IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM :

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

T.C.A.No.226 of 2024
and
C.M.P.No.22235 of 2024

D.Ramagopal ... Appellant

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore. ... 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 05.04.2024 in ITA.No.580/CHNY/2022 for the Assessment Year 2009-2010 and for setting aside the same.

For Appellant : Mr.A.E.Chelliah
Senior Counsel
for Mr.K.Ramanujam

JUDGMENT

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

We have the learned Senior Counsel for the appellant. This appeal is being disposed with the consent of the learned Senior Counsel for the appellant, at the admission stage itself.

2. This appeal is directed against the Impugned Order dated 05.04.2024 passed by the Income Tax Appellate Tribunal (ITAT), "A" Bench, Chennai in ITA.No.580/CHNY/2022.

3. In this appeal, the appellant has raised the following questions of law as substantial questions of law:-

i. Whether there is proper approach, right from the Officials of the Income Tax Department and whether they are acceptable to the Hon'ble Tribunal?
ii. Whether the Investigation by the Officials is fair and to be specific, when the assessee is questioned about a Sale Agreement of 142 Acres in Nilgiris District to one Sheela but not furnishing the details to the assessee and even when the assessee tries to find out through the RTI Act also could not materialise?
iii. If the officials decision that the assessee failed in producing P.R.Balakrishnan where the factual position is, there are several Court Orders demanding his presence and the Department shirking the responsibility in taking efforts in tracing especially when the Forensic Expert is emphatic in expressing that the Documents with Signature PR. Balakrishnan and "*PR Balu*" are written by two different persons but the Hon'ble Tribunal accepting the stand of the Officials of the Department is whether in accordance with Law or Procedure under which this Tax Appeal is preferred?

4. By the Impugned Order dated 05.04.2024, the appeal filed by the appellant-assessee has been dismissed.

5. Operative portion of the Impugned Order dated 05.04.2024 of ITAT in ITA.No.580/CHNY/2022 reads as under:-

"5. We have heard rival contentions and gone through facts and circumstances of the case. The assessee could not produce anything before us or could not make any argument except that the assessee is a power agent. On query from the Bench, the ld. Counsel for the assessee Shri Jhabakh, CA could not produce either sale deed, power of attorney or any evidence which support his claim that he has not taken this consideration or he has made payment to Shri P.R.Balakrishnan of Rs.2 crores and also incurred expenses for house clearing expenses and removal of encroachments. In the absence of any evidences or any document, we have no hesitation in confirming the orders of lower authorities and this issue of assessee's appeal is dismissed.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in not considering the agricultural income and treating the agricultural income at nil.

6. Briefly stated facts are that the assessee has declared agricultural income i.e., net agricultural income at Rs.3.50 lakhs and claimed gross agricultural income at Rs.5.50 lakhs. The assessee claimed that there is agricultural land in his name at Ravathur Pririvu and Yelaneli Village, Coonoor Taluk. The assessee did not file any detailed working of agricultural income but he filed original Mandi receipts from sale of agricultural produce to the extent of Rs.5,50,000/- lakhs and expenditure bill for a sum of Rs.2,01,500/-. The assessee claimed to have utilized this agricultural income for his personal drawings. The AO made enquiries through Inspector to verify the Mandi receipts but there is no shop in the name of Mani Vegetable Mandi, Trichy Road, Coimbatore from whom assessee have claimed to have sold the agricultural produce and receipt these receipts. Accordingly, the AO treated the agricultural income at *nil. Aggrieved, assessee preferred appeal before CIT(A).*

7. The CIT(A) also dismissed the assessee's ground by observing in para 7.1 as under:-

> *"7.1.The appellant filed the return of income by admitting Rs.3,50,000/- as agricultural income relevant to the assessment year 2009-10. In the absence of any details, the AO ignored the claim. It may be appreciated that eventhough the appellant has agitated the addition in the grounds of appeal and the written submission submitted, no evidence such as land holding details crops raised etc., were given. In the absence of such details the treatment of agricultural income by the AO as NIL is considered as correct and the grounds raised by the appellant upon this issue are dismissed."*

Aggrieved, now assessee is in appeal before the Tribunal.

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that there is no addition made by AO of this agricultural income and there is no addition of consequent personal drawings claimed to have been out of this agricultural income. Since there is no addition, the assessee should not have any grievance because no amount is taxed. Hence, this ground raised by assessee is dismissed as infructuous.

9. In the result, the appeal filed by the assessee is dismissed."

6. The appellant appears to have collected money from sale of immovable properties in respect of which, the appellant-assessee was proceeded under Section 153A of the Income Tax Act, 1961, which culminated in the Assessment

Order dated 30.03.2016 under Section 153A read with Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2009-2010. There are however no documents to show that the appellant had paid a sum of Rs.2,00,00,000/- to P.R.Balakrishnan out of Rs.2,60,00,000/- received.

