(2006) 11 MAD CK 0114

In the Madras High Court

Case No : Tax Case (Appeal) No. 2620 of 2006

Commissioner of Income Tax — APPELLANT

Vs

S. Ajit Kumar — RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:
Income Tax Act, 1961 — Section 133A, 158BB, 158BC, 260A

Citation : (2008) 300 ITR 152

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

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—This appeal is filed by the Revenue u/s 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, ''B'' Bench dated 28.04.2006 in I.T.(S.S.)A. No. 53/Mds/2005, raising the following substantial questions of law:

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the material found in the course of survey in the premises of the builder could not be used in the block assessment of the assessee?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding only if evidence of cash payment to the builder had been found at the time of search, could the proof of the same found at the time of survey in the builder''s premises be used, inspite of the fact that other details of employing that particular builder were found at the time of search?

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

The assessee is a Cine Actor. The office and residential premises of the assessee were searched on 17.07.2002 and the search was concluded on 21.08.2002. In the course of the search, evidences were noticed that the assessee had indulged in understatement of his real income relating to the block period 01.04.1996 to 17.07.2002. A notice dated 25.02.2003, u/s 158BC of the Income Tax Act (hereinafter referred to as the "Act"), was issued to the assessee and in response to the same, the assessee furnished the Return of income on 11.08.2003, admitting the undisclosed income as "Nil". On the date of search, there was a survey in the premises of M/s. Elegant Constructions and Interiors Ltd. ("Elegant Constructions" in short), the builder and interior decorator, who constructed and decorated the assessee''s house at Seaward Road, Valmiki Nagar, Thiruvanmiyur. It was found that the assessee paid a sum of Rs. 95.16 lakhs in cash and the same was not accounted. The Assessing Officer, completed the order making an addition of Rs. 95,16,320/- and completed the block assessment, inter alia, bringing the said amount to tax as undisclosed income of the block period. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals) and contended that the materials found in the course of survey could not be utilised for computing the income of the block period. The C.I.T.(A) held that it was due to the search action, the Department had found that the assessee had engaged the services of M/s. Elegant Constructions, the builder and decorator and hence the same is directly related to the information obtained in the survey proceedings, and confirmed the order of assessment and dismissed the appeal. Aggrieved by the order of C.I.T.(A), the assessee filed an appeal to the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal was of the view that information of materials found in the survey operation of the premises of M/s. Elegant Constructions, was not related to any material found during the course of search operation and hence the same cannot be a basis for making any addition in the block assessment.

3. Learned Standing Counsel appearing for the Revenue submitted that the assessee made cash payment to M/s. Elegant Constructions to the extent of Rs. 95,16,320/-. In the course of the search operation in the residential and official premises of the assessee, a survey was conducted u/s 133A of the Act, in the business premises of M/s. Elegant Constructions. In the course of survey operation, it was found that M/s. Elegant Constructions had undertaken construction of interior decoration work and received payment in cash over and above the cheque payment. The assessee had also made the cheque payment. Both the cash and cheque payments were recorded in the books of M/s. Elegant Constructions. However, the accounts of the assessee showed only the cheque payment. A comparison of the accounts of the assessee, as compared with the books of M/s. Elegant Constructions with copies of ledger folio of the assessee, would show that all payments made by the assessee by way of cheque have been accounted for in the books of M/s. Elegant Constructions. However, none of the cash payments were entered in the books of account of the assessee. Therefore, on the basis of the materials found in the course of survey and the statement recorded from the Director of M/s. Elegant Constructions, an addition was made to the extent of Rs. 95,16,320/- and the same is in accordance with law.

4. Heard the counsel. Admittedly, there was a search on 17.07.2002. The assessee constructed a residential bungalow in which the construction and interior decoration was done by one M/s. Elegant Constructions. The cost of investment was disclosed to the Revenue in the course of regular Return filed by the assessee. The transaction between the assessee and the said M/s. Elegant Constructions was also disclosed for the assessment year 2001-2002. The investment in Seaward Road, Valmiki Nagar, Thiruvanmiyur bungalow was also disclosed to the Revenue in the regular Return. Therefore, it is clear that the construction of residential bungalow and interior decoration by engaging M/s. Elegant Constructions, was within the knowledge of the Department as on the date of search. In the course of search operation, a survey was also conducted u/s 133A of the Act in the official premises of M/s. Elegant Constructions. In the course of survey operation, the Revenue found that the assessee had paid cash over and above the amount paid by cheque. It is an indisputable fact that the cost of construction and interior decoration through M/s.Elegant Constructions, was known to the Department even before the date of search. Admittedly, no material was found during the course of search operation in respect of amount said to be paid in cash over and above the cheque payment. Hence, the Tribunal correctly come to the conclusion that the information or material found during the course of survey operation at the premises of M/s. Elegant Constructions, were not relatable to any material found during the course of search operation. Therefore, the Tribunal is right in its view that material or information found at the premises of M/s. Elegant Constructions, in the course of survey proceeding, could not be a basis for making any addition in the block assessment. The block assessment provides for specific methods of computation and the Revenue are bound to follow the statutory procedures provided u/s 158BB of the Act. The Tribunal correctly followed the principles enunciated by the judgment of this Court, in the case of Commissioner of Income Tax Vs. G.K. Senniappan, . The Court considered the scope of Sections 133A and 158BB of the Act and held as follows:

Section 158BB occurs in Chapter XIV-B, which provides for special procedure for assessment of search cases. The computation of undisclosed income of the block period is contemplated u/s 158BB. As per the section, the undisclosed income of the block period should be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of this Act, on the basis of the evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years.

A mere reading of the above provision clearly indicates that the sentence "such other materials or information as are available with the Assessing Officer" cannot be bisected or taken in isolation for the purpose of computation. Such other materials or information as are available with the Assessing Officer, should as per the section relatable to such evidence. The word "such" used as a prefix to the word "evidence" assumes much significance, in this provision, as it indicates only the evidence found, as a result of search or requisition of books of account or other documents, at the time of search. Any other material cannot form basis for computation of undisclosed income of the block period. Hence, we are of the view that the Commissioner as well as the Tribunal have the issue in accordance with the statutory provisions, and requires no interference. The appeal is accordingly dismissed.

Applying the above ratio, we find there is no error or legal infirmity in the order of the Tribunal and the reasons given by the Tribunal are based on relevant materials and evidence.

5. In view of the foregoing reasons, we are of the view that the order of the Tribunal is in confirmity with law and hence, no substantial questions of law arise for consideration of this Court, so as to warrant interference. Accordingly, the tax case is dismissed. No costs.