(2013) 06 MAD CK 0291

In the Madras High Court

Case No : Tax Case (Appeal) No. 20 of 2010 (Appeal arising out of order of Tribunal in IT Appeal No. IT (SS) Appeal No. 79/Mds. of 2008, dated 19-6-2009)

Commissioner of Income Tax APPELLANT

Vs

R. Mallika RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2013) 219 TAXMAN 244

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

Bench : Division Bench

Advocate : T.R. Senthil Kumar, for the Appellant; J. Ashokpathy, for the Respondent

Judgement

Chitra Venkataraman, J.—The following substantial questions of law are raised by the Revenue in the present Tax Case Appeal filed as against the order of the Income Tax Appellate Tribunal, Chennai ''B'' Bench dated 19.6.2009 in IT. (SS) A. No. 79/Mds/2008.

Whether on the facts and circumstances of the case, the Tribunal was right in finding that the assessee proved the source of deposit contrary to the law laid down in Commissioner of Income Tax, Salem Vs. K. Chinnathamban,

This is a case of block assessment covering the period 01.04.1996 to 21.02.2003. It is seen from the facts narrated in the orders of the authority below that a search was conducted u/s 132 of the income tax Act, 1961 in the case of one Shri Singanamala Ramesh Babu and his father Shri. S. Sathya Ramamurthy on 21.02.2003. One of the documents seized during the search indicate that there was a sale of immovable property by one Kanakarathnamma, W/o. Shri S. Sathya Ramamurthy. The said S. Kanakarathnamma sold 1/3rd share of her immovable property for a sum of Rs. 22 lakhs (Rupees Twenty Two Lakhs only) to the assessee herein viz., Mallika.

2. On receipt of the information, the Assistant Commissioner of income tax sought for information as regards the filing of the returns for the relevant assessment years. It was found that the assessee did not disclose sufficient income to make an investment to the extent of Rs. 22 lakhs. Thus, notice u/s 158BC was issued for the period 01.04.1996 to 21.02.2003 on 09.11.2005.

3. In response to this notice, the assessee filed return of income for the block period. As regards the investment in immovable property at 41, Giri Road, T. Nagar, Chennai, it was submitted that the assessee had purchased the property in the undivided share of 1/3rd for a sum of Rs. 22 lakhs. The other 2/3rd of the property was purchased by her daughter Smt. Hemalatha and her son-in-law Shri J. Senthil Kumar, each of them investing Rs. 22 lakhs each. The assessee contended that she had sold her jewellery for a sum of Rs. 5,70,095/- and also taken loan from her son-in-law and the balance was out of her salary income and cash on hand as on the date of investment.

4. As regards the sale of jewellery, she had stated that the sale was through auction by Giri Auctioneers on 23.04.2002. The receipt given by M/s. Giri Auctioneers was submitted in support of the claim. On summons to the said auctioneers, it was deposed that he could not give any information since he could not recollect whether he had dealt with Mrs. Mallika, the assessee or not. Thus, the claim of the assessee as regards Rs. 5,70,095/- stood unproved and that the assessee had not taken any steps to produce Sri Lalith Kumar, who was incharge of Giri Auctioneers nor any evidence let in regarding the genuineness of the auction said to have been conducted.

5. The Assessing Officer further pointed out that contrary to her assertion that she had given a sum of Rupees six lakhs by way of sale of jewellery, her son in law Senthil Kumar stated that the assessee had given her jewellery to her daughter worth Rs. 7 lakhs just before the registration, which were sold by him. The assessee, however, submitted that as on 31.03.1996, she was in possession of jewellery worth about Rs. 2,86,395/- and there were no silver articles. She also submitted a photo copy of daily viz., "Makkal Kural" dated 22.04.2002, where, there was an advertisement relating to auction of her jewellery and silver articles. The assessee was directed to produce other details so as to accept the genuineness of the auction. Even then, it was not forthcoming. Thus, a sum of Rs. 5,70,095/- was added back to the total income of the assessee as on the date of investment made by her in the purchase of immovable property i.e., on 24.04.2002.

6. The assessee submitted that her son-in-law contributed Rs. 15 lakhs towards her investment in purchase of her share of property. In this regard, a statement was recorded from her son-in-law, which may be usefully extracted herein for better understanding:-

......Rs. 15 lakhs was contributed by me at the time of registration. It may be noted that the DD had been taken directly in the name of the seller from my

IDBI SB Account No. 005104000035033 on 24.04.2002. It may be noted that the sum of Rs. 15 lakhs given to her is not a loan given by me to her.

7. Based on the above statement, the Assessing Officer also caused verification on various accounts. On the verification of the credit entries in the IDBI and other banks, it was found that pay orders/DDs had been taken for making deposit into the bank accounts of J. Senthil Kumar during the period 02.03.2002 to 18.03.2002. The Assessing Officer pointed out that the credit entry have come from the parents, brothers, friends and employees of J. Senthil Kumar. A reading of the details given shows that the assessee had also made cash payment to J. Senthil Kumar''s account by Pay Order Nos. 421800, 421799, 846154 all dated 13.03.2002 for a sum of Rs. 45,000/- each, the first two from Karur Vysya Bank and other one from State Bank.

8. In response to the notice, the said Senthil Kumar appeared before the Officer and he was asked to explain the various credit entries. On a question specifically put to Senthil Kumar, whether he had repaid the loan, he had answered that he had not repaid the loan. In order to verify the financial transaction nature, notice was also issued to daughter of the assessee, who, however did not respond to the notice, except to say through a letter dated 14.11.2007 that she was unable to explain her stand for various reasons.

