

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.11.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).Nos.738 to 744 of 2014

B.Kishore Kumar

.. Appellant

Vs.

The Deputy Commissioner of Income Tax
Central Circle – IV(1), Aaykar Bhavan
121, Nungambakkam High Road
Chennai – 600 034.

.. Respondent

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 5.6.2014 made in I.T.A.Nos.640 to 646/Mds/2014 for the assessment years 2001-2002 to 2007-2008.

For Appellant : Mr.B.Ramana Kumar
For Respondent : Mr.T.R.Senthil Kumar

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

The assessee has filed these appeals challenging the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 5.6.2014 made in I.T.A.Nos.640 to 646/Mds/2014 for the assessment years 2001-2002 to 2007-2008, by raising the following substantial questions of law:

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- (i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing the appeals and not allowing the matter to be remanded to the respondent when the additions made by him in the appellant's case for the relevant assessment years arise out of a mere assumption?
- (ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing the appeal when there has been a clear insufficiency of time in providing reasonable opportunity to the appellant while completing the assessment under Section 153A read with Section 153C of the Income Tax Act?
- (iii) Whether the Tribunal having come to the conclusion that the assessment orders were passed at the fag end of the year without looking into the search materials, ought to have remitted the case to the assessing officer rather than adjudicating the case on merits?

2.1. The brief facts of the case are as under: On 29.8.2006, a search was conducted at the premises of the appellant's father, wherein loose

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sheets and notings on telephone diaries pertaining to the assessee were found by the department.

2.2. On 27.8.2008, notice under Section 153A read with Section 153C of the Income Tax Act, 1961 (for brevity, "*the Act*") was issued to the appellant for the assessment years 2001-2002 to 2007-2008, namely, for seven years. In response to these notices, on 14.10.2008, the appellant requested the department to treat the original returns filed by him as his returns in response to the notices issued under Section 153A read with Section 153 of the Act. Thereafter, on 12.11.2008, the assessee filed revised returns for the assessment year 2001-2002 and for the assessment years 2002-2003 to 2007-2008, the assessee filed revised returns on 16.12.2008.

2.3. Pursuant to the same, the assessment under Section 143(3) read with Section 153A and 153C of the Act was completed by the Assessing Officer based on admission made by the assessee during the time of search and the records seized. The request of the assessee to consider his objections was overturned by the Assessing Officer saying that the materials submitted at the fag end of the assessment could not be scrutinized, as the notings in telephone diaries and loose sheets are unstructured and spread over without reference to time-frame. The Assessing Officer was of the view that the assessment could be completed

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based on the admission of the assessee in the sworn statements made on 29.8.2006 and 10.10.2006. The Assessing Officer came to the conclusion that there is admission of undisclosed income to the tune of Rs.52,73,920/- and on the basis of the documents and statements, he came to the conclusion that further addition of Rs.30,00,000/- should be made. Therefore, the total extent of undisclosed income was determined at Rs.87,08,136/- and penalty proceedings were also initiated separately.

2.4. Aggrieved by the assessment orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who dismissed the appeals.

2.5. Assailing the said orders, the assessee went on appeal before the Tribunal, which dismissed the appeals upholding the orders passed by the authorities below.

2.6. Calling into question the said order, the present appeals are filed by the assessee on the questions of law, referred supra.

3. Heard Mr.B.Ramana Kumar, learned counsel for the assessee and Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the department and perused the documents filed in support of these appeals.

4. The main grievance of the assessee is that the Tribunal has not considered his plea that the Assessing Officer has not scrutinized the materials submitted before him and made additions based on *a priori* considerations.

