

**(2011) 06 MAD CK 0355**

**Madras High Court**

**Case No:** Tax Case (Appeal) No. 268 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Radha Silk Emporium

RESPONDENT

---

**Date of Decision:** June 13, 2011

**Hon'ble Judges:** P.P.S. Janarathana Raja, J; Chitra Venkataraman, J

**Bench:** Division Bench

**Advocate:** J. Narayanaswamy, for the Appellant;

**Final Decision:** Dismissed

---

### **Judgement**

P.P.S. Janarathana Raja, J.

The Revenue has come up on appeal as against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 14.12.2004 in ITA. No. 1410/Mds/98 raising the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition made towards the profit on undisclosed sales and unaccounted investment in the stock u/s 69?

2. Whether in the facts and circumstances of the case, the Tribunal was right in proceeding on the basis that the burden of proof is on the assessing officer to prove the stock discrepancy when the Assessee had admitted a higher stock to the bank and lower stock in its books for the purpose of assessment?

2. The brief facts of the case are as follows:

The Assessee is carrying on business of selling sarees. The assessment year in question is 1994-95. The corresponding account year ended on 31.03.1994. The Assessee filed its return of income on 31.10.1984 admitting total income of Rs. 27,44,640/-. The assessing officer sent intimation u/s 143(1)(a) and the same was issued on 20.09.1995 on adjusted total income of Rs. 27,55,900/-. Later, a notice was issued u/s 143(2) of the Act and the assessing officer completed the assessment u/s

143(3) of the Act and determined the taxable income at Rs. 36,82,550. While completing the assessment, the Assessing Officer made addition of Rs. 2,91,000 of undiscounted sale and also a sum of Rs. 5,28,000/- as unaccounted investment in stock added u/s 69 of the Act. Aggrieved by the same, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax deleted the addition. On appeal, the Appellate Tribunal confirmed the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal. Aggrieved by that, the Revenue filed the present Tax Case (Appeal) raising the above questions of law.

3. The learned Counsel appearing for the Revenue vehemently contended that the order passed by the Tribunal is not in accordance with law. Further it is contended that the Tribunal erred in deleting addition made in respect of a difference in the stock details given to the bank and stock recorded in the books of account. It is further submitted that the Tribunal ought to have appreciated the assessment had been made on the basis of the stock details provided and admitted by the Assessee to the bank. It is further contended that the Tribunal ought to have appreciated that the admission of the excess stock by the Assessee to the bank and reflection of the lesser stock in the books for the purpose of the income tax is enough to make an addition towards the assessment. Therefore, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. In spite of notice served on the Assessee, there is no representation on behalf of the Assessee. The name of the Assessee also appears in the cause list.

5. Heard the learned Counsel for the Revenue and perused the documents on record. It was noticed by the Assessing Officer that the value of the closing stock as per books was Rs. 1,82,73,348/-. The Assessee has a cash credit account with the Indian Bank. The stock statement given by the Assessee to the bank showing the value of stock as on 31.03.1994 was Rs. 3,20,70,858/-. It was given only for availing credit facilities. As per the Assessee, the stock declared to the Bank was under Open Loan and did not represent actual figures but only a rough and ready estimate. Quantity details were available for most of the items traded. There is no suppression in the sale price and purchases in the accounts. It is also seen from the records that there is no discrepancy in quantitative particulars given to the Bank. The CIT (Appeals) also given factual finding that the stock inventory furnished to the Bank cannot form a basis for judging the stock position as the stock particulars furnished to the bank is always submitted in an inflated manner for availing credit facilities. The assessing officer estimated the unaccounted investment in stock at Rs. 5,28,000/- under Section 69 of the Act. It is only a mere estimate. The Tribunal also given a factual finding that the Assessee had produced the assessment orders of the earlier years from assessment years 1988-89 to 1993-94 wherein, not even on single occasion any addition was made on account of closing stock. It was also verified that the value submitted to the bank as regards the closing stock is only increase in the value of quantity of stock and actually stock is not increased in those papers.

submitted to the bank. Both the authorities given their categorical finding that the Assessee only inflated the value of the stock submitted to the bank and not the actual quantity. After considering the same, both the authorities have given finding only for the purpose of obtaining credit facilities and the Assessee has only inflated the value of the stock and hence, there is a difference. There is no independent finding by the Assessing Officer that there is actual stock difference between the variation of the stock filed before the bank and in the books of account. The assessing officer merely estimated and made addition u/s 69 of the Act. This Court in the case of [Commissioner of Income Tax Vs. N. Swamy](#), considered the scope of making addition due to difference between value of stock as recorded in books and as found in declaration to the bank based on the statement which the assess may have given to a third party, the revenue cannot make addition. The court held as follows:

We find it a little difficult to agree with those observations. The Assessee's income is to be assessed by the income tax Officer on the basis of the materials which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the Assessee may have given to a third party unless there is materials to corroborate that statement of the Assessee given to a third party, even if it be a bank. The mere fact that the Assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the Assessee. The burden of showing that the Assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the Assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the Assessee had deliberately suppressed his income.

That the burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well settled by the Supreme Court in the case of [Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad](#), which reiterates these propositions.

Be that as it may, it is unnecessary for us to say anything further on that matter. In view of the fact that even by applying the decision in [Coimbatore Spinning and Weaving Co. Ltd. Vs. Commissioner of Income Tax](#), the result reached by the Tribunal can be sustained. The Division Bench in that case accepted the argument that was advanced by the Revenue that the question when an explanation offered by the assess is acceptable or not is a pure question of fact, and that this Court is not entitled to examine the correctness of such a finding on a reference. On the facts of that case, the Tribunal had rejected that explanation and this Court after examining the facts upheld the rejection. Here the situation is reversed. The Tribunal has accepted the explanation of the Assessee and it is the Revenue which wants that order of the Tribunal to be set aside on the ground that the explanation

could not have been accepted. The rejection of the explanation was a matter for the Tribunal. The Tribunal has exercised its jurisdiction and the question decided by it is a question of fact. We, therefore, do not see any scope for interference with the order of the Tribunal.

6. By following the principles enunciated in the above judgment, we are of the view that the order passed by the Tribunal is in accordance with law and further it is a concurrent finding given by both the appellate authorities. Finding given by the Tribunal is on valid materials and we find no ground to interfere with the same as the same is not perverse. It is in accordance with law. In these circumstances, we hereby confirm that the order passed by the Tribunal. The above substantial questions of law are answered in favour of the Assessee and against the Revenue. Therefore, the Tax Case (Appeal) preferred by the Revenue is devoid of merits and the same is dismissed. No costs.