

(2002) 07 MAD CK 0295

Madras High Court

Case No: T.C. No. 19 of 2002 and TCMP No. 3 of 2002

H. Shahul Hameed

APPELLANT

Vs

The Asst. Commissioner of
Income Tax (Investigation-I),
Thiruchirappalli

RESPONDENT

Date of Decision: July 31, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 260A

Citation: (2003) 179 CTR 449

Hon'ble Judges: V.S. Sirpurkar, J; N.V. Balasubramanian, J

Bench: Division Bench

Advocate: Anitha Sumanth, for the Appellant; T.C.A. Ramanujam, Senior Standing Counsel for Income Tax, for the Respondent

Judgement

N.V. Balasubramanian, J.

The appellant (hereinafter called as assessee) has filed this appeal against the order of Income Tax Appellate Tribunal made in I.T.(SS)A No.372/Mds/97 dated 21.11.1996 raising the following questions:

- 1) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that an investment in the name of the assessee's wife may be treated as the undisclosed income of the appellant, where admittedly, the property belongs to the wife, if the wife is not in a position to explain the sources of the investment?
- 2) Whether on the facts and on the circumstances of the case, in the absence of a categorical finding that the investment was made by the appellant in the name of the wife, such investment can be deemed to be the undisclosed income of the appellant?

3) Whether on the facts and in the circumstances of the case, in so far as any investment the source of which is not explained, can be assessed as an undisclosed income only of the financial year in which such investment is made u/s 69A or 69B of the Income Tax Act, in the name of the person, who makes such an investment the conclusion of the Tribunal is right in law?

4) Whether the Tribunal is entitled to take a view which is not opposed to the specific statutory provisions contained in Section 69A and 69B?

5) Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the investment standing in the name of the wife represents the undisclosed income of the petitioner in the absence of any material to show that the said investment has been made by the appellant and even in the absence of any averment to that effect?

6) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in disbelieving the statement given by the appellant's wife with regard to the source for the investment in the said property?

7) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that since Mrs. Mumtaj Begum had no separate source of income for her, the investment in her name should represent the undisclosed income of her husband, particularly, since the investment in her name was noticed in the course of search and the document seized during the search disclosed the investment in her name?

8) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in ignoring the provisions of Section 132(4A) which raises a presumption with regard to any documents seized in the course of a search?

9) Whether on the facts and in the circumstances of the case, there is any material for the Tribunal to hold that a sum of Rs.3,49,000/- representing the estimated family expenses during the block period 1987-1988 to 1997-1998 represents the undisclosed income of the appellant?

2. We find that the questions 1 to 8 deal with the same point and the question No.9 is different.

3. The facts that are necessary for the disposal of the question Nos.1 to 8 briefly are as under:-

The assessee was working as an Inspector of Wakf Board till 1991 and he resigned from the post and entered politics and became the District Secretary of A.I.A.D.M.K. party at Karur. When he was the District Secretary of the political party, a search was made by the Income Tax Department on 21.11.1996 in his residential premises at Karur and pursuant to the search a notice u/s 158BC of the Income Tax Act, 1961 (hereinafter called as "the Act") was issued. After considering the particulars

furnished by the assessee in the return, it was found that a house property at No.53, Pudu Street, Karur was purchased for an admitted consideration of Rs.1,50,300/- in the name of his wife Mumtaz for which a stamp duty of Rs.12,780/- was paid. The registration charges paid was Rs.3095/-. The said document was registered in the office of the Sub Registrar of Assurance, Parasala, Kerala and the property was purchased on 24-01-1996. At the time of search, the statements of the assessee and his wife were recorded. In the statement of the wife of the assessee, she did not mention anything about the property standing in her name at Karur. As a matter of fact, she had stated in her statement that apart from a plot at Tambaram, Chennai, there was no other property either in her name or in the name of her husband or in the name of her family members. The assessee has given a statement stating that the property was his wife's property and the entire consideration for the purchase of the property at Karur was provided by the brother of his wife in consideration of his wife's relinquishing her share in certain agricultural lands allotted to her by her father at Edaya Kottai, Dindigul District. The assessee also produced the release deed dated 12-01-1998. It was found that the deed of release was an unregistered document executed on a stamp paper valued at Rs.20/- and the value of the property over which the wife of the assessee relinquished her rights was not even indicated in the deed of release. The release deed proceeded on the basis that she relinquished her interest in the agricultural lands which were settled by her father and she relinquished her interest in the lands in favour of her brother one YAM Shahul Hameed in lieu of payment of Rs.1,75,000/-. The Assessing Officer enquired YAM Shahul Hameed on 30-11-1997, who is the brother-in-law of the assessee. He gave a statement to the effect that he had given a sum of Rs.1,75,000/- to his sister for purchasing the house property at Karur. He stated that his source was that he had an agricultural income of Rs.1,00,000/- and borrowed Rs.75,000/- from Lakshmi Vilas Bank, Kurumbatti. He also filed two letters from that Bank. The Assessing Officer found that the explanation given by the brother-in-law of the assessee was not true and acceptable for the following reasons. The house at Karur was purchased on 24-01-1996. The said Y.A.M. Shahul Hameed had taken subsequent to the date of purchase two jewel loans of Rs.50,000/- and Rs.25,000/- from Lakshmi Vilas Bank on 31-08-1996 and 9-6-1996. The wife of the assessee in her statement claimed that she had received the amount of Rs.1,75,000/- from her brother in one lump sum, but her brother's statement showed that the amounts were given to her in installments. Notwithstanding the contradictory statements, the Assessing Officer came to the conclusion that the loan amount drawn by the brother-in-law of the assessee could not have been available with the brother-in-law for making the payment to his sister as the property was purchased prior to the date of his taking loan from the bank. As regards his agricultural savings of Rs.1,00,000/-, the Assessing Officer found from the bank account of the assessee's brother-in-law that he had taken various crop loans every year from the bank for a period of five years. The Assessing Officer held that had the brother-in-law of the assessee possessed the sum of Rs.1,00,000/- in his hands from his agricultural lands, there would not

