

B. Kishore Kumar Vs The Deputy Commissioner of Income Tax

Court: Madras High Court

Date of Decision: Nov. 3, 2014

Acts Referred: Income Tax Act, 1961 " Section 143(3), 153, 153A, 153C

Citation: (2015) 273 CTR 468

Hon'ble Judges: R. Sudhakar, J; R. Karuppiiah, J

Bench: Division Bench

Judgement

R. Sudhakar, J.

1. The assessee has filed these appeals challenging the order of the Income Tax Appellate Tribunal "C" Bench, Chennai, dated 5.6.2014 made in

I.T.A.Nos. 640 to 646/Mds/2014 for the assessment years 2001-2002 to 2007-2008, by raising the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing the appeals and not allowing the matter to be

remanded to the respondent when the additions made by him in the appellant's case for the relevant assessment years arise out of a mere

assumption?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing the appeal when there has been a clear

insufficiency of time in providing reasonable opportunity to the appellant while completing the assessment under Section 153A read with Section

153C of the Income Tax Act?

(iii) Whether the Tribunal having come to the conclusion that the assessment orders were passed at the fag end of the year without looking into the

search materials, ought to have remitted the case to the assessing officer rather than adjudicating the case on merits?

2.1. The brief facts of the case are as under: On 29.8.2006, a search was conducted at the premises of the appellant's father, wherein loose sheets

and notings on telephone diaries pertaining to the assessee were found by the department.

2.2. On 27.8.2008, notice under Section 153A read with Section 153C of the Income Tax Act, 1961 (for brevity, the Act) was issued to the

appellant for the assessment years 2001-2002 to 2007-2008, namely, for seven years. In response to these notices, on 14.10.2008, the appellant

requested the department to treat the original returns filed by him as his returns in response to the notices issued under Section 153A read with

Section 153 of the Act. Thereafter, on 12.11.2008, the assessee filed revised returns for the assessment year 2001-2002 and for the assessment

years 2002-2003 to 2007-2008, the assessee filed revised returns on 16.12.2008.

2.3. Pursuant to the same, the assessment under Section 143(3) read with Section 153A and 153C of the Act was completed by the Assessing

Officer based on admission made by the assessee during the time of search and the records seized. The request of the assessee to consider his

objections was overturned by the Assessing Officer saying that the materials submitted at the fag end of the assessment could not be scrutinized, as

the notings in telephone diaries and loose sheets are unstructured and spread over without reference to time-frame. The Assessing Officer was of

the view that the assessment could be completed based on the admission of the assessee in the sworn statements made on 29.8.2006 and

10.10.2006. The Assessing Officer came to the conclusion that there is admission of undisclosed income to the tune of Rs. 52,73,920/- and on the

basis of the documents and statements, he came to the conclusion that further addition of Rs. 30,00,000/- should be made. Therefore, the total

extent of undisclosed income was determined at Rs. 87,08,136/- and penalty proceedings were also initiated separately.

2.4. Aggrieved by the assessment orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who dismissed the

appeals.

2.5. Assailing the said orders, the assessee went on appeal before the Tribunal, which dismissed the appeals upholding the orders passed by the

authorities below.

2.6. Calling into question the said order, the present appeals are filed by the assessee on the questions of law, referred supra.

3. Heard Mr. B. Ramana Kumar, learned counsel for the assessee and Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the

department and perused the documents filed in support of these appeals.

4. The main grievance of the assessee is that the Tribunal has not considered his plea that the Assessing Officer has not scrutinized the materials

submitted before him and made additions based on a priori considerations.

