

(2007) 06 MAD CK 0151

In the Madras High Court

Case No : Tax Case (Appeal) No. 636 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Chan Basha

RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 147, 260A

Citation : (2008) 298 ITR 346

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : T. Ravi Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—This appeal is filed u/s 260A of the Income Tax Act, 1961, by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench "D", Chennai, in I.T.A. No. 2880/Mds/2004, dated March 24, 2006, raising the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that there is no contribution made by the assessee during the assessment year for the construction, even though the investments are not contained in any books of account and they are unexplained or the explanation is unsatisfactory, the value of the investment is to be deemed to be the income of the assessee for the financial year preceding the assessment year u/s 69 of the Income Tax Act, 1961?

2. The facts leading to the above substantial question of law are as under:

The assessee is an individual engaged in the business of footwear. The relevant assessment year is 1999-2000 and the corresponding accounting year ended on March 31, 1999. The assessee has not filed return of income and hence notice u/s 142(1) of the Income Tax Act ("the Act" in short) was issued, calling upon the assessee to file his return of income for the assessment year. In response to the

notice, the assessee filed his return of income on March 24, 2003, admitting a total income of Rs. 49,866. Later notice u/s 143(2) was issued to the assessee. The assessment was completed u/s 143(3) read with Section 147 of the Act determining the total income at Rs. 10,72,290. While completing the assessment, the Assessing Officer treated 50 per cent, of the difference in the cost of construction, i.e., Rs. 10,22,425 as the assessee's unaccounted income from business and added the same to his total income. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) deleted the addition and set aside the order of the Assessing Officer. Aggrieved, the Revenue filed an appeal to the Income Tax Appellate Tribunal ("the Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the Commissioner of Income Tax (Appeals). Hence the present appeal by the Revenue.

3. Learned standing counsel appearing for the Revenue submitted that the Departmental Valuer estimated the cost of construction at Rs. 42,28,700 as against the estimated cost of construction at Rs. 21,83,855. Before the Departmental Valuer the assessee had filed the year-wise investment from which it could be seen that the assessee had contributed towards the capital for kalyana mandapam up to March 31, 1999, at Rs. 11,33,855 and his wife C. Jabeena at Rs. 10,50,000. The investments were not reflected in the books of account and the assessee also did not offer any explanation for the difference in the cost of construction. Hence the Assessing Officer is right in making addition of the difference amount in the hands of the assessee u/s 69 of the Act.

4. Heard counsel. The assessee had shown the cost of construction of kalyana mandapam at Rs. 21,83,855. The Departmental Valuer estimated the cost of construction at Rs. 42,28,700. During the year under appeal, the first appellate authority as well as the Tribunal found that there was no contribution by the assessee towards construction. Paragraph 5 of the Commissioner of Income Tax (Appeals) order, reads as follows:

Even on the merits, there cannot be a question of addition when there is no contribution from the appellant; the information of which is available on record. Another point to be considered is, that, the valuation report shows the period of construction from April, 1987, to March, 1999, and the contribution of all the partners from the beginning to end has been given. In the year under appeal, the appellant had apparently not contributed any amount towards investment.

5. The said finding of the Commissioner of Income Tax (Appeals) was confirmed by the Tribunal and the same has not been controverted. Hence the addition made by the Assessing Officer was rightly deleted by the authorities below. The concurrent findings given by both the authorities below are based on valid materials and evidence. Recently, the Supreme Court in the case of Commissioner of Income Tax Vs. P. Mohanakala, , held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under the circumstances, we do not find any error or legal

infirmity in the order of the Tribunal so as to warrant interference.

6. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.