



T.C.A. Nos.42 & 43 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

T.C.A. Nos.42 & 43 of 2025

Shri Gautham Chand Jain .. Appellant in T.C.A. No.42 of 2025

Shri Sumermal Kantilal Jain .. Appellant in T.C.A. No.43 of 2025

Vs.

Assistant Commissioner of Income Tax

Central Circle 1(1)

Chennai - 600 034

.. Respondent in both appeals

* * *

Prayer in T.C.A. Nos.42 and 43 of 2025 : Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', in I.T.A. No.1011/Chny/2022 & I.T.A. No.1012/Chny/2022 dated 19.04.2023 for the Assessment Period 2021-2022.

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For Appellant in : Mr.Ashok Pathy
both appeals for M/s.PASS Associates

For Respondent : Mr.Karthik Ranganathan
in both appeals Sr. Standing Counsel

COMMON JUDGMENT
(delivered by S.S.SUNDAR, J.)

These two tax case appeals arise out of the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 19.04.2023 made in I.T.A. No.1011/Chny/2022 & I.T.A. No.1012/Chny/2022 for the Assessment Period 2021-2022 in the case of one Gautham Chand Jain and Sumermal Kantilal Jain, the appellants herein.

2. It is admitted that there was a search conducted in the residence and office premises of the appellants on 31.03.2021 and a sum of Rs.85,00,000/- in cash was seized from the residential and business premises of the appellants. The assessee gave sworn statements under Section 131(4) of the Income Tax Act, 1961. While, Mr.Sumermal Kantilal Jain has declared a sum of Rs.50,00,000/- as his commission income, Mr.Gautham Chand Jain, has declared Rs.35,00,000/- as his commission income. They also agreed to pay



tax on the excess cash which were not accounted in the books of accounts.

Thereafter, the appellants filed their return of income, after issuance of notice under Section 142(1) of the Income Tax Act, declaring the excess amount seized during search proceedings under the head income from "other source". Thereafter notice under Section 143(2) of Income Tax Act, 1961 and a show cause notice dated 23.02.2022 was issued to the appellants. In the notice, the appellants were requested to explain why the excess money shall not be considered as unexplained money under Section 69A of the Act. However, the assessee did not even respond to the show cause notice. Thereafter, assessment orders were passed against the appellants on 02.03.2022 and 01.03.2022 respectively making the appellants liable to pay 60% of the undisclosed income as tax under Section 115BBE r/w Section 69A of the Income Tax Act. Appeals preferred by the appellants before the appellate authority were also dismissed. Aggrieved by the same, the appellants have preferred appeals before the Income Tax Appellate Tribunal 'C' Bench, Chennai in I.T.A. No.1011/Chny/2022 & I.T.A. No.1012/Chny/2022. The appellate Tribunal also confirmed the order of the appellate authority as well as the Assessing Officer. Aggrieved by the same, the above tax case appeals are preferred by the appellants.



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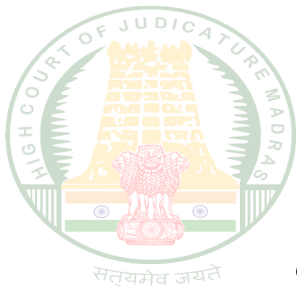
3. The appellants have raised the following questions of law as the substantial questions of law for consideration in these appeals:

"a) Whether the Income Tax Appellate Tribunal is right in law in assessing the seized cash as unaccounted cash under Section 69A of the Income Tax Act even though the appellant stated under oath that it had earned commission income and duly complied with it and offered it as income from other sources.

b) Whether the Income Tax Appellate Tribunal is right in law in assessing the seized cash as unaccounted cash under Section 69A of the Income Tax Act even though the appellant stated under oath that the said income is commission income which could be either assessed as income from other sources or business income.

c) Whether the Income Tax Appellate Tribunal is right in law in levying tax on hypothetical income which has neither accrued/arisen nor received by the appellant as against real income by merely placing reliance on the statement of the appellant.

d) Whether the Income Tax Appellate Tribunal is right in law in assessing the entire cash seized from the premises of the appellant under the head unaccounted cash under Section 69A even though the seized cash is



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explainable with the cash in hand of the other assesseees residing in the searched premises."

