

(2012) 08 MAD CK 0008

In the Madras High Court

Case No : Tax Case (Appeal) No. 104 of 2006

Commissioner of Income Tax

APPELLANT

Vs

P.R. Perumal

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : (2013) 215 TAXMAN 19

Hon'ble Judges : K. Ravichandrababu, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : T.R. Senthil Kumar, for the Appellant; Anita Sumanth, for the Respondent

Judgement

Chitra Venkataraman, J.—The Revenue is on appeal as against the order of the Tribunal in respect of the block assessment period 1986-87

to 1996-97. It is seen from the records placed before this Court that there was a search in the assessee's business premises on 10.09.1996.

Based on the materials gathered, the assessment was completed on 30.09.1997. The said assessment was the subject matter of appeal before the

Income Tax Appellate Tribunal.

2. By order dated 01.12.1999, the Tribunal set aside the assessment and remanded the matter back to the Assessing Officer to supply copies of

statements and other documents relied on and to permit the assessee to cross examine any person in connection with the assessment. Based on the

order passed by the Tribunal, the assessment was once again taken.

3. It is a matter of record that during the course of the assessment proceedings on remand, the assessee's representative categorically stated that

he did not want copies of any statements or documents, since he was having

them all. Thus the order sheet dated 07.03.2002 noted the above-said statement signed by the assessee's representative R.N. Patel, Advocate. The Officer pointed out that the said representative was authorised by the assessee and noted the said statement signed by the assessee's representative. It is a matter of record that the assessee was granted an opportunity to cross-examine one Akbar Shah of L.K.S. Gold House. The Officer pointed out to the cross-examination in extenso that the assessee had purchased gold and jewellery to the tune of Rs. 1.7 crores with the assistance of the said Akbar Shah and the commission received on the sales were declared as the undisclosed income of his concern. Thus, based on the information received, the Officer came to the conclusion that the assessee was to be assessed at a sum of Rs. 1,69,62,679/-, representing the assessee's undisclosed income. Further, the assessment also included the investment made in two house properties situated at 76/1, Chinnathambi Street, Chennai-12, purchased on 04.02.1988 in the name of the assessee's wife Valliammal and at 16, Central Cross Street, M.K.B. Nagar, Chennai, purchased on 01.11.1989 in the name of the assessee's son Balakrishnan.

4. The Department viewed that the assessee had disclosed the income from properties in the return and that the assessee's wife and her son had no source of income; hence, the investment in the properties were treated as undisclosed income of the assessee. The assessment also included investment in thandal business, which was carried on by the assessee along with others, investment in shares as well as investments in P.R. Wines, on the ground that the licence to sell liquor was in the assessee's own use. Aggrieved by this, the assessee once again went before the Tribunal.

5. After referring to the various contentions, particularly with reference to the contention that the Assessing Officer had not complied with the order of remand in granting sufficient opportunity to cross-examine all persons as well as being furnished with the copies of documents, the Tribunal pointed out that in spite of specific directions by the Tribunal, the Officer had not complied with the directions. The Revenue had not placed any material or records to substantiate its plea that the assessee was favoured with all the statements and documents. In the circumstances, drawing adverse inference against the Revenue, the addition of Rs. 1,69,62,679/- being

investment in jewellery, was set aside, holding that the additions were made on presumption or made in suspicion.

6. As far as the inclusion of the investment in the property situated at 76/1, Chinnathambi Street, Chennai-12, and at 16, Central Cross Street,

M.K.B. Nagar, Chennai, are concerned, the Tribunal cancelled the assessment on the ground that there were no materials seized at the time of

search to show that the investments made in the name of the assessee's wife and son were, in fact, investment by the assessee from out of the

unaccounted income. In the circumstances, the Tribunal agreed with the assessee and cancelled the assessment.

