(2011) 12 KAR CK 0424

In the Karnataka High Court

Case No : IT Appeal No''s. 580 to 583 of 2006

Mohanlal Punamchand (HUF) APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:
Income Tax Act, 1961 — Section 234 B, 271 (1) (c), 274, 68, 69

Citation : (2012) 205 TAXMAN 129

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : Parthasarathi, for the Appellant; Sriyuths Indrakumar and E. Sanmathi Indrakumar, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—All these appeals are filed by the assessee being aggrieved by the order dated 31-10-2005 passed by the Income Tax Appellate Tribunal, Bangalore Bench ''A'' (hereinafter called the ''ITAT) wherein the appeals filed by the revenue were partly allowed. Since the similar substantial questions of law involved in these appeals, for the purpose of convenience, the material facts in ITA No. 580/2006 are narrated below:

The Assessing Officer in respect of the assessee for the assessment year 1998-99, found that according to the return filed by the assessee-HUF, had declared interest from M/s. P. Vijayakumar & Co. and income from house property and long term capital loss for the year in question: in the diamonds and gold accounts, it had credited Rs. 5,93.450/- and Rs. 4,71.397/- received on sale of diamonds and gold ornaments respectively. To verify and ascertain the above credits, the assessee was asked to furnish the details like bills and details of jewellery. The assessee has furnished valuation report of gold ornaments and diamonds purchase invoice issued by Kamal Gems Salyed pura, Surat dated 3-1-1998. In respect of bullion sold bill issued by Shree Mahalakshmi Jewellers, Hubli dated 20-12-1997 and bills issued by Siddanath Silver Refinery, Durgadabailu, Gavligalli, Hubli dated 18-12-1997. The details of the transaction are as follows:

Sl. No

Gold Jewellary Quantity

Valued by whom & Date

Quantity after Melting

Melting Charges

Name of the person who Melted

Bullion Gold to

Sale Value

Mode of Receipt of Sale Consideration

1

14025.150 GMS

M. Gauthamchand Government approved valuer Navarathan Jewellery (P.) Ltd., No. 85. M.G. Road Blore 560 001 Dt. 12-11-97 valuation as on 1-4-87

1419.750 GMS

Rs. 180/- Bill Date 18-12-97

Siddanath A. Silver Rehnerie S. Durgad Bail Gowli Galli Hubli

Sri Mahalaxmi Jewellers Umachagi Complex Coen Road Hubli

Rs. 4.71.397 bill dated 20-12-97

By A/c Payee Cheque Drawee Bank Vysya Bank Ltd. Koppikar Road, Hubli 25.12.97

Diamonds

2

45.650 CT

Gauthamchand Government approved valuer, Navarathan Jewellery (P.) Ltd. No. 85 M.C. Road Blore - 560 001 12-11-97 Valuation As On 1-4-87

Kamal. Gems Diamonds. Gold Silver Dealer and Commission Agents. 102. Super Daimond Apartments. Sayedpura. Surat-3

Rs. 5.93.450

By DD Purchased from Union Bank of India. BVK Iyengar Road. Bangalore 10-1-98

There were also similar sales of bullion, and diamonds in individual case of the Kartha Shri Sha Mohanlal Punamchand and his brother Shri P. Vijaykumar. In all the cases similar bills were produced before the Assessing Officer. The Assessing Officer, after going through the particulars of the assessee and considering the contentions, brought the following cash credits u/s 68 of the Act:

Diamond Account

:

Rs. 5,93,450/-

Gold Bullion Account

:

Rs. 4,71.397/-

The Assessing Officer initiated penalty proceedings u/s 274 r/w Section 271(1)(c) of the Act and also levied interest u/s 234B of the Act. Being aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Davanagere. The first appellate authority allowed the said appeal by order dated 22-10-2002. Being aggrieved by the same, the revenue filed the appeals ITA Nos. 64-67/Bang/2003 before the ITAT. The ITAT, by common order dated 31-10-2005 partly allowed the appeals filed by the revenue and the cross-objections filed by the assessee. Being aggrieved by the same the assessee have preferred these appeals.

2. All these appeals are admitted on 31-5-2006 for consideration of the following substantial questions of law:

(1) Whether the Tribunal was right in law in holding that the sale of gold jewellery remained unproved even though the buyer of the jewellery was registered under the Sales tax Act, had filed sales tax returns, had made payment for purchase by account payee cheques and demand drafts and bills and vouchers for the transactions had been issued?

(2) Whether the Tribunal was correct in law in holding that the transactions in regard to the sale of gold jewellery was not genuine just because of certain irregularities in the accounts of M/s. Shree Mahalakshmi Jewellers?

(3) Whether the Tribunal was right in law in holding that the sale of gold jewellery was genuine just because the buyer of gold jewellery who had wound up his business could not be traced after nearly three years?

3. We have heard the learned counsel appearing for the appellants and learned counsel appearing for the respondents.

4. The learned counsel appearing for the appellant submitted that the abovesaid substantial questions of law have already been considered and answered by this Court in ITA No. 218/2004 by order dated 23-9-2008 and the matter has been

remitted to the Assessing Officer to pass fresh orders insofar as it relates to sale of jewellery to M/s. Mahalakshmi Jewellery.

5. The learned counsel appearing for the respondent, after going through the said judgment, submitted that the order passed in ITA No. 218/2004 and accordingly, the same order may be passed in these appeals also.

6. In ITA No. 218/2004 disposed of on 23-9-2008, this Court while answering the substantial questions of law and remitting the matter to the Assessing Officer, passed the following order. 6. The abovesaid substantial question of law has been answered on similar facts in ITA No. 186/2004 by holding that the question as to whether the jewellery which is the subject matter of sale declared in the regular return is the same subject matter in the application filed under VDIS, 97 and the said decision in the aforesaid appeal would decide the question as to whether the income from the said transaction would be unexplained investment u/s 69 of the Act. If the assessee is able to prove at the bullion that was sold was made out of the jewellery declared in the application under VDIS 97, the said amount realised to the said transaction would not amount to unexplained investment u/s 69 of the Act. However, if the assessee is not able to prove that the goods that is the subject matter of transaction as declared in the regular returns is made out of the same jewellery which was declared in the application filed under VDIS 97, the said amount realised to the said transaction would amount to unexplained investment u/s 69 of the Act. Accordingly, for the reasons assigned in the said appeal I.TA. No. 186/04, we hold that the substantial question of law had to be answered in affirmative and accordingly, we pass the following order:

i. The appeal is allowed.

ii. The order passed by the Income Tax Appellate Tribunal, Bangalore Bench ''C in No. 449/Bang/2003 for the assessment year 1998-99 confirming the order passed by the Commissioner of Income Tax (Appeals) dated 7.3.2003 who in turn had confirmed the order passed by the Assessing Officer insofar as; it relates to sale of jewellery to M/s Mahalaxmi Jewellery is set aside and the matter is remitted to the Income Tax Officer, Ward No. 1(3), Hubli for fresh consideration of the case in accordance with law in the light of the observations made in the body of the judgment.

Accordingly, these appeals are also allowed on the same terms as referred to above.

