IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.346 of 2009

1.T.V.Magaadevan (Died)

2.M.Chithradevi

3.M.Kruthika

4.Minor. M.Swarthmika

(Rep. by her mother & Natural guardian
M.Chithradevi)

5.V.Reginaganatham .. Appellants

(Appellants 2 to 5 brought on record as LRs of the deceased sole appellant vide order of the Court dated 11.01.2021 made in CMP.4797&4808/2019 in TCA.No.346 of 2009)

vs

The Deputy Commissioner of Income Tax,
Central Circle II(4),
Chennai. .. Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 25.09.2008 in IT(SS)A No.0052/MDS/2005.

For Appellants	:	Mr.R.Sivaraman for Mr.P.Ramesh Kumar (for A2 to A5)
For Respondent	:	Mr.Karthik Ranganathan Senior Standing Counsel

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This appeal has been filed at the instance of the assessee/appellant. He challenges an order of the Income Tax Appellate Tribunal (ITAT/Tribunal) dated 25.09.2008 in relation to an order of block assessment passed under the provisions of erstwhile Chapter XIV-B of the Income Tax Act, 1961 (in short 'Act') for the block period 01.04.1986 to 24/25.09.1996 (block period). The search in question was carried out under Section 132 of the Act on 24/25.09.1996.

2.We have heard the detailed submissions of Mr.R.Sivaraman, learned counsel appearing for Mr.P.Ramesh Kumar, learned counsel on record for the appellants (legal heirs of the deceased first appellant) and

Mr.Karthik Ranganathan, learned Senior Standing Counsel for the Revenue.

3. The substantial question admitted for consideration are as follows:-

'1.Whether in the facts and circumstances of the case, the additions made under the block assessment should be only on the basis of evidence gathered during the course of search?

2.Whether in the facts and circumstances of the case, additions under the block assessment can be made solely on the basis of the statement recorded under Section 132(4) of the Income Tax Act, 1961, without any other material evidence to corroborate with?

3.Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in upholding the addition made by the assessing officer on the issue of expenses incurred on construction of house property without giving credit for the expenses borne by the father of the appellant, when in fact, there was material available on record to demonstrate that a portion of the expenses was borne by the father of the appellant herein?

4.Whether in the face of the detailed written submissions placed before the Income Tax Appellate Tribunal, it was proper on the part of the Income Tax Appellate tribunal to state in Para 12 of the order that "a bleak attempt was made before us to show that part of the cost was incurred by the father of the assessee?'

4. The appellant had filed regular returns for all the years upto the date of search, within time. Only intimations had been issued under Section 143(1) and no scrutiny assessments had been made for any of the

years. In the course of search, a statement was recorded under Section 132(4) of the Act on 25.09.1996, from K.V.Magaadevan.

5.The above statement, recorded under section 132(4) of the Act undoubtedly comprises an important piece of evidence and one of the issues raised for our consideration is the extent of reliance that may be placed upon the statement. We will consider this aspect of the matter in due course.

6.Based on a conjoint appreciation of the seized material, being cash, jewellery and other incriminating assets found as well as the statement recorded in the course of search, an assessment came to be framed on 31.03.2005 making various additions/disallowances for the block period.

7.The appellant challenged the same by way of first appeal before the Tribunal which, by way of the present impugned order dated 25.09.2008 disposed the appeal granting part relief. The Deputy Commissioner of Income Tax, Central Circle II (4), Chennai has passed an order dated 22.12.2008 giving effect to the order of the Tribunal dated 25.09.2008. A miscellaneous petition was filed on 12.02.2009 seeking rectification of errors in the giving effect to order but no orders of the

Deputy Commissioner are available in that connection. The issues raised for our consideration number nine, as against which the appellant does not press three issues. In the course of arguments, Mr.Sivaraman has pressed only the following issues that are dealt with in the paragraphs to follow.