7. As regards the investment in shares, here too, the Tribunal held that there were no seized records made available to indicate that the investments

were out of unaccounted funds. As regards the investments made in P.R. Wines, the Tribunal pointed out that it is not anybody's case that the

assessee was not owning any agricultural land and was not in receipt of any agricultural income. When the Department had not disputed that the

assessee had a large extent of agricultural lands and earning a substantial agricultural income, the Revenue should have considered the same as

regards the investment made in P.R. Wines.

8. As regards the thandal business, the Tribunal, however, pointed out that there were no seized documents to hold that the thandal business was

done exclusively by the assessee and that the entire investment was only by the assessee. The assessee admitted that the thandal business was

carried on along with two other persons. That being the case, the assessment at a sum of Rs. 27,00,000/- as though the assessee had made an

investment to that end, could not be sustained. It further pointed out that there were no materials seized to make this investment as part of the

block assessment.

9. Apart from these enumerated items, there were further investments which were also the subject matter of appeal before the Tribunal. For the

present, we are not concerned about those issues, considering the following substantial questions of law raised by the Revenue in this appeal:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition on account of undisclosed investment in

jewellery amounting to Rs. 1.69 crores on the ground that the revenue had not

produced the assessment records as it would have gone against it?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition on account of investment and

expenditure on improvement of immovable property on the ground that the properties are in the name of the assessee's wife and son, when it has

been clearly proved that they have no independent source of income?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition on account of investment in shares on

the ground that the source must have been the agricultural income of the assessee's HUF, when he has not established the existence of the HUF

itself?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the entire addition on account of investment in

Thandal business amounting to Rs. 27 lakhs, on the ground that the statements relied upon, have not been confirmed by cross examination?

10. Learned Standing Counsel appearing for the Revenue pointed out that the Tribunal had committed a serious error in deleting the assessment

with reference to the investment made in gold jewellery, investment in immovable property, investment in shares, investment in liquor business and

in thandal business. As far as the first issue regarding the investment in gold jewellery and the non-furnishing of copies is concerned, he produced

the original assessment records to point out that after the remand by the Tribunal, the assessee participated in the assessment proceedings and the

representative of the assessee noted that the assessee had copies of the statements and materials and hence, he did not require the same. After

granting the assessee the opportunity of cross-examination, the assessment was made. Hence, the contention that the Assessing Officer did not

comply with the direction of the Tribunal is incorrect. In any event, the deletion of a sum of Rs. 1,69,62,679/- is not based on any material.

Consequently, the order of the Tribunal has to be set aside.

11. As far as the investment on the properties is concerned, when the assessee had not let in any evidence that the assessee's wife and son had

any independent income, rightly the assessment was made based on the estimation in the return regarding the rental income.

12. As regards the investment on shares made by the assessee is concerned, the

investment was one of unaccounted sum. So too, with reference to P.R. Wines, he pointed out that the assessee had not let in any evidence that the investment was made out of the agricultural income and hence, the assessment was rightly made at the hands of the assessee to the extent of Rs. 10,17,905/- as unexplained investment in P.R. Wines.

13. Learned counsel appearing for the assessee pointed out that as far as the assessment of Rs. 1,69,62,679/- in respect of purchases made by the assessee and also representing the assessee's undisclosed income is concerned, there is absolutely no material at the hands of the Revenue to assume that the assessee had undisclosed income. Even the cross-examination of Akbar Shah, representative of L.K.S. Gold House, did not reveal anything to draw an inference that the assessee had transactions on purchase of gold to the tune of Rs. 1,69,62,679/-. Thus the Tribunal was justified in deleting the assessment and thereby allowing the claim of the assessee both on the ground that the assessee was granted the opportunity as per the order of the Tribunal as well as on the ground that the addition made was on presumptions, surmises and suspicion.

