IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

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

T.C.A.No.998 of 2015

M.Kumarasamy ... Appellant

Vs.

The Income Tax Officer,
Ward-11(1),
Trichy. ... Respondent

PRAYER : 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 20.06.2014 in I.T.A.No.2257/Mds/2013 for the assessment year 2009-10.

For Appellant –(party in person) : Mr.Mr.M.Kumarasamy

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

JUDGMENT

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

The appellant is before this Court against the impugned order dated 20.06.2014 passed by the Income Tax Appellate Tribunal in ITA.No.2257/Mds/2013 for the Assessment Year 2009-10.

2. By the impugned order, the appeal filed by the Appellant in ITA.No.2257/Mds/2013 has been partly allowed and partly dismissed. Operative portion of the impugned order reads as under:-

> 8. In ITA No.2257/2013, apart from the issue of exemption u/s.54F which has already been discussed above, additions were made on account of:
>
> Income from sale of trees Rs.22,00,000/-
>
> Un-explained investment Rs.11,03,608/-
>
> The assessee has assailed the addition of Rs.22.00 Lakhs from the sale of trees as un-explained income. After perusal of impugned order and the assessment order it is evident that the assessee has not produced any reliable evidence to show the sale of trees. The Assessing Officer has made detailed enquiry from the locals and Village Administrative Officer (VAO) with regard to nature of activities being carried out by assessee on the agricultural land. The Revenue records as well as statement recorded by Assessing Officer are contrary to the claim of assessee. **Except for the statement of assessee and the confirmation letter**

given by one Shri Thangasamy, there is nothing on record to show that the assessee has earned income from sale of trees. The contents of the confirmation letter are not supported by the details of payment and bank statment of the assessee. **We do not find any merit in this ground of appeal, the same is dismissed:**

9. The next issue in appeal is un-explained investment of Rs.11,03,608/- in the residential property. The addition has been made for making investment in purchase of second residential house at Mogappair, Chennai. It has come on record that the said house has been purchased by the wife of the assessee from her own sources. Therefore, addition made by the Revenue in the hands of the assessee for funding of the said house does not sustain.

Accordingly, this ground of appeal of the allowed.

10. In both the appeals, the assessees have impugned the levy of interest u/s 234A, 234B & 234C. The levy of interest under aforesaid sections is consequential. Therefore, this ground in the appeals of the assessees is dismissed.In view of our detailed findings, the appeals of the assessees are partly allowed in the aforesaid terms".

3. Dispute in the present appeal is confined to addition of Rs.22,00,000/- as unexplained income from purported sale of casurina trees under Section 69 of the Income Tax Act, 1961.

4. At the time of admission of this Tax Case Appeal, the following substantial questions of law was framed for being answered:-

> "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 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?"

5. Earlier, an order came to be passed on 28.12.2011 under Section 144(A) of the Income Tax Act, 1961 by the Joint Commissioner of Income Tax.

6. By the aforesaid order, the Joint Commissioner of Income Tax concluded that there was no merits in the case of the appellant in not treating a sum of Rs.22 lakhs as an unexplained income from agriculture from sale of trees in the returns filed under Section 139

7. The Joint Commissioner of Income Tax in the aforesaid order dated 28.12.2011, observed as under :-

> "If this version is considered to be true, the assessee should have shown the balance Rs. 17 lakhs as loans / advances or under some other similar caption as his

> liability. To the contrary, the assessee in his letter dt. 4.11.2011, has clearly stated that "there are no loan creditors for the assessee during the year and hence no particulars are required to be furnished". Moreover the assessee did not produce any books of accounts in support of his claim. Therefore the assessee has failed to give a clear picture with regard to the transaction with Mr. Thangasamy.
>
> Further, in the 'Adangal' given by VAO, the land owned by the assessee at Reddymangudy village was categorized as "Tharisu" which means "Barren Land". From the facts and circumstances of the case, it is very much obvious that the assessee has Introduced a person Mr. Thangasamy to accommodate his wrong claim.
>
> Also the assessee did not give any reply to the question as to how he treated the alleged receipt on sale of trees as casual and non-recurring receipt.
>
> Thus, there is no merits in the assessee's objection for treating the above said Rs.22,00,000 as unexplained credit.”.