9. The Assessing Officer found that the assessee had gifted the share of the property to her daughter and that the son-in-law claimed that he had returned all the amounts too. In the background of these facts, the Income Tax Officer proposed to treat the investment in the property as unexplained. Thus, after hearing the assessee, the Officer passed the order of assessment apart from proposing penalty proceedings.

10. Aggrieved by this, the assessee went on appeal before the Commissioner of income tax (Appeals), who pointed out that the assessee had produced materials explaining her source of investment and that there could not be any addition at the hands of the assessee, viz., mother-in-law. Thus, on the evidence available before it, the Commissioner of Income Tax (Appeals) held that there is no justification in making addition at the hands of the assessee and if at all any addition could be made, it could be done only at the hands of the son-in-law. In so holding, the Commissioner of income tax (Appeals) set aside the assessment.

11. Aggrieved by the same, the Revenue went on further appeal before the Income Tax Appellate Tribunal, who had confirmed the view of the Commissioner of income tax (Appeals) pointed out that the said Senthil Kumar had invested Rs. 22 lakhs directly and had provided loan to his mother-in-law for purchase of share in the property. There are credit entries in his accounts. Since Senthil Kumar was an assessee and also submitted before the Assessing Officer that the credits in his bank account had been offered before his Assessing Officer, nothing further was required to make addition at the hands of the assessee. Thus, the appeal filed by the assessee was allowed on this aspect.

12. As regards the possession of jewellery and the sale of it, the Tribunal confirmed the view of the Commissioner of income tax (Appeals) deleting the addition holding that the assessee had produced a copy of the advertisement of the auction and receipts of the auction, thus, the assessment at the hands of the assessee for Rs. 22 lakhs was set aside. Aggrieved by this, the Revenue is before this Court.

13. Although the issue herein would appear to be a question of fact found by the Income Tax Appellate Tribunal, yet, going through the assessment order, we find that the issue does not appear to be a simple one. As already seen in the preceding paragraph, the assessee was stated to be working as a Teacher in International Maritime Academy from the financial year 2001-02 to 2005-06. Although the assessee was called upon to produce bill regarding salary and other details, except photocopies of Form 16, no materials were furnished. Apart from this fact, the claim of the assessee that part of the consideration came from the sale of jewellery also appear to be not true. The assessee took the stand that she had sold her jewellery in auction through M/s. Giri Auctioneers. There are no details that on 23.04.2002, auction was conducted. Notice was issued to the auctioneer in 2007, however, the auctioneer disclaimed sale or auction through their concern. The claim of the assessee in this regard merits to be tested on the specific question made on this.

14. The assessee''s son-in-law submitted that the assessee had given jewellery to her daughter worth Rs. 7 lakhs before Registration. This is apart from the explanation given by the assessee that she was in possession of jewellery worth Rs. 2,86,395/-. The claim of the assessee on the sale of gold jewellery does not fit in with any of this explanation. The view of the Income Tax Appellate Tribunal based on the advertisement of the auction and the receipt given by the auctioneer, by itself, would not prove substantially the claim of the assessee as regards the sale of her jewellery.

15. As regards a sum of Rs. 15 lakhs said to have been given by her son-in-law directly to the vendor of the assessee is concerned, there could be no inhibition on a person holding finance giving money to the vendor on behalf of the purchaser, yet, the details given in the assessment order, particularly, as regards the transactions of the son-in-law raised serious doubt on payment of the said amounts by the said Senthil Kumar on behalf of the Mallika for purchase of the property. The reason being that on 13.03.2002, the assessee herein viz., R. Mallika is stated to have deposited Rs. 45,000/- each by way of three Demand Drafts separately into the account of Senthil Kumar. There is no explanation as regards this deposit by the assessee in the sworn statement for making such deposit. Quite apart, the deposition recorded from the assessee''s son in law also raised doubts regarding the payment.

16. It may be seen that one of the questions posed to the son-in-law was that whether a sum of Rs. 15 lakhs was given as a loan, while originally he said no, immediately, he changed it and stated that it might be considered loan without

interest. On a specific question whether the loan was returned by the assessee to Senthil Kumar, while stating that it was not returned, he continued that the assessee had returned the share of property and gifted it to her daughter. Thus, the reading of the statement shows the unreliability of the claim made by the assessee as regards the receipt of money from her son-in-law. Even assuming that the mother had gifted the property to her daughter, the fact remains that the nature of the transaction between the assessee and her son-in-law, thus, not being made clear, we find it difficult to accept the case of the assessee that she had borrowed a sum of Rs. 15 lakhs from son-in-law for the purpose of investing it in a property, which was later on returned to the son-in-law. There is absolutely no material to throw light on the assessee''s son-in-law parting with the said sum for and on behalf of the assessee. In the circumstances, we have no hesitation in holding that the assessee had not discharged the burden as regards the source from which the investment had been made. In the circumstances, on facts, we hold that the Income Tax Appellate Tribunal misdirected itself in accepting the case of the assessee, thereby confirming the order of the Commissioner of income tax (Appeals) that there are entries in the accounts of Senthil Kumar and that the credits in the accounts of Senthil Kumar were considered by the respective Assessing Officer to make any further addition at the hands of the assessee on the sum of Rs. 15 lakhs. We do not think that such a line of reasoning will satisfy the requirements of law in the matter of substantiating the claim on the addition under the head of "Unexplained Investment". In the circumstances, we have no hesitation in disturbing the finding of fact by the Income Tax Appellate Tribunal as one not based on material and confirm the order of the Assessing Officer. Accordingly, the Tax Case Appeal stands allowed. No costs.