14. As regards the investment on house properties, she submitted that there is hardly any material seized at the time of search to make this as part of block assessment proceedings. She further pointed out that there was no enquiry made with the assessee's son and wife, to find out whether they had any source of income. In any event, there being no material seized at the time of search, the said issue cannot be a subject matter of assessment under Chapter XIVB. So too, on the issue regarding thandal business and investment in P.R. Wines; except for the licence given to the assessee to run the business, there was no material seized to bring the investment as a subject matter of block assessment. With regard to thandal business, she made particular reference to the search made in the premises of the assessee and the search made in the premises of one D.

Muthumanickam at No. 3-142, Kannagi Street, Pari Nagar, Jaffarkhanpet, Madras-83 and D. Marudappan at 76, Kodambakkam Road, West Mambalam, Chennai-33. She submitted that the Officer found that there was a search in the business premises on 10.9.1996 and a scrutiny of the papers revealed certain transactions that the assessee had with other persons; that one Ramachandran and Pandian were doing thandal business

along with the assessee. However, these books did not clearly indicate the business transactions to form the basis of assessment under Chapter

XIVB. Thus the assessment made based on average daily collection at Rs. 27,000/- as though the assessee had invested Rs. 27,00,000/- is totally

unsustainable and rightly, the Tribunal deleted the assessment.

15. Heard learned counsel appearing on either side and perused the materials placed on record.

16. As far as the first question regarding the opportunity granted to the assessee consequent on the remand order, particularly with reference to the

assessment for a sum of Rs. 1,69,62,679/- is concerned, the assessee does not deny the endorsement made by the assessee's representative Shri.

R.M. Patel in the note sheet dated 07.03.2002 wherein, the assessee's representative stated that the assessee did not require copies of any

statement or document, since it had them all.

17. As already pointed out earlier, we directed the learned Standing Counsel to produce the records of assessment. We have perused the same.

We find that the assessee had, in fact, made an endorsement through his representative that the assessee had all the statements and documents that

he required. It is also a matter of record that the assessee was given an opportunity to cross-examine Akbar Shah of L.K.S. Gold House. Thus,

there are hardly any material to support the Tribunal's view that the assessee was not granted any opportunity to substantiate his case or that the

remand order of the Tribunal was not properly complied with. The observation of the Tribunal in paragraph 7.5 of its order is devoid of any

material and we do not find any justification in the Tribunal drawing an adverse inference against the Revenue. We do not know on what basis the

said observation of the Tribunal was made. In the circumstances, we set aside the order of the Tribunal as contained in paragraph 7.5 of its order,

which is the basis for deleting the entire addition of Rs. 1,69,62,679/-. Without expressing any view on this, the proper course herein would be to

set aside the Tribunal's order in paragraph 7.6 deleting the addition of Rs. 1,69,62,679/- and restore it to the files of the Income Tax Appellate

Tribunal to consider the issue on addition, on its merits.

18. As far as the assessment made on the alleged investments in the immovable properties at 76/1, Chinnathambi Street, Chennai-12 and 16,

Central Cross Street, M.K.B. Nagar, Chennai is concerned, we agree with the assessee's submission that the search did not reveal any material as regards the alleged investments of the assessee in the above-said properties. It is no doubt true that the said properties were in the name of the assessee's wife and his son and the assessee had filed returns admitting the rental income from these properties. The Revenue's contention is that the assessee's son and the assessee's wife had no source of income. We do not find there exists any material for the Revenue to draw such an inference, nor was there any investigation made to find out as to who had contributed funds for the purchase of the property. There are hardly any material shown in the assessment order to sustain the addition under Chapter XIVB. In the circumstances, the mere fact that the documents were there in the name of the assessee's wife and son, per se, would not justify the assessment under Chapter XIV, holding that the investment in the properties were from and out of the assessee's unaccounted money. Thus, confirming the order of the Tribunal in this regard, we hold that it is open to the Revenue to consider the issue not as part of the assessment under Chapter XIVB, but under the regular assessment proceedings, after making proper enquiries in this regard.

