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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

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

T.C.A. No. 245 of 2011

The Commissioner of Income Tax
Salary Range IV, Chennai .. Appellant

Versus

Sri. S.A. Bhimaraja .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 24.12.2010 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, in I.T.A. No. 1167/Mds/2010.

Against the order of The Commissioner of Income tax (Appeals)-VI, Chennai-34 dated 22/06/2010 in I.T.A.No.122/09-10 against the order of The Joint Commissioner of Income Tax, Salary Range IV, Chennai-34 dated 30/12/2009 in PAN/GIR No.AEFPB5660J.

For Appellant : Mrs. R. Hemalatha
Senior Standing Counsel
For Respondent : Mr. S.Sathya Narayanan

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

This appeal is filed by the appellant/Revenue against the order dated 24.12.2010 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A. No. 1167/Mds/2010 for the assessment year 2007-08.

2. This Court, by order dated 03.08.2011 admitted the appeal on the following substantial questions of law for consideration:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the commission income when the sale is effected through power of attorney in favour of Sri Developer Ltd. and purchase deed was produced?

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2. Whether on the facts and circumstances of the case, the Tribunal was right in deciding that no capital gain or business income arises, since the property was sold to single party when the land is business asset?

3. Whether on the facts and circumstances of the case, the Tribunal was right in deleting Rs.28 lakhs bank account and no evidence for withdrawal?

4. Whether on the facts and circumstances of the case, the Tribunal was right in deciding that palawakkam village not so far is notified for capital gain when the land is situated within urban limits?

5. Whether on the facts and circumstances of the case, the Tribunal was right in deleting Rs.44.75 lakhs when the assessee has not produced any evidence?

6. Whether on the facts and circumstances of the case, the Tribunal was right in deleting Rs.50 lakhs when the total credit in the name of Manikandan is Rs.1.17 crore and the total debt is Rs.67 lakh and there is nett amount of Rs.50 lakhs remaining unexplained?"

3. The case in brief is that the respondent/assessee was employed as Engineer in M/s.Ramco Industries Ltd, till 2008. He filed his return of income for the assessment year 2007-2008 disclosing a sum of Rs.79,35,400/-. During the course of assessment proceedings, the Assessing Officer confronted the respondent/assessee with respect to the details collected from AIR information, which include cash deposits of Rs.32,19,000/- being rent received from different parties, purchase of immovable properties to the tune of Rs.48,30,000/- and huge cash turnover in his account with State Bank of India, Mauritius. The respondent/assessee offered his explanation, which was found to be not satisfactory and therefore, the assessing officer, after having held that the respondent / assessee was involved in the real estate business, passed the order of assessment on 30.12.2009, on a total income of Rs.3,18,42,159/- including long term capital gains at Rs.1,82,000/- (subjected to tax @ 20%) which resulted in raising a net demand of Rs.1,15,71,391/-.

4. Aggrieved by the order of assessment, the respondent/assessee filed an appeal before the appellate authority namely Commissioner of Income-tax (Appeals)-VI, who dismissed the same on 22.06.2010 confirming the order of the assessing officer. The respondent / assessee went on further appeal before the Tribunal and the Tribunal vide its order dated 24.12.2010, partly allowed the appeal. The said order is under challenge in this appeal by the appellant / Revenue.

5. The main contention of the learned counsel for the appellant is that without properly considering the fact that the

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respondent / assessee did not adduce any satisfactory documentary material to support their claim, the Tribunal erred in deleting the additions made by the Assessing Officer viz., Rs.23.20 lakhs as business income in the nature of commission earned on sale of land at Kalavakkam village, Rs.25,45,417/- as business income in respect of the sale of property at Neelangarai village, Rs.32.19 lakhs and Rs.28 lakhs as income from other sources against the cash deposits, deposit of Rs.25 lakhs as unexplained investment and Rs.44.75 lakhs as unexplained nature of deposit. The learned counsel further submitted that the Tribunal also erred in deleting the addition of Rs.50 lakhs received from one Manikandan as unexplained investment. According to the learned counsel, it was claimed by the respondent / assessee before the Tribunal that he advanced the sum of Rs.50 lakhs to the said Manikandan by way of Demand Draft in February 2006 for purchase of property, but the transaction did not fructify and therefore, the advance amount was returned by way of cheque, which was dishonoured on its presentation and the respondent / assessee filed a complaint before the jurisdictional magistrate court in this regard. However, such a claim of dishonour of cheque and filing of complaint was raised by the respondent / assessee for the first time before the Tribunal and hence, the Tribunal ought to have provided an opportunity to the appellant / Revenue to counter the said claim made by the respondent/ assessee, in adherence to the principles of natural justice. Therefore, the learned counsel prayed this court to remand the matter to the Tribunal for fresh consideration.

6. On the other hand, the learned counsel for the respondent / assessee, submitted that the Tribunal after analysing the entire facts and circumstances of the case and the documents placed before the same, rightly passed the order impugned herein, which does not call for any interference by this court.

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

8. The order of the Tribunal dated 24.12.2010, which is impugned herein, is assailed by the appellant / Revenue on the ground that no relevant documentary evidence, such as, PAN Number, Income Tax Particulars, etc. was produced by the respondent /assessee to substantiate their claim and no reasonable opportunity was provided to the appellant / Revenue to counter the claim made by the respondent / assessee for the first time before the Tribunal, following the principles of natural justice.

9. There is some force in the contentions so made by the learned counsel for the appellant, as this court as a court of

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appeal only decides the legal questions arising out of the impugned order and it cannot decide the question of fact de novo unless a pure finding of fact is decided. Whereas, the submissions made on the side of the appellant are touching the factual aspects, which have to be examined by the Tribunal, being the final fact finding authority, after providing reasonable opportunity to both the parties to substantiate their respective claims by producing the relevant documentary evidence available with them. Therefore, this court, without going into the merits of the case, sets aside the order impugned herein and remands the matter to the Tribunal for fresh consideration and pass appropriate orders, on merits and in accordance with law, after affording reasonable opportunity to both the parties for production of the requisite materials. Such an exercise shall be competed within a period of six months from the date of receipt of a copy of this judgment.

10. Accordingly, this tax case appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

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

2.The Joint Commissioner of Income Tax,
Salary Range IV, Chennai.

3.The Commissioner of Income tax (Appeals)-VI, Chennai-34.

T.C.A No. 245 of 2011

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