have been any occasion for him to borrow small amounts as crop loans from the Bank every year paying interest at 11.5 per cent per annum. The brother-in-law's further statement that he was doing retail business in textiles getting the goods from Bombay during the period 1988-1992 was also not found to be genuine as it was found that he sustained loss of Rs.1,50,000/- in the said business. The Assessing Officer came to the conclusion that if the money was really available with the brother-in-law, no prudent man would obtain loan of small amounts and pay interest at 11.5% p.a. The Assessing Officer came to the conclusion that the claim of the assessee that the property at Karur purchased by his wife was funded by her brother YAM Shahul Hameed was not true and the wife of the assessee had no separate income. The Assessing Officer came to the conclusion that the purchase of the house property at Karur was made out of the undisclosed income of the assessee and accordingly he held the total purchase consideration of Rs.1,66,175/- was the undisclosed income of the assessee.

4. The assessee filed an appeal before the Income Tax Appellate Tribunal, Madras against the order of the Assistant Commissioner of Income Tax, Investigation I, Trichy. The Appellate Tribunal noticed the statements made by the assessee's wife and the brother-in-law and further noticed that the assessee's brother-in-law had taken jewel loans for Rs.50,000/- and Rs.25,000/- on 31.8.1996 and on 9-6-1996. The Tribunal found that the sum of Rs.75,000/- were not available with the wife of the assessee at the time of purchase of the said property as the loan were obtained subsequent to the date of purchase of the property. As regards the balance sum of Rs.1,00,000/-, the Tribunal went into details of the availability of cash and found that it was difficult to believe that the brother-in-law of the assessee would have advanced a sum of Rs.1 lakh from his savings. The Tribunal, after noticing the statement filed by the assessee's brother-in-law and the sworn affidavit of the assessee's wife at the time of search, recorded a finding that only subsequent to 13-11-1997, the assessee's wife came with the claim that she had received money from her brother for investment. The Tribunal found that the assessee's wife had no separate income of her own and she was completely ignorant of the investment made in her name. It was further held that all the finances to purchase the property at Karur were made by the assessee and his wife was in complete ignorance of the property purchased in her name and there was no member in the family having independent source of income to advance the money. The Tribunal found that the claim of the assessee that the amount was received from his wife's brother was false. Learned counsel for the appellant contended before the Tribunal that since the assessee was not the owner of the property, the investment could not be assessed as undisclosed income of the assessee. The Tribunal did not accept the submission and relying upon Section 69 of the Income Tax Act, 1961, it held that the unexplained investment made in the name of the assessee's wife is the deemed undisclosed income for the purpose of assessment. The Tribunal, in this view, dismissed the appeal. The assessee has filed the appeal challenging the order of the

Tribunal.

5. Learned counsel for the appellant vehemently argued that the Tribunal was not correct in sustaining the addition as the assessee was not the owner of the property and she submitted that it cannot be taken as unexplained income of the assessee u/s 69 of the Act. She strenuously argued that the department has not brought any shred of material to show that the assessee had some unexplained income which was utilised for the purchase of the property and in the absence of any such material, the Tribunal was wrong in sustaining the addition. Learned counsel further argued that merely because the assessee was not able to explain the source of the source for the investment, it does not mean that the investment should be treated as undisclosed income of the assessee. Learned counsel further submitted that the wife of the assessee had certain agricultural lands settled in her favour by her father and in lieu of relinquishment of her interest in the said property in favour of her brother, the assessee's wife had received the amount from her brother and therefore, it cannot be stated that the assessee has not explained the source for the investment standing in the name of his wife. Learned counsel further relied on Section 158BC of the Act and submitted that the document seized showed that the property was standing in the name of the assessee's wife at the time of search and in view of the presumption u/s 158-BC of the Act, the investment should be treated as the investment of the wife of the assessee and it cannot be treated as an unexplained investment of the assessee. She also referred to the provisions of Section 64 of the Act and submitted that the unexplained investment standing in the name of the wife of the assessee cannot be assessed in the hands of the assessee as his income as there is no legal requirement for the assessee to explain the source of the purchase of the property purchased by her.