7. Thus, in the proceedings before the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore, a sum of Rs.2,00,00,000/- was added to the income of the appellant in absence of any evidence to show that the appellant had paid a sum of Rs.2,00,00,000/- to one P.R.Balakrishnan. The other issue related to declaration of net agricultural income of Rs.3,50,000/- and a gross agricultural income of Rs.5,50,000/-, which was claimed on the strength of an agricultural land, which was said to be in the appellant/assesse's name.

8. However, in absence of any detail of agricultural income, except the Mandi receipts for the alleged sale of agricultural produce to the extent of Rs.5,50,000/- and expenditure for a sum of Rs.2,01,500/-, no other documents were produced by the appellant.

9. The appellant has not filed copy of the aforesaid Order dated

30.03.2016 of the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore passed under Section 153A read with Section 143(3) of the Income Tax Act, 1961.

10. Only, the Order of the Commissioner of Income Tax (Appeals) dated 25.05.2022 in I.T.A.No.555/2019-2020 and the Order dated 27.10.2016 of the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore, passed under Section 220(2) of the Income Tax Act, 1961 have been kept wherein, interest has been levied for the period between 01.05.2016 and 27.10.2016 for a sum of Rs.13,84,429/- on the demand of Rs.2,30,73,815/-.

11. Aggrieved by the aforesaid Assessment Order dated 30.03.2016 passed by the Assistant Commissioner of Income Tax, Central Circle-1, Coimbatore under Section 153A read with Section 143(3) of the Income Tax Act, 1961, the appellant filed an Appeal before the Commissioner of Income Tax (Appeals) in I.T.A.No.555 of 2019. The Commissioner of Income Tax (Appeals) by an Order dated 25.05.2022, dismissed the Appeal of the appellant.

12. The aforesaid Order dated 25.05.2022 of the Commissioner of Income

Tax (Appeals), captures the details of the search conducted at the premises of the appellant on 27.11.2013 pursuant to which, the appellant had filed a Return of Income in response to the notice issued under Section 153A of the Income Tax Act, 1961 wherein, the appellant had declared an agricultural income of Rs.3,50,000/-.

13. The said Order clearly records that after providing an opportunity to the appellant, the assessment was completed by adding Interest Free Fixed Deposit of Rs.39,262/- and profit from the land dealing as business income treating the same as adventure in the nature of trade and assessed the same at Rs.2,59,91,000/- totalling to Rs.2,60,30,262/-.

14. The Order of the Commissioner of Income Tax (Appeals) dated 25.05.2022 has extrated the grounds of appeal and summary of the arguments and has concluded as far as the Short Term Capital Gain and Other Income as follows:-

> 1. The Sale Deed executed by the Appellant was in the capacity of Power Agent.
> 2. The Agreement to sale unregistered was also in the capacity of Power Agent for the part of the property and the Advance monies refunded and parties concluded that the agreement itself was bad in law and other part of the properties

were arranged for sale directly by the owners to the agreement holder's choice.

3. The payments received was also in the capacit of Power Agent.
4. The expenses made were also in the capacity of Power Agent.
5. The payments made to the Principal and owner were also in the capacity of Power Agent.
6. There is no even iota of truth that the Appellant was engaged in the business of Land dealings.
7. The Income tax does not provide for Taxing the receipts of owners received by the Power Agent.
8. The Sale Deed and receipts are filed for verification.
9. The Assessment Orders were made without proper legs to stand and bound to fall which was done without proper basis and against the principles of Accounting and Taxation.

The Appellant pleads to Delete the Additions and Allow the Appeal for which act the Appellant will be ever grateful to you sir."

6. Findings of the AO in the Assessment Order:

6.1. The AO while making the addition of Rs.39,262/- under the head Income from Other Sources by way of interest earned from fixed deposit and Rs.2,59,91,000/- under the head Income from Business as observed the following:

6.2. Issue No.1 – Interest on Fixed Deposit amounting to Rs.39,262/-

6.3. The AO during the course of assessment proceedings has ascertained that the appellant has earned interest on fixed deposits amounting to Rs.39,262/- by analysing the bank statement and the AO added the same to the income of the Appellant under the head income from Other Sources. Since this issue has not been disputed in the grounds of appeal file, the same is not taken up for consideration, accordingly, there is no need for any adjudication upon this issue.