8. In support of the above, the appellant had also obtained a letter of confirmation from an agent named Thangasamy who had stated that **200 cart** loads of country wood were purchased over a period of time and that a total sum of **Rs.22 lakhs** was paid to the appellant after deducting a 3% commission of **Rs.68,000**/-. during the relevant financial year.

9. Thereafter, assessment was completed under Section 143(3) of the Income Tax Act, 1961 vide Order passed on 29.12.2011. The Assessing Officer had concluded as under:-

> "Further, in the 'Adangal' given by VAO, the land owned by the assessee at Reddymangudy village was categorized as Tharisu" which means "Barren Land". From the facts and circumstances of the case, it is very much obvious that the assessee has introduced a person Mr.Thangasamy to accommodate his wrong claim.
>
> "Also the assessee did not give any reply to the question as to how he treated the alleged receipt on sale of trees as casual and non- recurring receipt.
>
> **Thus, there is no merits in the assessee's objection for treating the above said Rs.22,00,000/- as unexplained credit. Therefore this is added to the income returned as unexplained credit of Rs.22,00,000/-.**
>
> D) On comparison of the balance sheets of the assessee as at 31.3.2008 and 31.3.2009, it is seen that the assessee has shown a sum of Rs.2,93,000 as "Imprest Account" in the balance as at 31.3.2008 and Rs.5,13,600 as 'Imprest Account' in the balance sheet as at 31.3.2009. Vide this office letter dt. 28.11.2011, the assessee was asked to explain the nature of the entry and the reason for the increase of Rs.2,20,600 during the financial year 2008-09 relevant to asst. year 2009-10. The assessee did not give any reply in this regard. This increase in the value of asset has not been sufficiently explained with the adequacy of sources: Therefore, the decision to add the increase of Rs.2,20,600 under Imprest account' as unaccounted

income earned by the assessee and not disclosed in the return of income was informed to the assessee through this office proposal dated 21.12.2011 for which the assessee objected through his letter dated nil filed on 26.12.2011. However, the assessee's objection is not acceptable for the following reasons :-

1) The assessee had never explained orally or in writing with regard to the details of Imprest account.

2) Even in the latest letter filed on 26.12.2011 though he has stated that the Imprest amount is nothing but the salary advance/advance to building contractor for repairs etc. he did not produce any books of accounts or the break up figures for the above said payments nor any details of contractors to whom such advances were given. If the advance to building contractor for repairs had been given, then the sum should have been debited in the profit & loss or capitalized in building account whereas the assessee has failed to show such debits in the P&L account/ balance sheet. Also the assessee has not produced any books of accounts in support of his claim. He also did not produce any copy of acquittance register or attendance register of employees and the list of employees to whom salary advance had been given.

From the above, it is clear that the assessee has only tried to cover up the imprest account' shown in the balance sheet by giving false reasons. Since the reasons shown by the assessee is very vague and since the assessee did not produce any books of accounts to show the payments relating to salary advance and advance to contractor, the assessee's objection is not acceptable. Therefore the increase in the imprest' account of a sum of Rs.2,20,600 is added to the total income returned".

10. The above views of the Appellate Commissioner and the Joint

Commissioner of Income Tax were affirmed by the Income Tax Appellate Tribunal in the impugned Order.

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.

(R.S.K., J.) **(C.S.N., J.)**

03.09.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
kkd
To

1. The Income Tax Officer,
   Ward-11(1),
   Trichy.

2. The Income Tax Appellate Tribunal,
   'A' Bench, Chennai.

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

kkd

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