6. We have considered the submissions made by the learned counsel for the appellant/assessee. The Tribunal has found as a fact that the wife of the assessee Mumtaj Begum had no separate income of her own. Her case that she had some agricultural land which she got under a settlement from her father executed on 29.10.1969 was not proved. Her further case that she released her rights in the said land in favour of her brother was also found to be not acceptable as the release deed was executed on a stamp paper of value of Rs.20/- and it was an unregistered document and the deed was executed on 12-01-1998 subsequent to the purchase of the property in question. The explanation offered by the assessee that the property was purchased by the assessee's wife from the source provided by her brother YAM Shahul Hameed was found to be not true and not accepted, as it was conclusively established that her brother could not have advanced the sum to the assessee's wife for the purchase of the property as borne out from the statements made by the assessee's brother in law and the assessee's wife. His own statement was that he had obtained jewel loans from the Bank but the jewel loans were obtained subsequent to the date of purchase of the property. With reference to the availability of Rs.1,00,000/- it was found that he could not have savings since he was

taking loans of very small amounts from the Bank periodically. The Tribunal found on materials that the assessee's wife had no separate income of her own and she could not have made use of the money said to have been given by her brother for the purchase of the property. It was also found that no member in the family of the assessee was having an independent source of income to advance money to the assessee's wife which was also not the case of the assessee. In the absence of any source for the purchase of the property, it was found by the Tribunal as a matter of fact that the assessee had acquired the property at Karur on 24-01-1996 in the name of his wife and that investment represents his unexplained income.

7. The Tribunal relied on Section 69 of the Act incidentally to rebut the contention raised by the learned counsel for the assessee to the effect that the assessee was not the owner of the property and the income could not be assessed in the name of the assessee as undisclosed income. The Tribunal held that u/s 69 of the Act, the unexplained investment is the deemed undisclosed income of the assessee for the purpose of assessment. We hold that the finding that the investment made in the house property in the name of his wife represents the undisclosed income in the name of the assessee is a pure finding of fact arrived at on appreciation of evidence.

8. Learned counsel for the assessee relied on the case of [H.N. Parswanath Vs. Commissioner of Income Tax](#), wherein the Karnataka High Court was dealing with the case of investments made by the major sons of the assessee which were treated as unexplained investments of the assessee. The court held that the question regarding the onus of proving the independent sources of income of the sons of the assessee is a question of law. That decision is distinguishable as the investment in the present case was made by the assessee in the name of his wife and that it is not a case of investment made by the wife of the assessee. Hence that decision is no of assistance to the assessee.

9. In the case of [Commissioner of Income Tax Vs. Nitin Kumar](#), the Punjab & Haryana High Court was dealing a case where the Tribunal has found that there was no evidence to establish that the assessee had made investment over and above the amounts recorded in the sale deed and hence additions u/s 69 of the Act were unwarranted. This is not a case that the investment was made over and above the amount recorded in the sale deed and further the decision in Punjab & Haryana Court dealt with a case of addition made on the assessee on the protective basis and the decision of Punjab & Haryana High Court in Nitin Kumar's case is not applicable.

10. In [Commissioner of Income Tax Vs. Daya Chand Jain Vaidya](#), the Allahabad High Court was dealing with the case of additions of certain undisclosed income in the hands of the assessee of certain amounts paid for allotment of shares in favour of the mother and two major sons of the assessee. In the case before the Allahabad High Court, there was no evidence to show that the deposits made by the mother and two major sons of the assessee were in fact made by the assessee and in these circumstances, the Allahabad High Court held that the amount could not be added

as the income of the assessee. This decision was rendered with reference to the facts of that case and has no application to the facts of the case.

11. The Punjab and Haryana High Court in the case of [Commissioner of Income Tax Vs. Roshan Lal Seth](#), has held that the assessee should not be required to explain the source of the deposit in another person's name. On the facts of this case, the assessing Officer sought for explanation for the source for the purchase of the property standing in the name of wife of the assessee. The document of sale was found as a result of search and the explanation offered by the assessee that the source of the investment was the loan from his brother-in-law which found to be false and that the assessee's wife had no separate income of her own to make the investment in her name. Hence the decision in Roshan Lal Seth's case is not helpful to the assessee.