S.No.	***Particulars***	***Addition made by the Assessing Officer***	***Addition sustained by the Income Tax Appellate Tribunal***
3	Valuable articles found during the course of search	Rs.3,25,000	Rs.3,20,000/-
4	Investment on account of purchase of house property	Rs.81,25,000/-	Rs.81,25,000/-
5	Plots purchased at Ambika Nagar, Trichy	Rs.80,880/-	Rs.40,440/-
6	Purchase of four plots from Mannargudi Housing Co-operative Society Ltd.	Rs.1,72,584/-	Rs.1,72,584/-
8.	Rent paid for the house property at No.26A, Arulananda Nagar, Tanjore	Rs.48,000/-	Rs.48,000/-
12	Estimated marriage expenses	Rs.25,00,000/-	Rs.12,50,000/-

8. The first issue relates to articles found in the course of search. The authority had sought the sources for the purchase of 21 articles that were found in the course of search. In some cases, seized materials had been found to indicate contradictions/discrepancies in the statement

recorded/explanations tendered. One of the explanations tendered at the time of assessment was that those articles from part of the wealth tax returns and this submission has been eschewed, and rightly, on the premise that movable assets that are personal in nature would not form part of taxable wealth.

9.The assessing authority had valued the movables at a sum of Rs.3,25,000/- treating the same as undisclosed income of the assessee for assessment year (AY) 1997-98 under Section 69A of the Act. As far as the value of air conditioners is concerned, no addition was made on this account as they had been considered under the head 'investment in house property'.

10.The Tribunal finds that in the statement recorded from the appellant, he had stated that one television had been given as a gift by his father-in-law and another television had been purchased in 1994. As far as the refrigerators are concerned, he had explained the sources stating that his father had purchased two refrigerators and one had been given to him at the time of marriage as a gift. The relevant questions and answers read thus:-

> *'Q.34. During the course of the search, 9 air conditioners, 5 colour televisions, 3 refrigerators, 1 VCR*

and 1 CD audio cassette deck were found. In which year were these purchased and how much did you pay for them? Are they accounted for?

A.34.
I)
1.One TV was presented to me at the time of my marriage
2.Two Sony televisions were purchased by my father.
3.A Thomson TV was gifted to me by my father-in-law.
4.One Videocon TV was purchased in 1994, but the details of the same are not known.

II) Refrigerator:
1.One was received by me at the time of marriage.
2.The rest 2 of them were purchased by my father.

III) A/C Machines:
1.After the construction of the house, 4 A/C Machines were purchased which were purchased for Rs.1,20,000/- out of my other incomes. The above 4 machines were purchased in Burma Bazaar. The rest of the 5 air conditioners were purchased by my father.

IV) VCR – Old

V) CD Audio cassette deck – Old.

The Air conditioners purchased were not shown in books for income tax purpose.'

11.The seized materials however, revealed that one of the televisions had been purchased from a local store. Hence, the statement recorded contained some discrepancies, and to the extent to which the authority had seized material that disproved the explanations in the statement, he has reconciled the two and arrived at the following conclusion:-

> *'6. ....*
>
> *The assessee's representative vide his letter dt.20-12-2004 has stated that the assessee and his family members are already assessed to Wealth tax and they are filing WT returns regularly. The assessee has explained the sources for the purchase of the valuables in his sworn statement at the time of search. The explanation provided by the assessee was not accepted and examined. The valuables were purchased by the entire family and has been discussed in the statement filed along with the returns. The assessee's representative has not furnished any evidence that the valuables are reflected in the WT returns. The valuables found at the time of search are all movable properties and personal in nature and will not form taxable wealth. The assessee in his sworn statement recorded u/s 132(4) of the I.T.Act on the date of search has stated that one TV was received by him as gift at the time of marriage and 2 TVs were purchased by his father. His father-in-law has given him one TV as gift and another TV was purchased in the year 1994. In respect of the VCR, he has stated that they are old. He has stated that his father has purchased two refrigerators and one refrigerator was given to him at the time of marriage as a gift. The assessee's representative has not furnished the name and address of the person from whom he has received the TV and refrigerator as a gift. A perusal of the seized documents reveal that the assessee has purchased an Onida Colour TV for Rs.16,000/- on 10-05-95 from M/s Punniyamoorthy Pillai Departmental Stores. The bill was seized vide page No.64/MC/B & D/S-11. Hence the assessee's explanation that the TV was received at the time of marriage as a gift is not acceptable. No credit for*

drawing from Dr.Vinodhagam is given for the reasons discussed in para No.4 of this order. In the absence of any proof, the value of the movables is estimated at Rs.3,25,000/- and treated as the undisclosed investment of the assessee for the A.Y.97-98 and assessed u/s 69A of the Income tax Act.'

12.We find that the Tribunal has considered the matter in detail and has taken into account the entirety of the facts that were put forth by the parties. The statement which has been produced before us also reveals variations between the returns that the appellant has filed prior to the date of search and the assets that were found.

