
(2014) 363 ITR 161

Madras High Court

Case No: Tax Case (Appeal) No. 375 of 2013

S. Muthukumar

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision: July 3, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 144, 68

Citation: (2014) 363 ITR 161

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

Bench: Division Bench

Advocate: A.R.L. Sundaresan, for Ms. A.L. Ganthimathi, for the Appellant; Arun Kurian Joseph for Income Tax Dept., for the Respondent

Judgement

Chitra Venkataraman, J.

The following substantial questions of law are raised by the assessees seeking admission of the present Tax Case Appeals, preferred as against the orders of the Income Tax Appellate Tribunal, Chennai "D" Bench dated 30.01.2013 in Appeal Nos. 2067 and 2068 (MDS)/2012.

1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the amount of deposit in the bank account of the appellant should be treated as un-disclosed income chargeable u/s 68 of the Income Tax Act?
2. Whether the order of the Income Tax Appellate Tribunal is vitiated in not considering the alternative submissions of the Appellant to treat the quantum of deposit as un-disclosed business turnover and not un-disclosed income and thereby assess 5% of the same as net taxable income?

The assessees herein are Civil Engineers. In the course of scrutiny of assessment, it was found that the assessees made cash deposit to the tune of Rs. 50,75,000/- in savings

bank account. It is matter of fact that the assessee in TC(A). No. 375 of 2013, along with Stanley Rajan (Assessee in TC(A). No. 376 of 2013), constituted a partnership firm. The assessee explained that these monies belonged to various people who had entrusted the same with them for getting various civil works done in respect of their house properties; they were providing artisans, carpenters, masons and other skilled workers to all the needy people in the neighborhood for renewal and renovation of house properties and also for constructing new buildings; thus, the money, in fact, did not belong to them. The assessee finally offered 5% of the cash deposits for taxation, which amounted to Rs. 2,50,000/- in each of the assessee"s cases.

2. The Joint Commissioner of Income Tax, Range-IV, Chennai, after examining the case of the assessee u/s 144 of the Income Tax Act, 1961 (hereinafter called as the "Act") held that the assessee could not establish that the money, in fact, belonged to the neighbours, who had made payments for carrying out the work relating to interior decoration etc. However, the Joint Commissioner of Income Tax directed the Assessing Officer to give one more opportunity to the assessee to substantiate their version.

3. The Assessing Officer, hence, called upon the assessee to give evidence in support of their contention. Except for pointing out that they had withdrawn a sum of Rs. 7,50,000/- each, there were no materials to show that these monies were utilised for making payments to various persons. In the background of these facts, assessment order was made by the Income Tax Officer adding Rs. 50,75,000/- to the taxable income. Aggrieved by the said assessment, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

4. Having lost the appeal before the Commissioner of Income Tax (Appeals), the assessee approached the Income Tax Appellate Tribunal.

5. On going through the materials, the Income Tax Appellate Tribunal found that there were no materials produced before the Authorities below to show that the Saving Bank deposits made by them were related to other persons; even after remand by the Joint Commissioner, the assessee had not produced any acceptable evidence to substantiate their contentions. In the absence of any acceptable evidence by the assessee and they having failed to produce even the basic materials, the Income Tax Appellate Tribunal held that the assessment u/s 143(3) of the Act could not be interfered. Aggrieved by the said order, the present Tax Case Appeals have been filed.

6. It may be noted that the assessee filed Miscellaneous Applications before the Income Tax Appellate Tribunal, contending that the cash deposits should have been treated as unexplained cash credits and the same should not be treated as undisclosed business turnover and that the income thereon alone should be assessed. The Income Tax Appellate Tribunal rejected such contention and pointed out that by filing such Miscellaneous Petitions, the assessee wanted to re-argue the appeals before the Tribunal; further, there was no mistake apparent on the face of the record to entertain the

Rectification Petition.

7. Having regard to the addition made as business income, learned Senior counsel appearing for the appellants/assesseees raised the question that when the unexplained cash credits had been added to the income, the Tribunal should have considered deducting necessary expenditure and the profit alone could be taken as income. We do not think such a contention, at this stage, is acceptable, especially when no evidence was produced by them to substantiate that the said sums were paid to them by the neighborhood people for carrying out certain construction activity like floor laying, carpentry, interior decoration etc., In the circumstances, being pure findings of fact, we do not find any substantial question of law to admit the appeals. Consequently, the Tax Case Appeals are dismissed at the admission stage itself. No costs.