19. As far as the investment in shares is concerned, it is seen from paragraph 11 of the assessment order that during the assessment proceedings, the assessee accepted the ownership of the certificates to an extent of Rs. 4,00,000/- and accordingly, the same was assessed for the assessment year 1995-96. As the assessee himself had conceded the investment, we do not find any error in the Tribunal's order, to delete the said assessment.

20. Further, as regards the investment in P.R. Wines, it is no doubt true that the licence to carry on the business stood in the name of the assessee.

A reading of the assessment order shows that on an investigation made, it was found that the assessee had started the wine shop in the name and

style of P.R. Wines in June, 1995 and the assessee was asked to explain the investment made. For this, the assessee had stated that he had started

the business along with four others, each contributing a sum of Rs. 1,25,000/- as capital. The Assessing Officer pointed out to an enquiry with two

of the partners viz., R. Ramakrishnan and Hamparithi, who stated that they had

no interest in the wine shop. The assessee was asked to produce the details regarding the investment and the assessee had stated that they were out of the income from the investment made or income derived from the agricultural lands of 6 acres at Jamindar Patti, P.M. District, which belonged to the HUF. In the absence of any further material as regards the existence, constitution of the HUF and the assets and liabilities thereon, the Assessing Officer found that the investment thus remaining unexplained, assessment was to be made under Chapter XIV.

21. As far as this aspect is concerned, as in the earlier issue of investment in house property, we do not find any observation in the assessment order that the materials were seized in the course of search, to make the investment made as part of the block assessment proceedings. Hence, unless and until the Revenue had materials seized at the time of search, the income cannot be claimed as a block assessment.

22. Thus if any investigation done, apart from the search, reveal certain state of affairs, it is always open to the Revenue to bring it under the regular assessment procedure. Hence, the question whether the assessee had an agricultural income for the purpose of investment in the wine business, certainly is not a subject matter of block assessment. Consequently, agreeing with the Tribunal's view, it is open to the Revenue to consider the said issue in the regular assessment procedure. Thus, we confirm the order of the Tribunal on this issue too.

23. As regards the thandal business, here too, the facts are not very favourable to the Revenue to make the assessment under Chapter XIVB. The

Revenue does not dispute the fact that the assessment on running the thandal business is not based on any material seized in the course of search

proceedings in the assessee's premises. The materials came to light only in the course of search proceedings in the case of one Muthumanickam

and Marudappan. A scrutiny of these investments reveal business transactions of the assessee. The Assessing Officer also noted that apart from

the assessee, there were also two other persons, viz. Ramachandran and Pandian, involved in the Thandal business. The daily collection was stated

to be around Rs. 27,000/-. The inference made by the Revenue was that there should have been capital investment of Rs. 27 lakhs; since

Muthumanickam and Ramachandran, in their depositions, had stated that they

had not contributed any capital for the business, the same was not to be taken as unexplained investment for the purpose of block assessment.

24. As is evident from the reading of paragraph 7 of the assessment order, there are no materials seized at the time of search of the assessee's

premises, to make this as a subject matter of block assessment. When the Revenue does not dispute the fact that the assessee had been doing the

business along with two others, we do not find any justifiable ground to assess Rs. 27 lakhs at the hands of the assessee. In the circumstances,

apart from questioning the inclusion in the block assessment procedure, we may also point out that the manner of assessment of Rs. 27 lakhs is

also without any basis. In the circumstances, holding that the income from thandal business could not be a subject matter of block assessment, it is

open to the Revenue to make such investigation as are necessary for the purpose of determining the income that the assessee might have earned in

the thandal business. In the circumstances, barring Question No. 1 which is now remanded back to the Tribunal for its consideration on merits, the

investment in house property, investment in thandal business and in wine business, cannot be a subject matter of assessment under the block

assessment procedure and accordingly, we confirm the order of the Tribunal. However, as regards the investment of shares to the extent of Rs.

4,00,000/-, when the assessee himself had admitted it as an unexplained income as part of the records, we confirm the order of assessment.

In the result, the Tax Case Appeal stands partly allowed. No costs.