13.Coming to the second addition, which relates to investment in the property at No.5, 9th Cross Street, Arulananda Nagar, Tanjore, (in short 'subject property'), the return initially filed by the appellant on 23.08.1995 had revealed expenditure only in the region of Rs.18 lakhs. No return had been filed in response to notice under Section 158 BC of the Act. In the order of assessment, the assessing authority has set out the details of expenses as tabulated by the appellant in his diary, which is part of the seized records. The relevant part of the narration in the order is as follows:

'7........The assessee has in his diary seized vide Ann/MC/B&D/S-3 has noted down the following expenses for the construction of the house.

1)Pushpa Marble	*Rs.2,30,000/-*
2)Kasi Electrician	*Rs. 15,300/-*
3)Wooden Box Ply woods	*Rs. 24,290/-*

4)Ravi Electrician	*Rs. 16,000/-*
5)Grill (Advance)	*Rs. 10,000/-*
6)Paint	*Rs. 20,000/-*
7)Prasanna	*Rs.3,00,000/-*
8)Grill	*Rs. 14,500/-*
9)Electricals	*Rs. 30,000/-*
10)Water Heater	*Rs. 29,480/-*
11)Kasi Electrician	*Rs. 36,850/-*
12)Kasi Electrician	*Rs. 7,640/-*
13)Grill	*Rs. 6,000/-*
14)Maran Painter	*Rs. 18,200/-*
15)Grill Final payment	*Rs. 11,000/-*
16)Ravi Electrician	*Rs. 28,500/-*

The assessee has also paid a sum of Rs.8188.755 to Thanjavur Municipality for water connection vide seized page no.89 of MC/B&D/S-_11. the assessee has paid Rs.19,00/- to Electricity Board for getting EB connection as per the noting of the assessee seized vide page No.112 of Ann/MC/B&D/S-11. He has accounted Rs.18.75 lakhs as the cost of construction of the property in the books. The above expenses as per the seized materials would not form part of Rs.18.75 lakhs for the following reasons.

(i) *The Seized materials vide exhibit MC/B&D/S-11 pages 82-84 indicate that the cost of marbles purchased is Rs.8,71,438/-. These marbles are purchased from Rajasthan. The assessee has purchased marbles for Rs.2,30,000/- from M/s.Pushpa Marbles as per the seized document MC/B&D/S-3. The marble value alone is Rs.11,01,438/-.*

(ii) *If the laying (labour) charges are taken into account at the rate of Rs.220/- per sq.metre, the total investment in laying charges would be around Rs.1,93,600/-. (888 sq.m x 220)*

(iii) *The total cost on marble and laying charges alone is Rs.12,95,038/- (8,71,438 + 2,30,000 + 1,93,600).*

(iv) *If cement and other materials required for flooring is taken into account, the flooring charge could be easily taken at Rs.13.25 lakhs.*

Therefore the entire investment on the basis of seized material as furnished below amounting to Rs.29,54,342/- is assessed as the Undisclosed Income of the assessee.

1) Marble	*Rs.11,01,438.00*
2) Laying charges	*Rs. 1,93,600.00*
3) Cement and other materials	*Rs. 29,962.00*
4) Fans and lights	*Rs. 1,37,625.00*
5) Switches	*Rs. 35,916.00*
6) Wires	*Rs. 47,324.00*
7) Wires	*Rs. 16,070.00*
8) Brass locks	*Rs. 15,234.00*
9) Frames	*Rs. 29,030.00*
10)Grill for staircase	*Rs. 16,813.75*
11)EPABX	*Rs. 40,000.00*
12)Kasi Electrician	*Rs. 15,300.00*
13)Wooden Box Ply woods	*Rs. 24,290.00*
14)Ravi Electrician	*Rs. 16,000.00*
15)Grill (Advance)	*Rs. 10,000.00*
16)Paint	*Rs. 20,000.00*
17)Prasanna	*Rs. 3,00,000.00*
18)Grill	*Rs. 14,500.00*
19)Electricals	*Rs. 30,000.00*
20)Water Heater	*Rs. 29,480.00*
21)Kasi Electrician	*Rs. 36,850.00*
22)Kasi Electrician	*Rs. 7,640.00*
23)Grill	*Rs. 6,000.00*
24)Maran Painter	*Rs. 18,200.00*
25)Grill Final Payment	*Rs. 11,000.00*
26)Ravi Electrician	*Rs. 28,500.00*
27)Water connection charges	*Rs. 8,188.00*
28)EB connection	*Rs. 19,000.00*
29) *Furniture*	*Rs. 6,96,381.00*
	Rs.29,54,342.50

