



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

AND

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case Appeal No.45 of 2013

D.Suneeta

...Appellant

-vs-

The Deputy Commissioner of Income Tax,
Central Circle II (5),
Chennai - 600 034.

...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 03.06.2011 passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai in I.T. (SS)A.No.7/Mds/2010 as against the order of the Commissioner of Income Tax (Appeals)-II, 46 Mahathma Gandhi Road, Nungambakkam Chennai 600 034 made in I.T.A. No. 03/07-08 dated 27.11.2009, as against the order of the Assistant Commissioner of Income Tax, Central Circle II(5)i/c Chennai 34 in PAN/GIR No. AYPPS3637E dated 28.02.2007 for the Assessment year Block period ending 1.4.96 to 31.01.2003.

For Appellant : Mr.Venkatanarayanan
for Mr.Subbaraya Aiyar

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT

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

This is an appeal filed by the appellant / assessee, assailing the order dated 03.06.2011 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in I.T. (SS)A.No.7/Mds/2010, for the block period from 01.04.1996 to 02.01.2003.

2.According to the appellant, a search under section 132 of the Income-tax Act, was conducted in her premises on 02.01.2003, in which, 4582 grams of jewellery was found; and out of the same, 1387 grams belonged to the appellant; and she



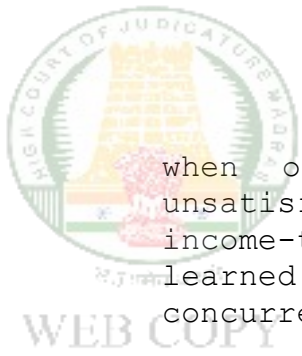
explained the source of the same as if 750 grams was received from her parents, 250 grams from her mother-in-law and 350 grams from her sister residing abroad. Based on the materials recovered, the proceedings under section 158BD was initiated and a notice was issued, to which the appellant filed her return admitting undisclosed income 'nil'. Upon scrutiny of the same, the assessment was completed under section 158BD r/w section 143(3) on 28.02.2007, determining the undisclosed income at Rs.4,75,780/-, by adding the value of 887 grams of jewellery of Rs.4,07,880/- and Rs.67,900/- towards unexplained agricultural income. Challenging the same, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), who by order dated 27.12.2009, deleted the addition made in respect of agricultural income, but confirmed the addition made in respect of 887 grams of jewellery. The said order of the appellate authority was also affirmed by the Tribunal, in the appeal filed by the appellant. Therefore, the appellant is before this court with this tax case appeal.

3. On 25.02.2013, this Tax Case Appeal was admitted on the following substantial questions of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the addition made in respect of jewellery found at the time of search without appreciating the explanation offered by the assessee and the guidelines issued by CBDT vide Instruction No.1916 dated 11.05.1994 in this regard?"

4. The learned counsel appearing for the appellant submitted that the Tribunal erred in confirming the addition without appreciating the explanation given by the appellant in the sworn statement recorded from her on 06.01.2003 and without considering her status and hence, the same is liable to be quashed.

5. The learned senior standing counsel appearing for the respondent/department submitted that after analysing the entire materials available on record, the Tribunal affirmed the order passed by the CIT(A), with respect to addition of Rs.4,07,880/- representing the value of 887 grams of jewellery, as undisclosed income of the appellant. Placing reliance on the decision of the Hon'ble Supreme Court in Commissioner of Income Tax v. P.Mohanakala [(2007) 291 ITR 278 (SC)], the learned counsel submitted that the re-appreciation of evidence and substitution of the findings by the High Court was impermissible and that,



when once explanation offered by the assessee was found unsatisfactory, the value of the jewellery was to be charged to income-tax as the income of the assessee. Thus, according to the learned counsel, there is no requirement to interfere with the concurrent finding of fact arrived at by the authorities below.

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

7. The short question that arises for consideration herein is relating to the addition of Rs.4,07,880/- towards the value of 887 grams of jewellery as undisclosed income of the assessee, by the assessing officer as confirmed by the CIT(A) as well as the Tribunal.