4. For the sake of convenience and for better appreciation of facts, Sections 69A and 115BBE of the Income Tax Act, 1961, are reproduced as below:

Section 69A of the Act:

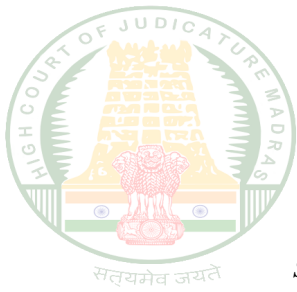
Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year].

Section 115BBE of the Act:

(1) Where the total income of an assessee;

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under Section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A,



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section 69C or section 69D, if such income is not covered

under clause (a),

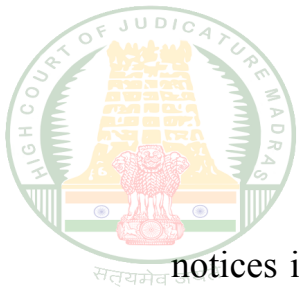
the income-tax payable shall be the aggregate of -

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

5. It is admitted that the appellants have filed their returns stating that the income of Rs.50,00,000/- and Rs.35,00,000/- are income by way of commission. As per Section 69A of the Act, the assessee has to offer an explanation about the nature and source of acquisition of money. In this case, barring the statement of the appellants declaring the income by way of commission, no other information disclosing the source of income as required under Section 69A of the Act was given, despite the show cause notices were issued. The very fact that the assessee did not even respond to the show cause



notices issued to them would show that they were indifferent to the situation.

However, the questions of law raised before this court remain as if the assesseees have disclosed their source of income and that the declaration made during the search operation is sufficient to bring the case outside the purview of Section 69A r/w Section 115BBE of the Act. This court is unable to appreciate the issue as a pure question of law or arguments of the appellants. Even if an explanation is given, such explanation has to be satisfactory in the opinion of the Assessing Officer in terms of Section 69A of the Income Tax Act. In this case, there is no explanation. The money seized was not disclosed and hence it is an unexplained money. Mere declaration that it was received as commission without an explanation about the source with supporting material attracts Section 69A and the tax liability under Section 115BBE follows.

6. The contention of the learned counsel for the appellants that the declaration of income furnished as an information is sufficient to satisfy the department, cannot be countenanced. In fact, the Delhi High Court has dealt with a similar situation in *Shashi Garg v. Principal Commissioner of Income Tax* reported in [2020] 113 taxmann.com 92 (Delhi), wherein, in paragraph 9, it has been held as follows:



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"9. Burden to explain the source of cash deposit was on the appellant-assessee, who as per the finding has not been able to discharge this burden. The evidence on record is undisputed, and the inference and factual findings recorded we could observe are supported by cogent and weighty reasoning. Explanation of the appellant-assessee has been duly considered and not ignored. Implausible and lame justification for making cash withdrawals has exposed and dented the concocted explanation regarding source of the cash deposit. Factual findings are based on cumulative effect of all facts covering all essential points. We would not interfere with factual findings unless they are irrational and absurd, which no person acting judicially and properly instructed in the field of law of taxation would have passed."

7. The above view of the Delhi High Court was affirmed by the Hon'ble Supreme Court in **[2020] 113 taxmann.com 93 (SC)**.

8. Similar view has been taken by the Hon'ble Supreme Court in ***Sadiq Sheikh v. Commissioner of Income Tax, Bangalore*** reported in **[2021] 124 taxmann.com 202 (SC)** against the order passed by the Karnataka High Court.



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9. In view of the facts on merits, we find no merit in these appeals and the same deserve to be dismissed.

10. Accordingly, both the appeals are dismissed. All the substantial questions of law are answered against the appellants. However, there is no order as to costs.

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

04.03.2025

Asr

To
The Assistant Commissioner of Income Tax
Central Circle 1(1)
Chennai - 600 034



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