6.4. Issue No.2 – Short Term Capital Gain amounting Rs.8,32,850/-

6.5. During the year under consideration the appellant facilitated sale of property at Coimbatore to M/s.Martin Builders P Ltd., through one Sh. Vincentraj. The AO in the order had clearly held that the appellant is not the owner of the property. During the course of the assessment proceedings, the AO has made a clear findings that the appellant had received a sum of Rs.2,60,00,000/- as a sale consideration and the net income of the appellant (as admitted by the appellant) is Rs.1,63,950/-. The details of the working is as under:

Total Consideration received	:	Rs.2,60,00,000/-	
Less	:		
A. Commission paid	:	Rs. 26,86,050/-	
B. House Clearing expenditure expenses	:	Rs. 31,50,000/-	
C. Amount Given to PR Balakrishnan	:	Rs.2,00,00,000/-	Rs.2,58,36,050/-
			--------------------
Net Income from the land dealing	:		Rs. 1,63,950/-

6.6. The AO while examining the contention of the appellant about the expenditure incurred as considered only Rs.9,000/- and the balance amounting to Rs.2,59,91,000/- was added to the total income of the appellant as income from the business.

6.7. While making the addition the AO has made the following findings:

a) The appellant was not the owner of the property sold

b) He was only a power agent based on the undersigned general power of attorney issued by the owner Shir PR Balakrishnan.

c) The net income prepared by the appellant in the land dealings was accepted.

d) It has been concluded that the income is under the head "Income from Profits and Gains of Business and Profession". In view of this the AO has opined that provisions of Section 28 to 44 of the Act would clearly apply.

e) As the payments amounting Rs.2,59,91,000/- which has been claimed as expenditure has been disallowed by the AO as per the provisions of Section 40A(3) of the Act since the payments were made by way of cash exceeding Rs.20,000/- as provided under Section 40A(3) of the Act.

6.8. There can be no dispute on the part of the appellant on the findings of the AO about the receipt of cash and payment of cash towards the expenditure claimed. As the appellant has claimed the expenditure the AO has correctly disallowed the expenditure for violating the provisions of Sectin 40A(3) of the Act. In view of this, the action of the AO in disallowing the expenditure claimed is legally tenable. In this background, the grounds raised upon this issue by the appellant are dismissed.

7. Issue no.3 – Claim of agricultural income amounting Rs.3,50,000/-

> 7.1. The appellant filed the return of income by admitting Rs.3,50,000/- as agricultural income relevant to the assessment year 2009-2010. In the absence of any details, the AO ignore the claim. It may be appreciated that eventhough the appellant has agitated the addition in the grounds of appeal and the written submission submitted, no evidence such as land holding details crops raised etc., were given. In the absence of such details, the treatment of agricultural income by the AO as NIL is considered as correct and the grounds raised by the appellant upon this issue are dismissed.
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> 8. In the result, the appeal is treated as dismissed.

15. It is in this background, the appellant filed I.T.A.No.580/CHNY/2022 before the Income Tax Appellate Tribunal (ITAT), "A" Bench, Chennai, which has culminated in the Impugned Order dated 05.04.2024.

16. The Income Tax Appellate Tribunal (ITAT) disposed the Appeal of the appellant vide Impugned Order dated 05.04.2024 on the following issues:-

Issue No.1 – Interest on Fixed Deposit amounting to Rs.39,262/-.

Issue No.2 – Short Term Capital Gain amounting to Rs.8,32,850/-.

Issue No.3 – Claim of Agricultural Income amounting to Rs.3,50,000/-.

17. In this Appeal, the appellant has raised the following substantial questions of law for being answered:-

i. Whether there is proper approach, right from the Officials of the Income Tax Department an whether they are acceptable to the Hon'ble Tribunal,

ii. Whether the Investigation by the Officials is fair and to be specific, when the assessee is questioned about a Sale Agreement of 142 Acres in Nulgiris District to one Sheela but not furnishing the details to the assessee, and even when the assessee tries to find out through the RTI Act also could not materialise,

iii. If the officials decision that the assessee failed in producing P.R.Balakrishnan where the factual position is, there are several Court Orders demanding his presence and the Department shirking the responsibility in taking efforts in tracing especially when the Forensic Expert is emphatic in expressing that the Documents with Signature PR.Balakrishnan and “PR Balu” are written by two different persons but the Hon'ble Tribunal accepting the stand of the Officials of the Department is whether in accordance with Law or Procedure under which this Tax Appeal is preferred.

18. The Appeal against the Order of the Income Tax Appellate Tribunal (ITAT) under Section 260A of the Income Tax Act, 1961 would arise only where there is substantial questions of law arise for consideration as held by the Hon'ble Supreme Court in **Moti Lal Chunnilal (Tak)** Vs. **Commissioner of Income Tax**, (1998) 9 SCC 401.

19. A reading of the Impugned Order indicates that the Income Tax Appellate Tribunal (ITAT) has given a categorical finding on fact. As such, no substantial question of law that arises for consideration to be answered in this

Appeal under Section 260A of the Income Tax Act, 1961. Therefore, the present Appeal is not maintainable.

20. This Tax Case Appeal is therefore liable to be dismissed and is accordingly dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

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

03.10.2024

Neutral Citation : Yes / No

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To

The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore.

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

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