(2009) 01 MAD CK 0285

In the Madras High Court

Case No : Tax Case (Appeal) No. 1913 of 2008

Commissioner of Income Tax APPELLANT

Vs

D. Venkatesh RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Citation : (2009) 310 ITR 303

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Subramaniam, for the Appellant; R. Sivaraman, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal is filed by the Revenue against the order of the Income Tax Appellate Tribunal Chennai "A" Bench dated May 13, 2008, in I.T. (SS) A. No. 136/Mds/2007 in respect of the assessment for the block period April 1, 1996 to January 2, 2003, by formulating the following questions of law:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that no addition could be made in respect of the claim of agricultural income made in the returns prior to the date of search, disregarding the relevant evidence in the form of the statement of the Village Administrative Officer regarding the improbability of the assessee having earned any agricultural income?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in ignoring the relevant facts found as a result of the search, like the non-maintenance of accounts for agricultural income by the assessee and the evidence found pertaining to the generation of unaccounted income in the assessee''s family business?

2. The facts of the case are as follows:

3. The block assessment in the case of the assessee after search for the block period ending January 2, 2003, was completed on January 31, 2005, computing a total undisclosed income at Rs. 9,55,790. In the course of the assessment, the Assessing Officer found that the assessee had claimed agricultural income of Rs. 7,55,400 for the block period. The original assessment has not been completed. However, based on the materials collected during the search, the Assessing Officer has come to the conclusion that the claim has been made though prior to the search but without any material and introduced an unaccounted income generated in the business activity as agricultural claim and thus added the agricultural income claim of Rs. 7,55,400 as undisclosed business income of the assessee for the block period. The assessee carried the matter on appeal. The Commissioner of Income Tax (Appeals) agreed with the contention of the assessee that the addition was not relatable to any material found during the course of search, thereby deleted the addition. Aggrieved by that order, the Revenue filed an appeal before the Income Tax Appellate Tribunal, Chennai, and the Tribunal dismissed the appeal. Questioning the correctness of the same, the present appeal has been filed.

4. It is not in dispute that the assessee was regularly assessed even before search. For the assessment years 1997-98 and 2002-03, the assessee has offered various amounts as agricultural income. The entire amount of Rs. 7,55,400 treated by the assessee as agricultural income has been disclosed to the Department through regular returns filed for the respective assessment years. Those returns were filed well before the search conducted on January 2, 2003. If the Department is having any material to deny the claim, they would have done it in respect of the assessment year. In the absence of any valid material to prove the contrary, the amount, which has been disclosed in the returns well prior to the search, cannot be treated as undisclosed income for the purpose of making block assessment. We do not find any merit in this appeal and no question of law, much less, a substantial question of law is involved.

5. Hence, the appeal is dismissed.