IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.1034 of 2015

Smt.K.Jothirani ... Appellant / Appellant

Vs.

The Income Tax Officer,
Ward – III (1),
Trichy. ... Respondent / Respondent

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 20th June 2014 in I.T.A.No.2256/Mds/2013.

For Appellant : Smt.K.Jothirani
(Party-in-Person)

For Respondent : Mr.S.Rajesh
Junior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

At the admission stage, this appeal was admitted on the following substantial questions of law:

i. Whether the Tribunal is correct in law in sustaining the addition of Rs.37,85,000/- representing agricultural income which was shown as one of the sources for the investments made overlooking the material evidence filed for the sale of the casuarina trees while rejecting the said claim based on irrelevant materials and considerations?
ii. Whether the Tribunal is correct in law in sustaining the entire amount of agricultural income as unexplained income even though the amount of Rs.34,85,000/- was received in the previous year relating to the Assessment Year 2008-09 and not in the Assessment Year under consideration?
iii. Whether the Tribunal is correct in law in sustaining the addition of Rs.67,645/- based on the sworn statement while overlooking the retraction statement filed immediately thereafter?

2. This Tax Case Appeal is directed against the Impugned Order dated 20.06.2014 passed by the Income Tax Appellate Tribunal, “A” Bench, Chennai in I.T.A.No.2256/Mds/2013.

3. The Impugned Order is a Common Order passed in I.T.A.No.2256/Mds/2013 of the appellant and I.T.A.No.2257/Mds/2013 of the appellant's husband.

4. The Tax Case Appeal against the same Impugned Order dated 20.06.2014 insofar as I.T.A.No.2257/Mds/2013 is concerned, was subject matter of T.C.A.No.998 of 2015.

5. The facts are identical of the present case and the appellant husband's case, though the question of law framed by this Court in T.C.A.No.998 of 2015 against the Order passed in I.T.A.No.2257/Mds/2013 is materially different from the questions of law framed by this Court in the present Appeal on 03.11.2015.

6. The question of law framed in the present Appeal against the Order passed in I.T.A.No.2256/Mds/2023 and T.C.A.No.998 of 2015 against the Order passed in I.T.A.No.2257/Mds/2013 are reproduced below:-

T.C.A.No.1034 of 2015	T.C.A.No.998 of 2015
i. Whether the Tribunal is correct in law in sustaining the addition of Rs.37,85,000/- representing agricultural income which was shown as one of the sources for the investments made	i. Whether the Tribunal is correct in law in sustaining the assessment of agricultural income reported as unexplained income based on the enquiry report of the Income Tax Inspector which

T.C.A.No.1034 of 2015	T.C.A.No.998 of 2015
overlooking the material evidence filed for the sale of the casuarina trees while rejecting the said claim based on irrelevant materials and considerations? ii. Whether the Tribunal is correct in law in sustaining the entire amount of agricultural income as unexplained income even though the amount of Rs.34,85,000/- was received in the previous year relating to the Assessment Year 2008-09 and not in the Assessment Year under consideration? iii. Whether the Tribunal is correct in law in sustaining the addition of Rs.67,645/- based on the sworn statement while overlooking the retraction statement filed immediately thereafter?	report was not provided to the appellant for rebuttal, proving and establishing the gross violation of the principles of natural justice as well as the perversity/misdirection in the decision rendered in relation thereto?

7. The facts are identical except that in the present case, the appellant has declared a sum of Rs.37,85,000/- as the agricultural income.

8. In the appeal filed by the appellant's husband in I.T.A.No.998 of 2015 against the Order dated 20.06.2024 in I.T.A.No.2257/Mds/2013, the appellant's husband had produced a statement and the confirmation letter from one Thangasamy whereas in the present case the appellant has produced a letter of confirmation from one M.Tamilarasan, who has confirmed that he had attracted sale with the appellant herein for a sum of Rs.37,85,000/- and after deducing his commission, he had handed over the same to the appellant on various dates during February, March and April 2008.

9. Dealing with the identical situation, this Court by its Order dated 03.09.2024 in T.C.A.No.998 of 2015, had held as under:-

> ***"11. We have considered the submissions made by the learned counsel for the appellant and the learned counsel for the respondent. In this case, the Department has disbelieved the letter of the person who had given a statement in favour of the appellant without subjecting the said person to any cross examination.***
>
> ***12. Therefore, the substantial question of law to be answered in this appeal is whether a statement of a person who had given a statement in favour of the appellant can be disbelieved and discredited long after it was given without cross examination of the said person by a mere reliance on an enquiry Report of the Income***

Tax Officer based on information gathered by the Income Tax Officer from the Village Headman.

13. The evidence which department has gathered is long after the felling of trees and sale by the appellant by placing reliance on the statement of the Village Headman. The statement of the Village Headman can at best only corroborate the stand which department based on evidence, if there were other compelling evidence.

14. It was incumbent on the part of the Income Tax Department to have summoned the said Mr.Thangasamy of Alangudi Taluk, Pudukottai District and verified and confirmed whether the said person had indeed given the statement which was produced by the Appellant and if so whether the statement given by the said person was true or not.

15. Although the department is governed by preponderance of probability and not by strict rules of evidence, yet it was incumbent to have secured the presence of the said person. They should have cross examined him before disbelieving the statement. Therefore, an issuance of summon to Mr.Thangasamy who had given statement by the Income Tax department is not sufficient.

16. The Income Tax department should have secured the presence of Mr.Thangasamy to answer to the summons and should have confronted him and contradicted the content of the statement of Mr.Thangasamy produced by the appellant by way of cross examination.

17. Therefore, without cross examination, the statement of Mr.Thangasamy can neither be disbelieved nor disregarded. The statement of Mr.Thangasamy *cannot be therefore discredited. If Mr.Thangasamy had refused to co-operate, the Income Tax Department was not without remedy under the provisions of the Income Tax Act, 1961 to secure his presence.*

18. Since this exercise was not done, the demand confirmed vide order passed under Section 144(A) of the Income Tax Act, 1961 dated 28.12.2011 which view was affirmed by the Assessing Officer vide order dated 29.12.2011 passed under Section 143(3) of the Income Tax Act, 1961 and by the Commissioner of Income Tax (Appeals) vide order dated 12.11.2013 and by the Income Tax Appellate Tribunal vide order dated 20.06.2014 are liable to be interfered as unsustainable.

19. We are therefore of the view, the succeeding orders passed against the appellant in so far as the addition of Rs.22,00,000 under Section 69A of the Income Tax Act, 1961 as unexplained credit/unexplained money of the appellant are incorrect and are liable to the set aside.

20. Therefore, the substantial questions of law framed by us is answered in favour of the appellant assessee and against the Income Tax Appellate Tribunal. Hence, this Tax appeal stands allowed. No costs."

10. The facts of the case of the appellant in this Appeal being almost identical to the facts of the case the appellant's husband in T.C.A.No.998 of 2015 against the Order passed in I.T.A.No.2257/Mds/2013, we find no reasons to take a different view in this Appeal.

11. Accordingly, we allow this Appeal and answered the substantial questions of law raised in favour of the appellant and against the revenue.

12. This Tax Case Appeal, is thus, allowed. No costs.

[R.S.K., J.] **[C.S.N., J.]**

14.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Income Tax Officer,
Ward – III (1),
Trichy.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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T.C.A.No.1034 of 2015

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