5. We have perused the orders passed by the Tribunal and the authorities below. Though the assessee was at pains to make out an issue that he

has made certain submissions and those submissions were not considered by the Assessing Officer and therefore, the Assessing Officer has

misdirected himself in determining the tax liability, on going through the order of the Tribunal, we find that the case of the assessee was decided on

the basis of his own sworn statements dated 29.8.2006 and 10.10.2006 and admitted documents. We extract that portion of the order as has

been recorded by the Assessing Officer in paragraph (11), which clinches the whole issue:

11. Therefore, reliance is placed on the admission of the assessee at the time of search, which is reproduced as under:

Sworn statement of Shri Kishore Kumar dt. 29.8.2006:

"Qn.11: I am showing you the three print-out of amounts totaling to Rs. 52,73,920 (Rs. 3,31,336 + Rs. 15,05,158 + Rs. 34,37,427). Please

explain this?

Ans: These are the details of loans given by me to various parties as mentioned in the printouts. This is a separate business carried out by me which

was not included in the income-tax returns filed by me.

Qn.12: Please explain the source for the total outstanding amounts which are given by you?

Ans: The loans totaling to Rs. 52,73,920 given to various parties as per the list were from my undisclosed income. I agree to pay the relevant

income-tax dues for the above declared undisclosed income."

Sworn statement of Shri Kishore Kumar dt. 10.10.2006 (in Tamil):

"Qn.1: I am showing you Ann/BL/B&D/S-3 and sl.No. 5, which are telephone index books wherein amounts given in cash to various persons

were found recorded. Whom do they belong to? In whose handwriting it is write? What do these amounts represent?

Ans: They belong to me. Signature is mine and the notings relate to loans given by me on various dates. This constitutes my separate finance

business. There are no regular books for this. According to the documents shown, as on date outstanding loans to be recovered is in the range of

Rs. 25 Lakhs to 30 Lakhs. The rate of interest is 18% (i.e. Rs. 1.50 per 100 per month). The interest income is also not shown in the accounts.

The borrowers have committed defaults in repaying the loans and more than 50% of the outstandings are to be treated as bad debts. All the

advances were not disclosed in the returns filed." This has been relied upon by the Tribunal in full force.

6. With regard to the undisclosed income of Rs. 52,73,920/- supported by printouts, in the sworn statement dated 29.8.2006, the assessee says

that he had separate business income which was not included in his income tax returns. Therefore, admission of undisclosed income of Rs.

52,73,920/- is categorical and undisputed. The assessee in the sworn statement made on 10.10.2006, stated that outstanding loans to the tune of

Rs. 25 Lakhs to 30 Lakhs are to be recovered with interest at the rate of 18%. This is a clear admission. This amount has also been calculated and

added as undisclosed income. When there is a clear and categorical admission of the undisclosed income by the assessee himself, in our considered

opinion, there is no necessity to scrutinize the documents. The document can be of some relevance, if the undisclosed income is determined higher

than what is now determined by the department. Moreover, it is not the case of the assessee that the admission made by him was incorrect or there

is mistake. In fact, when there is a clear admission, voluntarily made, by the assessee, that would constitute a good piece of evidence for the

Revenue.

7. The learned counsel for the assessee relied upon a decision of the Delhi High Court in Commissioner of Income Tax Vs. Shri Girish Chaudhary,

Director of I.G. Builders and Promoters Pvt. Ltd., to plead that loose sheets of papers should not be taken as a basis for determining undisclosed

income. However, in the case on hand, loose sheets found during the search are not the sole basis for determining the tax liability. It is a piece of

evidence to prove undisclosed income. The printout statements of undisclosed income is not disputed by the assessee and in his sworn statements

it is accepted. In fact, he admitted that outstanding loans to be recovered are in the range of Rs. 25 Lakhs to 30 Lakhs. We find no error in the

procedure followed by the Assessing Officer on admitted facts. The entire exercise by the department to bring to tax undisclosed income, we find

has been generous and simple. There appears to be no confusion in the quantification of the tax liability and we uphold the order of the Tribunal.

For the foregoing reasons, we dismiss these appeals. No costs. Consequently, M.P.Nos. 1 of 2014 (6 Petitions) are closed.