(2007) 08 MAD CK 0008

In the Madras High Court

Case No : Tax Case (Appeal) No. 549 of 2007

Commissioner of Income Tax — APPELLANT

Vs

P.S. Mani — RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 132, 139(1), 139(4), 155BB, 158B

Citation : (2007) 08 MAD CK 0008

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

Bench : Division Bench

Advocate : J. Narayanaswamy, 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, Bench ''C'', Chennai in I.T. (SS)A. No. 991/Mds/2004 dated 30.06.2006, raising the following substantial questions of

law:

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that even though returns were filed belatedly and hence

treated as invalid, the income shown in them could not be treated as undisclosed income?

2. Whether on the facts and circumstances of the case, the provisions of Section 158BB(ca) would apply only where returns are not at all filed, or

whether it would also apply to cases where the return is filed beyond the specified time limits and is hence invalid?

3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that there was no undisclosed income for the years in

which advance tax had been paid, even though the returns were not filed within the time limit specified u/s 139(1)?

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

The assessee is engaged in jewellery business and money lending business. The assessee is also a partner in M/s. Thangamayil Jewellery and was

also a partner in M/s. Winner Finance, Trichy, M/s. Winner Chit Funds, Trichy and M/s. Venus Corporation, Trichy. Besides business income, the

assessee also derived income from house property. A search u/s 132 of the Income Tax Act (""Act"" in short) was conducted on 14.12.2000 in the

residential premises of the assessee. During the course of the search, incriminating materials and documents were noticed and seized. Considering

the above seized materials, the Assessing Officer had issued notice u/s 158BC of the Act on 30.07.2002. In response to the said notice, the

assessee filed Return of income for the block period from 1991-92 to 2001-02 in Form No. 2B on 24.09.2002 admitting an income of Rs.

20,000/-. During the course of assessment proceedings, the assessee had admitted the following:

Amount (Rs.)

i)Towards undisclosed income of 2,50,000

jewellery business

ii)Unaccounted investment in 1,22,000

M/s.Thangaratnam Jewellery

iii)Towards unaccounted personal 1,40,000

expenditure

The Assessing Officer determined the total undisclosed income at Rs. 8,66,869/-. While completing the assessment, the Assessing Officer made

the following additions:

i) Additions of Rs. 36,770/-, Rs. 51,270/-, Rs. 55,010/- and Rs. 67,850/- towards undisclosed income for the assessment years 1992-93, 1993-

94, 1994-95 and 1995-96, respectively.

ii) Addition of Rs. 1,43,969/- towards undisclosed income for the assessment year 2000-01.

Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income Tax Appellate Tribunal (""Tribunal"" in short).

The Tribunal allowed the appeal and set aside the order of the lower authorities. Hence the present tax case by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that even though the assessee had taxable income for the assessment years

1992-93 to 1995-96, he had not filed the Returns within the period specified u/s 139(1) or even Section 139(4) of the Act. The belated Returns

filed by him were treated as invalid and consequently the amounts therein were treated as undisclosed income. In respect of addition towards

undisclosed income for the assessment year 2000-2001, the counsel for the Revenue further submitted that the Return of income was filed only on

08.03.2001 which is subsequent to the date of the search. Hence the Tribunal is wrong in disregarding the fact of filing the Return belatedly. Mere

payment of advance tax cannot prevent the Assessing Officer to treat the said amount as undisclosed income for the purpose of block assessment

u/s 158BC of the Act.

4. Heard the counsel. In respect of Question Nos. 1 and 2, the due dates for filing the Return of income u/s 139(1) of the Act, the actual date of

filing by the assessee and the income declared for the assessment years 1992-93 to 1995-96 are as under:

Asst.year Due date Date of Income declared

u/s. 139(1) filing Rs.

1992-93 31.07.1992 26.03.1997 36,770

1993-94 31.07.1993 30.03.1997 51,270

1994-95 31.07.1994 30.03.1997 55,010

1995-96 31.07.1995 13.03.1998 67,850

From a reading of the above, it is clear that for the above assessment years, Returns were filed by the assessee only after the due dates prescribed

under Sections 139(1) and 139(4) of the Act. Since the Returns of income filed were not valid ones, the Assessing Officer treated the Returns as

nonest"" and lodged the same. The income returned by the assessee in these assessment years could not be taken as undisclosed income considering the definition of undisclosed income u/s 158B(b) of the Act. From the above tabular column, it is seen that the filing of the Returns

were before the date of search. The Assessing Officer merely lifted the figures from the Returns filed by the assessee and treated the amounts

shown in the Returns as undisclosed income. The Revenue also did not point out that there is any material available in consequence of the said

search for determining undisclosed income. A similar issue came up for hearing before this Court and this Court considered the same in the

unreported judgment in T.C. No. 268 of 2001 dated 01.04.2004 in the case of C.I.T v. Shri J.K. Narayanan, wherein it was held as follows:

4. It is not the case of the Revenue that in the present case, any undisclosed income had come to light as a result of search. On the other hand, the

assessee had filed already a belated return disclosing such income.

5. Keeping in view the provisions contained in Section 155BB of the Act, in the facts and circumstances of the case, it cannot be said that

assessment was required to be made under Chapter XIV-B. The belated returns, which had been filed, even though invalid, contained information

showing the earning of the corresponding income and such information having been imparted by the assessee to the Assessing Officer long before

the search, it would not be proper to hold that there was any undisclosed income requiring assessment under Chapter XIV-B.

The facts involved in the above unreported judgment of this Court as well as the facts involved in the present case are the same. The Tribunal

rightly followed the principles enunciated in the above unreported judgment of this Court and correctly held that the Assessing Officer is wrong in

determining undisclosed income in respect of the assessment years 1992-93 to 1995-96. Hence we find no error or illegality in the order of the

Tribunal in respect of Question Nos. 1 and 2 and accordingly, no substantial questions of law arise for consideration of this Court in respect of

Question Nos. 1 and 2.

5. Learned Standing Counsel appearing for the Revenue fairly stated that Question No. 3 stands covered by this Court''s judgment in the case of

The Assistant Commissioner of Income Tax Vs. A.R. Enterprises, , in favour of the assessee. Hence no substantial question of law arises for

consideration of this Court in respect of Question No. 3.

6. In the result, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.