12. In [KM. N.N.S.N. Subramanian Vs. Commissioner of Income Tax, Madras](#), this Court was dealing with a case of addition made to the income of the assessee. The addition was made of the deposit amounts standing in the name of the assessee's wife. The assessee in his explanation had stated that the deposits were made out of the amounts given to his wife by her adoptive father. It was found that the adoptive father could not have gifted the amount to her nor could the sum have come from her parents and there was no other source of income except her husband. This court held that the finding of the Tribunal that the deposits represented the undisclosed income of the assessee from undisclosed source was justified as the material available showed that the assessee's wife had no other source from which she could have deposited the amount except her husband and it was also proved that the assessee had deliberately suppressed part of his income relating to business. The decision of this court in KM N.N. S. Subramanian's case is an authority for the proposition that the Revenue is empowered to add the unexplained investment made in the name of the wife or relative of the assessee as the undisclosed income of the assessee if the facts warrant the same. In our view, it would depend upon the facts of each case and the evidence and the probable course of events that would determine whether the investment made in the name of the assessee's relative could be treated as the unexplained income of the assessee particularly in the case of search. We also hold that in a case where it is found that the assessee's relative had no source of income and it was also proved that the assessee alone could have utilised his unexplained money for the purchase of the property standing in the name of his close relatives, the finding rendered by the Tribunal to treat the amount of investment as the undisclosed income of the assessee would be a finding on fact.

13. A similar view was taken in the case of [Lallu Mal Vs. Commissioner of Income Tax](#), by the Allahabad High Court. On the facts of that case, it was held that the wife and son of the assessee had no independent source that there was ample evidence on the record to sustain the finding of the Tribunal that the deposits in dispute

standing in the names of the wife and son of the assessee represented the undisclosed income of the assessee and the Court held that the deposits would represent the undisclosed income of the assessee.

14. Learned counsel for the assessee relied on the decision of the Delhi High Court in the case of [Bhagat Construction Co. \(P.\) Ltd. Vs. Commissioner of Income Tax](#), . Arijit Pasayat, C.J.,(as the learned Chief Justice then was) Speaking for the Bench, has held that the subject matter of the appeal u/s 260A of the Income Tax Act, 1961 is a substantial question of law and the expression "substantial question of law" is not defined. The Delhi Court laid down the following five tests to determine when a substantial question of law would arise:

- 1) Whether directly or indirectly it affects substantial rights of the parties; or
- 2) the question is of general public importance or
- 3) whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or the Privy Council or by the Federal Court or
- 4) the issue is not free from difficulty, and
- 5) it calls for a discussion for alternative view.

We are in respectful agreement with the views observed by the Delhi High Court. We find that the tests laid down in the case of Bhagath Construction (P) Ltd. are not satisfied and the finding that the amount added would represent the undisclosed income of the assessee is a finding of fact as the finding was rendered by the Tribunal with reference to the facts of the case and further it does not affect substantial rights of the parties either directly or indirectly. The other tests laid down have no application to the facts of the case.

15. We hold that the finding of the Tribunal that it is an unexplained income of the assessee is a finding of fact and the Tribunal found that the assessee's wife had no source of income to purchase the property and her own statement shows that she was completely innocent of the purchase of the property standing in her name. The financial condition of the assessee's brother-in-law was also found to be not sound so that he could have advanced the sum of Rs.1,50,000/- to his sister for the purpose of purchasing the property. The assessee was working as a Inspector of Wakf Board and later became the District Secretary of a political party. Considering the common course of natural human conduct, We hold that the finding arrived by the Appellate Tribunal that the investment made by the assessee in the name of his wife, really represents the investment of the assessee is perfectly in order on the facts of the case. The above finding of the Tribunal was arrived at on the basis of appreciation of evidence and the assessee has not discharged his burden by letting in any contra evidence accounting for the sum of Rs.1,50,000/-. We therefore hold that the finding of the Tribunal that the amount representing the investment standing in his wife's

name really represents the undisclosed income of the assessee is a pure finding of fact arrived at on appreciation of evidence. We accordingly do not find any question of law that arises from the order of the Tribunal in so far as the questions 1 to 8 as framed by the assessee and the appeal is dismissed in limine in the admission stage in so far as questions 1 to 8 are concerned.

16. In so far as the question No.9 is concerned, we find that question raised involves a substantial question of law as it involves jurisdiction of the assessing officer to make estimate consequent on search proceedings under Chapter XIV-B of the Act and the question whether there are materials to make the estimate of income involves a substantial question which may arise frequently in search cases. Accordingly, the appeal is admitted only with reference to the question No.9 which reads as under:

"Whether on the facts and in the circumstances of the case, there is any material for the Tribunal to hold that the sum of Rs.3,49,000/= representing the estimated family expenses during the block period 1987-1988 to 1997-1998 represents the undisclosed income of the appellant?"