8. There is no dispute with regard to the search and seizure of 1387 grams of jewellery in the premises of the appellant on 02.01.2003. The appellant claimed that the said jewels were received from her parents, mother-in-law and sister on various occasions, by way of gift. However, the assessing officer found that there was no evidence adduced by the appellant to support her claim and hence, after deducting 500 grams as gift received by the appellant, the value of balance 887 grams of jewels at Rs.4,07,880/- was added as undisclosed income. The said addition by the assessing officer in the assessment order was confirmed by the CIT(A) by order dated 27.11.2009, which was also affirmed by the Tribunal. The findings of the Tribunal are quoted below for ready reference:

"We find that no evidence whatsoever for receiving gift was brought on record either before us or before the lower authorities. Further, no material was brought before us to show the amount of income which was disclosed by either of the parents of the assessee and parents-in-law of the assessee at the time of marriage or thereabout. In the absence of any such material, we do not find any good reason to interfere with the orders of the lower authorities."

9. Admittedly, the CBDT, vide Instruction No.1916 dated 11.05.1996 has directed not to seize jewellery to the extent of 500 grams in the case of married women. Further, the appellant did not produce any bills / books of accounts / document, except her oral statement, to substantiate her claim that the entire jewels belonged to her. In such circumstances, this court finds no good reason to disagree with the findings so rendered by the Tribunal.



10. It is also to be noted that the concurrent finding of fact arrived at by all the authorities below cannot be slightly interfered with by the High Court. In this context, it would be relevant to refer to the decision of the Hon'ble Supreme court in Mohanakala case cited on the side of the respondent, wherein, it was observed as under:

"22. Whether the High Court was justified in interfering with the concurrent finding of fact arrived at by all the authorities including the Tribunal? The Assessing Officer found that all the so-called gifts came from Ariavan Thotan and Suprotoman. The assessee did not declare that they are the alias of Sampathkumar. It is only an afterthought they have come forward with the said plea. The Assessing officer also found that the gifts were not real in nature. Various surroundings circumstances have been relied upon by the Assessing officer to reject the explanation offered by the assessee. The Commissioner of Appeals confirmed the findings and conclusion drawn by the Assessing Officer. The Tribunal speaking through its Senior Vice President concurred with the findings of fact. The findings in our considered opinion, are based on the material available on record and not on any conjectures and surmises. They are not imaginary as sought to be contended.

23. Relying on the decisions of this Court in Bejoy Gopal Mukherji v. Pratul Chandra Ghose AIR 1953 SC 153 and Orient Distributors v. Bank of India Ltd. AIR 1979 SC 867, Shri Iyer, learned senior counsel contended that issue relating to the propriety of legal conclusion that could be drawn on basis of proved facts gives rise to a question of law and, therefore, the High Court is justified in interfering in the matter since the authorities below failed to draw a proper and logical inference from the proved facts. We are unable to persuade ourselves to accept the submission. The findings of fact arrived at by the authorities below are based on proper appreciation of the facts and the material available on record and surrounding circumstances. The doubtful nature of the transaction and the manner in which the sums were found credited in the books of account maintained by the assessee have been duly taken into



WEB COPY

consideration by the authorities below. The transactions though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence."

11.Thus, the concurrent findings of fact arrived at by the authorities below based on material evidence, cannot be found fault with; and there is no question of law, much less substantial question of law arisen for consideration in this appeal.

12.In fine, this tax case appeal stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registra

gba/msr
To

- 1.The Deputy Commissioner of Income Tax,
Central Circle II (5),
Chennai - 600 034
2. The Income Tax Appellate Tribunal,
Madras "B" Bench, Chennai.
3. The Commissioner of Income Tax (Appeals)-II,
No. 46 Mahathma Gandhi Road
Nungambakkam, Chennai 34.
4. The Assistant Commissioner of Income Tax
Central Circle II(5), Chennai 34

+1 CC to Mr. Subbaraya Aiyar, Advocate sr 17161.

Tax Case Appeal No.45 of 2013

SPD(CO)
SP(05/04/2022)