

(2008) 01 MAD CK 0206

In the Madras High Court

Case No : Tax Case (Appeal) No. 922 of 2007

Dr. S. Rajamony

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 158BC, 260A

Citation : (2009) 221 CTR 604 : (2008) 300 ITR 128

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

Bench : Division Bench

Advocate : Philip George, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal is filed against the order passed by the Income Tax Appellate Tribunal, "A" Bench dated September 15, 2006, in I.T.(SS) A. No. 180 (Mds)/2004 for the block assessment period from April 1, 1995, to March 28, 2002.

2. The appellant is a Government doctor specialized in varma treatment. There was a search in the premises of the appellant on March 28, 2002. During the course of search, cash in a sum of Rs. 13,34,210, fixed deposits in various banks, jewellery and loose sheets containing information regarding construction expenses were found. A sum of Rs. 13,00,000 was seized. Notice u/s 158BC dated March 6, 2003, was served on the appellant on July 15, 2003. The appellant had filed a return in Form No. 2B on August 14, 2003, admitting an undisclosed income of Rs. 4,31,797. The assessment was completed u/s 158BC read with Section 143(3) of the Income Tax Act, 1961, on March 30, 2004, on a total undisclosed income of Rs. 42,05,370 by making additions as follows:

Rs.

1. Cash and fixed deposits 18,01,112 2. Jewellery 13,13,520 3. Building renovation 6,30,158 4. Accrued interest 4,63,631 5. Professional income for part

period for which no books 74,211 were maintained 6. Levy of surcharge at 2% 15,464

3. On appeal, the Commissioner of Income Tax (Appeals) partly allowed the appeal by restricting the cash and fixed deposit to Rs. 12,34,210 and the addition on jewellery was restricted to 2568 gms valued at Rs. 10,01,520.

4. As against that order, the appellant filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, while partly allowing the appeal, had confirmed the order of the Commissioner of Income Tax (Appeals) in respect of the two issues of restricting the addition of cash and fixed deposits to Rs. 12,34,210 and restricting the addition of jewellery of 2568 gms valued at Rs. 10,01,520. Not satisfied with that order of the Tribunal, in respect of the abovesaid two issues, the present appeal is filed.

5. Learned Counsel appearing for the appellant vehemently contended that the Commissioner of Income Tax (Appeals) and the Tribunal had miserably erred in rejecting a portion of the claim made in respect of cash and jewellery by partially accepting the sworn statement given by the assessee, but rejecting the other part of the statement, which has been corroborated by the assessee's wife.

6. We have gone through the order of the Commissioner of Income Tax (Appeals) as well as the Tribunal.

7. The Commissioner of Income Tax (Appeals), in respect of the additions made in a sum of Rs. 18,01,112, has held that during the search, cash in a sum of Rs. 13,34,210 was found and at the most, the Assessing Officer could make an addition to that extent only in the block assessment order. He further observed that having regard to the status of the appellant, it could be deemed that a sum of Rs. 1,00,000 could be treated as the cash available out of the earlier year savings. He further found that the explanation offered by the appellant that he received substantial cash gift from his patients including Dr. M.G. Ramachandran was not substantiated with any documentary evidence and thus out of the cash found during the course of search in a sum of Rs. 13,34,210 after giving credit a sum of Rs. 1,00,000 for possible savings out of the earlier year's income, restricted the addition in a sum of Rs. 12,34,210. Before the Tribunal also the only explanation given and the ground urged was that the assessee was a doctor and he treated Dr. M.G. Ramachandran and the said amount was received by way of gift from him. The Tribunal also found that there was no evidence to substantiate the contention of the assessee and thus rejected the explanation offered. Before us also there is no other material made available so as to accept the submissions made by Counsel for the assessee.

8. The second issue is in respect of the jewellery of 4768 gms found at the time of search. The Assessing Officer had given credit for 150 sovereigns as stridhana of the appellant's wife and 25 sovereigns as possible gift at various times to his daughter. The Assessing Officer calculated the market value for the remaining jewellery of 3368 gms at Rs. 390 per gram, which amounted to Rs. 13,13,520.

The Commissioner of Income Tax (Appeals) considered the explanation offered before him to the effect that the appellant's wife at the time of search had stated that she was given 200 sovereigns of gold jewellery at the time of her marriage, that Smt. Janaki Ramachandran has given 50 sovereigns of gold jewellery, that a foreign doctor by name Mor Jones had given 50 sovereigns of gold jewellery and that the balance was given to the children at the time of their birthdays.

9. The appellant, in his sworn statement, stated that about 50 sovereigns of gold jewellery were gifted to him and his family members by Smt. Janaki Ramachandran, that about 250 sovereigns were given to the appellant's wife at the time of her marriage and that some sovereigns were gifted to his children during the birthday celebration and concluded that there was no contemporaneous documentary evidence available regarding the quantum of jewellery received by the appellant's wife at the time of her marriage, the quantity of jewellery given by Smt. Janaki Ramachandran, the quantum of jewellery given by the appellant's brother-in-law and the foreign doctor Mor Jones. He has considered the sworn statement given by the appellant and his wife and having regard to the common element available in both the statements, accepted the statement that the wife has received 250 sovereigns of gold jewellery at the time of her marriage even though in the statement of the wife, she has stated that she received only 200 sovereigns of gold. He has accepted the statement that the appellant has received 50 sovereigns of gold from Smt. Janaki Ramachandran and further given credit to 25 sovereigns of gold supposed to have been given to the children during the birthdays and other auspicious occasions. Thus, out of the total quantity of 4768 gms found at the time of search, the Commissioner (Appeals) has come to the conclusion that the appellant was not able to properly explain with regard to 2568 gms and directed the Assessing Officer to restrict the additions in respect of the abovesaid quantity at the rate of Rs. 390 per gm working out to Rs. 10,01,520 and thereby granted the relief in a sum of Rs. 3,12,000.

10. Before the Tribunal it was contended that the wife of the assessee has received 50 sovereigns of jewels from a foreign doctor by name Mor Jones and that has not been taken into account by the authorities below. The Tribunal found that there is absolutely no evidence to support the claim and the other claims that 180 sovereigns were entrusted by the brother-in-law of the assessee to be given to his daughter at the time of marriage also is not established with the relevant materials. Before us also, except reiterating the very same grounds, no material worth mentioning was placed.

11. From the totality of the case stated above and upon hearing learned Counsel, we find that there is absolutely no merit in this appeal, as an appeal u/s 260A of the Income Tax Act, 1961, can only be maintained on substantial question of law. In this case, the following questions of law have been formulated:

(a) Addition of cash and fixed deposits:

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition of cash and fixed deposits as undisclosed income?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not appreciating the evidence relied on by the appellant to demonstrate the fact that the gifts had been received from Dr. M.G. Ramachandran?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not appreciating that the cash left by the father of the appellant was distributed among the family members of the appellant ?

(iv) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not appreciating that the appellant had past savings to the extent of Rs. 2,11,000.

(b) Addition on jewellery 2568 gms:

(v) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the addition on account of jewellery, as undisclosed income?

12. The above substantial questions of law formulated in this appeal, on the facts of the case, in our view, cannot be regarded as substantial questions of law as provided u/s 260A of the Income Tax Act. The appeal is, therefore, dismissed. No costs.