14.In the statement recorded, the assessee has categorically admitted as noted by the assessing officer (paragraph 7, page 17 of the assessment order) that the cost of construction of the house property was Rs.1 crore. Initially, the appellant had, in answer to question No.5, stated that the cost of construction was a sum of Rs.55 lakhs. Subsequently, in answer to question No.36 he had admitted that the cost incurred on construction, electrical fittings, wood work and the cost of four air conditioners was Rs.90 lakhs.

15.The assessee has also clarified in response to question No.35, that over and above the aforesaid expenses, Rs.10 lakhs had been incurred on purchase of furniture, wardrobe, showcase, sofa etc. The relevant questions and answers are extracted below:

> *'Q.35. It was found that there are sofa sets and cots. How much did you invest in them? Do you have any proof?*
>
> *A.35. 3 cots and 3 sofa sets have been purchased. Apart from these, drawing room show case and wardrobes for 6 bed rooms and kitchen furnishings were done. The total expenses incurred amounts to Rs.6 lakhs. I have evidences and bills for a part of these expenses. These expenses were incurred out of my income.'*

16.While so, the argument of the assessee at the time of assessment had been that the investment had been disclosed in the original returns of income and hence there should be no addition made on this account in the block assessment. No proof has been placed before us in this regard, and neither do the orders of the authorities indicate any proof placed before them. In the statement recorded on 25.09.1996, the assessee has admitted a sum of Rs.82 lakhs as undisclosed income in the property.

17.It is in the above facts and circumstances that the assessing officer proceeds to estimate the investment in the property. He takes into account the cost of construction as per Return dated 23.08.1995 at a sum of Rs.18.75 lakhs and brings to tax a sum of Rs.29.54 lakhs (as emanating from the seized materials) plus Rs.51.70 lakhs, in all an addition of Rs. 51,70,658/-, as undisclosed income for AY 1995-96 under Section 69 of the Income Tax Act. Incidentally, he had also referred the property to valuation and the District Valuation Officer had estimated the cost of construction at a sum of Rs.81,97,134/-.

18.As regards the reference to the departmental valuer, we find the same incidental and merely supportive of the assessment ultimately made. Hence, there is no infirmity created in this matter by reference to the issue to the District Valuation Officer as ultimately what has been adopted as cost of construction by the Assessing Officer is only based on the materials found in the course of search and not the results of the report of the District Valuation Officer itself.

19. The third, fourth and fifth additions relate to the purchase of plots at Ambika Nagar Trichy, the purchase of four plots from Mannargudi Housing Co-operative Society Limited and rent paid for the house property at No.26A, Arulananda Nagar, Tanjore.

20.The assessment order reveals that a sale deed as well as receipts for payment of rent have been found as far as the plots at Ambika Nagar, Trichy is concerned. Rental receipts have also been found in respect of the plots purchased from Mannargudi Housing Co-operative Society Limited and the house property at No.26A, Arulananda Nagar, Tanjore. Hence, the assessing authority has been of the view that the statements of the assessee revealing a meagre payment of rent was liable to be rejected and the seized materials were taken to be the basis of the additions made.

21.The orders of the lower authorities have taken into account the cumulative facts and circumstances as well as the seized materials and hence, we are of the considered view that no question of law let alone a substantial question of law arises in this mater.

22.We now advert to the last item relating to marriage expenses. The marriage of the appellant was celebrated on 06.02.1995 and the marriage of the appellant's sister on 16.09.1994. In the order of assessment, the assessing authority has recorded bills that were found in the course of the search to indicate various purchase and expenditure incurred in connection with the marriages.

23.He notes that the sister of the appellant had been married to one D.Baskaran, affiliated to the then Chief Minister of Tamil Nadu Ms.J.Jayalalitha and that the marriage functions had been attended by the Chief Minister, Ministers and party functionaries.

24.According to the sworn statement, the appellant had expended a sum of Rs.5 lakhs for the marriage and had given his sister gold jewellery of 90 sovereigns. The assessing authority has also verified the purchase of clothing from a local store for a sum of Rs.23,000/-. As far as the appellant's wedding is concerned, he had stated that the expenditure on his marriage was of a sum of Rs.2 lakhs. The explanation tendered was that the expenditure was met out of agricultural income.