5. We have perused the orders passed by the Tribunal and the authorities below. Though the assessee was at pains to make out an issue that he has made certain submissions and those submissions were not considered by the Assessing Officer and therefore, the Assessing Officer has misdirected himself in determining the tax liability, on going through the order of the Tribunal, we find that the case of the assessee was decided on the basis of his own sworn statements dated 29.8.2006 and 10.10.2006 and admitted documents. We extract that portion of the order as has been recorded by the Assessing Officer in paragraph (11), which clinches the whole issue:

“11. Therefore, reliance is placed on the admission of the assessee at the time of search, which is reproduced as under:

Sworn statement of Shri Kishore Kumar dt. 29.8.2006:

'Qn.11: I am showing you the three print-out of amounts totaling to Rs.52,73,920 (Rs.3,31,336 + Rs.15,05,158 + Rs.34,37,427). Please explain this?

Ans: These are the details of loans given by me to various parties as mentioned in the printouts.

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This is a separate business carried out by me which was not included in the income-tax returns filed by me.

Qn.12: Please explain the source for the total outstanding amounts which are given by you?

Ans: The loans totaling to Rs.52,73,920 given to various parties as per the list were from my undisclosed income. I agree to pay the relevant income-tax dues for the above declared undisclosed income.'

Sworn statement of Shri Kishore Kumar dt. 10.10.2006 (in Tamil):

'Qn.1: I am showing you Ann/BL/B&D/S-3 and sl.No.5, which are telephone index books wherein amounts given in cash to various persons were found recorded. Whom do they belong to? In whose handwriting it is write? What do these amounts represent?

Ans: They belong to me. Signature is mine and the notings relate to loans given by me on various dates. This constitutes my separate finance business. There are no regular books for this. According to the documents shown, as on date outstanding loans to be recovered is in the range of Rs.25 Lakhs to 30 Lakhs. The rate of interest is 18% (i.e. Rs.1.50 per 100 per month). The interest income is also not shown in the accounts. The borrowers have committed defaults in repaying the loans and more than 50% of the outstandings are to be treated as bad

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debts. All the advances were not disclosed in the returns filed.'"

This has been relied upon by the Tribunal in full force.

6. With regard to the undisclosed income of Rs.52,73,920/- supported by printouts, in the sworn statement dated 29.8.2006, the assessee says that he had separate business income which was not included in his income tax returns. Therefore, admission of undisclosed income of Rs.52,73,920/- is categoric and undisputed. The assessee in the sworn statement made on 10.10.2006, stated that outstanding loans to the tune of Rs.25 Lakhs to 30 Lakhs are to be recovered with interest at the rate of 18%. This is a clear admission. This amount has also been calculated and added as undisclosed income. When there is a clear and categoric admission of the undisclosed income by the assessee himself, in our considered opinion, there is no necessity to scrutinize the documents. The document can be of some relevance, if the undisclosed income is determined higher than what is now determined by the department. Moreover, it is not the case of the assessee that the admission made by him was incorrect or there is mistake. In fact, when there is a clear admission, voluntarily made, by the assessee, that would constitute a good piece of evidence for the Revenue.

7. The learned counsel for the assessee relied upon a decision of the

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Delhi High Court in *Commissioner of Income Tax v. Girish Chaudhary*, [2008] 296 ITR 619 to plead that loose sheets of papers should not be taken as a basis for determining undisclosed income. However, in the case on hand, loose sheets found during the search are not the sole basis for determining the tax liability. It is a piece of evidence to prove undisclosed income. The printout statements of undisclosed income is not disputed by the assessee and in his sworn statements it is accepted. In fact, he admitted that outstanding loans to be recovered are in the range of Rs.25 Lakhs to 30 Lakhs. We find no error in the procedure followed by the Assessing Officer on admitted facts. The entire exercise by the department to bring to tax undisclosed income, we find has been generous and simple. There appears to be no confusion in the quantification of the tax liability and we uphold the order of the Tribunal.

For the foregoing reasons, we dismiss these appeals. No costs. Consequently, M.P.Nos.1 of 2014 (6 Petitions) are closed.

(R.S.J.) (R.K.J.)
3.11.2014

Index : Yes
Internet : Yes
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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "C", Chennai.

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2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax
Appeals (Central)-I, Chennai.
4. The Deputy Commissioner of Income Tax
Central Circle-IV(1), Chennai.

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

T.C.(A).Nos.738 to 744 of 2014

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