Tribunal and the grounds of appeals raised by the respective appellants reveals that no substantial question arises for consideration for being answered in these appeals.

26. The dispute pertains to only quantum of unexplained income in the form of jewels in the hands of the respective appellants as above. Though the learned Standing Counsel for the respondent submitted that the matter can be remitted back to the Assessing Officer for determination,

the learned counsel for the appellants insisted for a order on merits of the respective appeals.

27. We find no merits in these appeals as no substantial question of law arises for consideration. The Appellate Tribunal is the ultimate fact finding authority. In appeal, we cannot come to a different conclusion on facts. These appeals are therefore liable to be dismissed. However, considering the fact that the Assessing Officer was directed to make additions based on the observation in impugned order dated 03.01.2011 I.T. (SS) A.No.43/Mds/2007 challenged in T.C.A.No.232 of 2011, we are inclined to set aside the order dated 13.02.2009 in I.T. (SS) A.No.0044/Mds/2007 challenged in T.C.A.No.768 of 2009 and remit the case back to the Assessing Officer to do a similar exercise afresh following the reasoning adopted by the Appellate Tribunal in I.T. (SS) A.No.43/Mds/2007 vide order dated 13.01.2011.

28. In the result,

i. Impugned order dated 13.02.2009 in T.C.A.No.768 of 2009 is set aside and the case is remitted back to the Assessing Officer, i.e. Deputy Commissioner of

Income Tax, Central Circle-II, to pass a fresh order on merits in accordance with law in line with the direction of the Tribunal in I.T. (SS) A.No.43/Mds/2007 vide order dated 13.01.2011.

ii. Entire exercise shall be completed by the Assessing Officer in the respective cases, within a period of three months from the date of receipt of a copy of this order.

iii. T.C.A.No.768 of 2009 stands disposed of by way of remand.

iv. T.C.A.No.232 of 2011 stands dismissed.

v. No Cost. Consequently, connected Miscellaneous Petitions are closed.

S.V.N., J. C.S.N., J.
02.12.2022

Internet : Yes / No
Index: Yes/ No
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To
1.The Commissioner of Income Tax,
Madurai.

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

3.The Deputy Commissioner of Income Tax,
Central Circle – II,
Madurai.

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

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Pre-Delivery Common Judgment
made in
T.C.A.Nos.768 of 2009
& 232 of 2011 and
M.P.Nos.1 of 2009 & 1 of 2011

02.12.2022