25.According to the appellant, there is no justification for any enhancement on this count and in this connection, he relies on the judgments of the Supreme Court (i) *Bannalal Jat Constructions (P.) Ltd. v. Assistant Commissioner of Income-tax*[1] (ii) *Orma Marble Palace P.*

1 (264 Taxmann 5)

Ltd. v. Commissioner of Income-tax[2] and the decision of the Delhi High Court in the case of *Smt.Dayawanti v. Commissioner of Income-tax*[3].

26.The search in the present case was conducted on 24/25.09.1996 and the block period in question is 01.04.1996. Admittedly, the appellant had filed regular returns for all the years prior to search. No block return was filed in response to the notice under Section 158BC. A statement had been recorded under Section 132(4) of the Act establishing categorically that the returns filed initially are incorrect as there are variations between the income disclosed/expenditure incurred in the returns and in the statement recorded.

27.One of the arguments put forth by the appellant is that the additions to income should be attributed to the appellant's father, who had passed away in 1993. There is no merit in this submission as it is unsupported by any material such as books maintained by his father or returns filed by him offering income/claiming expenditure in his hands. Hence, we affirm the finding of fact by the Tribunal at paragraph 12 of the order to following effect:

> *'12. A bleak attempt was made before us to show that part of the cost was incurred by the father of the*

2 (267 Taxmann 165)
3 (390 ITR 496)

assessee. But in his deposition the assessee clearly stated that his father contributed towards the cost of "adinilam", which means "land". Therefore, it cannot be concluded that the assessee's father contributed for the construction of the house. We have perused the impugned order. In our opinion the Assessing Officer took a correct view in the matter. His order calls for no interference on this count. Accordingly, we uphold the same.'

28. A perusal of the assessment order reveals that there has been substantial seized material relied upon in the framing of the assessment. The Statement in question has been recorded from the assessee on oath and Section 132(4) states that any such Statement may be used in evidence in any proceeding under the Indian Income Tax Act, 1922 or this Act.

29. The scope of the Statement is set out in the Explanation to Section 132(4) where Legislature clarifies that the examination of the person is not a restrictive examination touching only upon documents or assets found in the search but may encompass all materials relevant for the purposes of investigation connected with the proceedings under the Act.

30. Reliance upon the decision referring to the CBDT Instruction in the case of *R.Bhoopathy V. Commissioner of Income-Tax, Chennai*[4] is of no avail. The Instruction reads as follows:

Instruction F.No.286/2/2003-IT (INV.II)

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SECTION 132 OF THE INCOME – TAX ACT, 1961 – SEARCH AND SEIZURE – GENERAL CONFESSION OF ADDITIONAL INCOME DURING THE COURSE OF SEARCH AND SEIZURE AND SURVEY OPERATION

INSTRUCTION F.NO.286/2/2003-IT (INV.II), DATED 10.3.2003

Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also. Assessing Officers should rely upon the evidence/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.'

31.This is not a case where the appellant has retracted the statement despite having had the opportunity to do so. Hence, the statement remains part of the record as a reliable document. Moreover, the appellant has also not responded to Notice under Section 158BC dated 06.12.1996 by filing a block return. Hence, in the absence of a return and the fact that the Appellant has stood by the recorded statement, we are not inclined to intervene. The Departmental Instruction states that the computation of undisclosed must be based on evidence. In the present case, there are seized material duly supported by the assessee's own statement.

32.In the case of *R.Boopathy*[5], the addition was made solely based on the statement of that assessee to the effect that the education institution has collected capitation fee. There was no incriminating material found or seized. Hence, that case is distinguishable both on facts and in law.

33. In *M.Narayanan & Bros. V. Assitant Commissioner of Income tax, Special Investigation Circle, Salem*[6], a Division Bench of this Court has referred to and relied upon an earlier decision of this Court in *CIT v. S.Khader Khan Son*[7]. The aforesaid decisions are also distinguishable as in both those cases the assessees had retracted their statements alleging that the statements had been recorded under coercion. In the present case, the appellant has not made any such allegation and hence there is no taint on the statement recorded. These decisions are hence of no avail to the appellant.

