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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A. No. 89 of 2022

Smt.S.Sakunthala Sivam
No.42, Hari Palace
Sundaram Colony,
Pallapatti,
Salem - 636 005.

...Appellant/Appellant

Versus

Income Tax Officer,
Ward - 1(3),
Salem.

...Respondent/Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 16.09.2021 passed in I.T.A.No.2724/Chny/2016 and against the order of the Commissioner of Income Tax (Appeals), Salem dated 23.06.2016 made in ITA.No.72/2014-15 and against the order of the Income Tax Officer, Ward I (3), Salem dated 21.03.2014 made in PAN.No.BDLPS8621L for the Assessment year 2011-12.

For Appellant : Mr.R.Janakiraman

For Respondent : Mrs.V.Pushpa,
Junior Standing Counsel

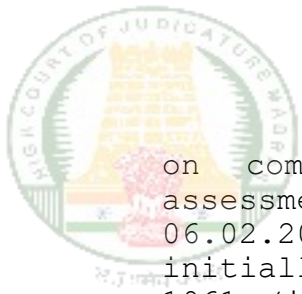
JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This is an assessee's appeal, filed against the order dated 16.09.2021 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, in ITA No.2724/CHNY/2016 relating to the assessment year 2011-12.

2.The case in brief is as follows:

The appellant, an individual in status, was deriving income



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on commission basis from real estate business. For the assessment year in question, she filed her return of income on 06.02.2012 admitting a total income of Rs.4,44,750/-, which was initially processed under section 143(1) of the Income tax Act, 1961 (in short, 'the Act'). Subsequently, notice under section 143(2) of the Act, dated 31.07.2012 was issued, which was served on the appellant on 17.08.2012. In response, the relevant details were furnished by the appellant to the respondent. Thereafter, an assessment order under section 143(3) of the Act, dated 21.03.2014 came to be passed, making addition of Rs.25,00,000/- as unexplained investment under section 69 of the Act, on the premise that the cash deposits in the Savings bank account do not represent the business receipts claimed to be admitted under section 44AD, for which, the appellant was required to prove the sources for the peak cash balance of Rs.25,00,000/-, but she failed to do so. Challenging the order of assessment, the appellant preferred an appeal before the CIT (Appeals) Salem, who by order dated 23.06.2016, dismissed the appeal, after having held that the appellant has not produced evidence for the cash deposits made in the bank account. She carried the matter further to the Income Tax Appellate Tribunal, which also dismissed the appeal filed by her, by the order dated 16.09.2021. Therefore, the appellant / assessee is before this court with this tax case appeal.

3.The appellant has suggested the following substantial questions of law for consideration of this court:

"(i)Whether the Appellate Tribunal was correct in law in dismissing the appeal without due regard to the statutory mandate of section 44AD of the Income-tax Act?

(ii)Whether the Appellate Tribunal was correct in law in holding that the source of a cash deposit is to be explained, although the amount forms part of the total credits considered for applying the presumptive rate of tax under section 44AD of the Act."

4.It is the main contention of the learned counsel for the appellant that all the authorities below failed to notice that once the income has been returned under section 44AD of the Act, there was no mandate under the statute for the department to question the source for each and every entry that formed the basis to arrive at the gross income for the purpose of applying 8% rate. It is further contended that the appellant had been earning income from real estate business from the assessment year 2007-08 onwards and the records produced by her were very much available with the respondent. However, the respondent erred in concluding that the cash deposits in the SB account do not represent the business receipts as admitted under section 44AD and that, the source for the peak cash balance of



Rs.25,00,000/- was not proved by the appellant and accordingly, made addition of the said amount as unexplained investment under section 69 of the Act. Without properly appreciating the submission of the appellant, the conclusion so arrived at by the respondent was also affirmed by the appellate authorities and hence, the same is liable to be set aside. The learned counsel in support of his contention, placed reliance on a decision rendered by Punjab and Haryana High Court in the case of CIT v. Surinder Pal Anand [(2011) 242 CTR 61, wherein it was held as follows:

"8.Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8% of the gross receipt itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry of cash deposit in the bank unless such entry had no nexus with the gross receipts. The stand of the assessee before Commissioner of Income-tax (Appeals) and the ITAT that the said amount of Rs.14,95,300/- was on account of business receipts had been accepted. Learned counsel for the appellant with reference to any material on record, could not show that the cash deposits amounting to Rs.14,95,300/- were unexplained or undisclosed income of the assessee.

9. In view of the above position, we are unable to hold that any substantial question of law arises in this appeal" With these submissions, the learned counsel sought to allow this appeal by setting aside the order of the Tribunal.

5.On the other hand, the learned counsel appearing for the respondent submitted that after analysing the entire facts and circumstances of the case in the light of the materials placed, the authorities below rightly held that the sources of the deposits in question, were not properly explained by the appellant. Hence, the order impugned herein warrants no interference at the hands of this court.

6.Heard both sides and perused the documents enclosed in the typed set of papers.