34.Per contra, the decisions cited on behalf of the revenue support the assessments made. In *Orma Marble Palace P. Ltd.*[8], the Supreme

5 Foot Note Supra (4)
6 339 ITR 192
7 [(2008) 300 ITR 157(Mad.)]
8 Foot Note Supra (2)

Court has dismissed the SLP filed by the assessee as against the decision of the Kerala High Court in the case of *CIT v. Orma Marble Palace (P.) Ltd.*[9]. In that case, there was a search conducted in six business concerns of the assessee and the residences of the Directors. Block assessments were framed on the basis of the seized incriminating materials as well as the statements recorded, in terms of the new regime of search assessments under Sections 153A and 153C of the Act.

35. The specific argument taken by the assessee was that the authority was to confine himself only to assessments for the period for which documentary evidences had been seized. Assessments ultimately came to be made on the basis of the estimation of the assessing authority and such assessments were assailed by that assessee as being contrary to the mandate of Section 153A. The assessments were confirmed by the Supreme Court in the following terms:

> *'23.We have already found that there is lack of material insofar as the prior years of the block period, but the same has been held to be inconsequential, in so far as the A.O being conferred with the power to make assessment in the best of his judgment. The AO was perfectly justified in carrying out an assessment on the best of judgment, making estimations on the basis of the materials recovered. As has been found in Hotel Meriya, it cannot be assumed that a dealer who practises suppression would retain the materials*

9 [(2019) 110 taxmann.com 435 (Kerala)]

disclosing suppression, for long years; in the instant case a block period of 6 years. There is also no presumption insofar as the suppression having occurred only in the year in which the search was conducted. If at all, the presumption is otherwise insofar as the special procedure prescribed under Chapter XIV-B to assess undisclosed income for a block period, comprising of assessment years prior to the date of search, on the basis of the materials recovered at the search and other evidences available before the AO relatable to such material. At the risk of repetition, it has to be noticed that the block assessment prescribed under Chapter XIV-B also confers power on the AO to make assessment on the best of judgment. Question Nos.(i) and (ii) are answered in favour of the Revenue and against the assessee. We hence set aside the order of the Tribunal and the first appellate authority and confirm the under-invoicing of sale bills at Rs.90,50,924/-.'

36. In *Bannalal Jat Constructions (P.) Ltd.*[10], the Rajasthan High Court considered the question as to whether a block assessment could be made merely based on statements recorded under Section 132(4) of the Income Tax Act invoking a presumption under Section 292C of the Act and evidences brought on record by the appellant.

37.In that case too, cash was seized and a statement recorded under Section 132(4) of the Act. Gross Profit additions were made as the assessing authority was of the view that the cash books that were produced by the assessee were neither correct or complete. The argument advanced was that no estimate could have been made by the assessing

10 Foot Note Supra (1)

officer in terms of the procedure contemplated for framing of a block assessment.

38. That argument was rejected on the ground that it was well within the powers of the assessing authority to make an estimate in circumstances where (i) primary materials indicated that the books maintained were incomplete or incorrect (ii) Statements recorded corroborated the fact that books contained errors and (iii) Statements had been recorded in support of the additions made. There is nothing in this case to indicate that books were at all, maintained by the assessee. The statement in this case has not been retracted, whereas, in the case of *Bannalal Jat Constructions (P) Ltd*[11]*,* the assessee had retracted the statement recorded, which rejection had been disavowed by the authorities.

39. In the case of *Smt.Dayawanti*[12], the Delhi High Court has affirmed the position that where inference is strong in respect of undisclosed income of assessee, such inferences being premised on materials found as well as statements recorded in the course of search operations, such additions are permissible and warranted. Intervention in

11 Foot Note Supra (1)
12 Foot Note Supra (3)

such a case would arise only where the estimation has been shown to be arbitrary or unreasonable.

40. In all the issues raised for consideration before us, incriminating material has been found in the course of search proceedings. Over and above, the statement of the assessee confirms the position that the additions made are justified. We are thus of the considered view that the order of the Tribunal does not suffer from any infirmity.

41.In light of the aforesaid discussion, we confirm the order of the Tribunal dated 25.09.2008 and answer all the substantial questions of law against the assessee and in favour of the revenue. This Tax Case (Appeal) is dismissed. No costs.

[A.S.M., J]　　[G.A.M., J]
19.11.2024

Index:Yes
Speaking order
Neutral Citation:Yes
vs

To

The Deputy Commissioner of Income Tax,
Central Circle II(4),
Chennai.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

vs

T.C.A.No.346 of 2009

19.11.2024