7. The short question that arises for consideration herein is relating to the unaccounted credit of Rs.25,00,000/- in the savings bank account of the appellant. According to the appellant, the said sum is to be taxed at 8% as per section 44AD of the Act, as the same is her business receipts. However, the assessing officer rejected the claim of the appellant and assessed the same under section 69 of the Act, by treating it as unexplained investment, with the following findings:

"5.1.The assessee has initially claimed certain sources for the peak deposit of Rs.25,00,000/- and



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when she was confronted with the possibility of her sources being discredited in view of the facts and propositions expounded in this office letter dated 12.03.2014, she has resorted to this new theory as an afterthought to cover up the obvious lack of sources.

5.2. The assessee vide her letter dated Nil received on 06.03.2013 initially stated that her nature of Business is "Spoken English Coaching Class Profession" and later in her letter dated 17.03.2014 she has stated that she has done "Real Estate Business". If the assessee was carrying on "Spoken English Coaching Class", she would not be eligible to admit income u/s 44AD as this would be in the nature of profession. If on the other hand, as the assessee claimed later, she is engaged in "Real Estate Business", there should be records for the purchase and sale of immovable property which would inevitably have to be maintained. In view of the diverging stands taken by the assessee, there is no way of ascertaining the actual nature of business and its eligibility under the provisions of section 44AD."

The order of assessment passed by the assessing officer was confirmed by the first appellate authority as well as by the Tribunal. Therefore, this tax case appeal by the appellant / assessee.

8. There is no dispute with regard to the legal position that Section 44AD of the Act was inserted by Finance Act, 1994 with effect from 01.04.1994. Sub-section (1) of Section 44AD clearly provides that where an assessee is engaged in the business of civil construction or supply of labour for civil construction, income shall be estimated at 8% of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in Sections 28 to 43C of the Act. This income is to be deemed to be the profits and gains of the said business chargeable of tax under the head "profits and gains" of business. The said provisions are applicable where the gross receipts paid or payable does not exceed Rs.40 lakhs.

9. However, it is evident from the records that the appellant did not prove her nature of business and the source of credit of Rs.25,00,000/-; and she put forth different stand before the authorities below. Though the learned counsel for the appellant raised a plea that the appellant was represented by an Income Tax Practitioner, who did not properly represent the case before the respondent and failed to give the details with regard to the



credit in her savings bank account and explain the sources of credit of Rs.25,00,000/- in a proper manner, this court is not inclined to accept the same, in view of the categorical finding rendered by the appellate authorities, while dismissing the appeals filed by the appellant, to the effect that the appellant failed to co-relate the source of cash deposits. For better appreciation, the relevant passage of the orders passed by the appellate authorities is extracted below:

First Appellate Authority

"6. The assessee has been giving different explanation at different times regarding the sources of Rs.25,00,000/-. However, the assessee has not produced any evidence in support of the claims. The Authorised Representative has requested that the entire amount may be treated as the business turnover of the assessee as claimed in the Return of Income filed by the assessee. The question of cash deposit was a subject matter of AIR information based on which the Assessing Officer had called for details. In response to the query by the assessing officer, the assessee has made a claim that the amount of Rs.12,45,000/- was her own accounted money and Rs.12,55,000/- was cash gift received from her NRI son and her husband. However, no evidence was produced & hence, the assessing officer made the additions. The assessee and her authorized representative are unable to produce any evidence in support in their claims even during the proceedings before me. Therefore, I do not find any reason to interfere with the Assessment Order. Hence, this ground of appeal is dismissed."

Income Tax Appellate Tribunal

"7. We heard the rival submissions and gone through the relevant material. Though, the assessee admitted the income u/s. 44AD, with regard to the sources of cash deposits made in the bank account, initially, she submitted that her nature of business of Spoken English Coaching Class Profession and gave certain sources for the cash deposits made on 18.10.2010 and explained the sources for the cash deposits made on 21.10.2010 as extracted, supra. When the AO accepted part of her explanation and required the assessee to prove the sources of the remaining deposits, the assessee took a differed stand and canvassed that her income is from real estate business and it is covered u/s.44AD etc. However, she has not let any material/evidences before the lower authorities to prove that she was in the real estate business. It is clear that the assessee has been inconsistent about the nature of sources of the



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impugned cash credits. She has not let in any material/evidence either before the lower authorities or before us to establish that the nature of her activities are falling within the realm of business etc and the impugned transactions are part and parcel of her turnover etc but for a fact that she was a trustee in a school which was brought on record through an enquiry. Therefore, the sources of the impugned deposits were not explained by the assessee. Further, the assessee has not dislodged the findings recorded by the AO on the inconsistencies in her stand, supra."

10. In view of the above, this court is of the opinion that there is no question of law much less substantial question of law arisen for consideration herein. Hence, this tax case appeal deserves to be dismissed and is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

mrr

To

1. The Income Tax Appellate Tribunal 'A' Bench,
Chennai.
2. The Commissioner of Income Tax (Appeals)
No.3, Gandhi Road, Salem -7.
3. The Income Tax Officer,
Ward - 1(3), Salem.

T.C.A.No.89 of 2022

BR(CO)
RGA(06/05/2022)