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COMMISSIONER OF INCOME TAX, SALEM

v.

K. CHINNATHAMBAN

JULY 24, 2007

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[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

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Income Tax Act, 1961—Sections 69 and 69A—Firm floated for collecting deposits from public—Assessee, connected with the firm—In assessment proceedings, amount shown as undisclosed income subject to tax u/s 69—Order of tribunal that since claim made by members of public, income on unexplained investments to be considered in the hands of the firm—Correctness of—Held: Not correct since no evidence recording registration of firm, books of account not properly maintained—No explanation by assessee about source of investment—No evidence that members of public placed their deposits with the firm through their relatives and friends—Also the firm as well as its partners found to be fictitious.

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Firm VV was floated for carrying on the business of prize tickets and for collecting deposits from the public. The firm was managed by KP. Police Officer carried out search in the premises of the firm and seized Rs. 1.18 crores. KP filed his return. In the assessment proceedings, the books of accounts were found incomplete and KP could not explain source of deposit amount of Rs. 1.18 crores. Assessing Officer treated the amount as undisclosed income of persons in whose names the deposit appeared. Respondent-assessee was also connected with the firm and with regard to his assessment, Rs. 5 lakhs was shown as undisclosed income under s. 69 of the Income Tax Act, 1961. CIT upheld the Assessment Order. However, the tribunal held that since the claim was made by members of the public it was not proper to treat the amount as income from undisclosed source of various assessees and it was necessary to link up all these amounts with books of the firm. High Court upheld the order. Hence the present appeals.

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Allowing the appeals, the Court

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HELD: 1.1 Where a deposit stands in the name of a third person and where that person is related to the assessee then in such a case the proper course would be to call upon the person in whose books the deposit appears

or the person in whose name the deposit stands should be called upon to explain such deposit. [Para 7] [500-B] A

1.2. In the instant case, there was no evidence recording registration of the firm, the books of accounts were not properly maintained; there was no explanation regarding the source of investment and the evidence of KP indicated that even the partners of the firm were fictitious. There was no evidence to show that members of the public have been placing their deposits with the firm through their relatives and friends, therefore, there was no question of linking up all these amounts with the books of the firm. The Department was right in holding that the income on unexplained investments cannot be considered in the hands of the firm found to be fictitious and that the assessee had the amount as his income which was subject to tax under section 69A of the Income Tax Act, 1961. Therefore, the Tribunal erred in directing linking up of the deposits with the accounts of the alleged firm. In fact, the directions given by the Tribunal to the A.O. for such linking up was not even capable of compliance. The onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks. Thus, the Department was right in making individual assessments in the hands of respondent-assessee and in the names of other respondent-assesseees in the other civil appeals. The tribunal should not have interfered with these findings of fact rightly recorded by A.O. and C.I.T. (A). [Paras 5, 6, and 7] [499-G, H; E; 500-A; C; D, E] B C D E

Chuharmal v. C.I.T., [1988] 3 SCC 588, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3230 of 2007.

From the Judgment & Order dated 24.01.2006 of the High Court of Judicature at Madras in Tax Case Appeal No. 680 of 2004. F

WITH

C.A. Nos. 3231-3235 of 2007.

Arijit Prasad, Chinmay Sharma and B.V. Balaram Das for the Appellant. G

The Judgment of the Court was delivered by

KAPADIA, J. 1. Leave granted.

2. The short question which arises for determination in this group of H

A civil appeals is: Whether in the facts and circumstances of the case the Tribunal was right in holding that income on the unexplained investments should be considered in the hands of the firm, M/s V.V. Enterprises.

3. For the sake of convenience, we mention hereinbelow the facts of the civil appeal arising out of Special Leave Petition (C) No. 11596/2006.

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4. K. Chinnathamban, the respondent-assessee, was connected with the firm by the name V.V. Enterprises, having its premises at No. 2 & 3A, East Perumanoor Road, Salem. There was a search in the premises by police officers on 19.8.1991 when Rs. 1.18 crores (approx.) was seized. This seizure was followed by a survey under Section 133A and investigations under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"). The firm was managed by one K. Palanisamy who had filed his Return and who appeared on summons and gave statements. In the course of assessment proceedings, it was detected that the books of accounts were incomplete. K. Palanisamy was not in a position to explain the source of the deposit amount of Rs. 1.18 crores (approx.). Therefore, the Assessing Officer ("A.O.") treated the said amount as undisclosed income of persons in whose names the deposit appeared. The assessment made in respect of K. Chinnathamban was Rs. 5.16 lacs consisting of Rs. 16,148 as salary and Rs. 5 lacs as undisclosed income under Section 69. This order of assessment was upheld by the CIT(A). The assessee, K. Chinnathamban, carried the matter in appeal with the Tribunal. By the impugned judgment, the Tribunal held that since the claim was made by members of the public, it was not proper to treat the amount as income from undisclosed source of various assessees and, therefore, according to the Tribunal, it was necessary to link up all these amounts with the books of the firm. It is this part of the reasoning given by the Tribunal which is the subject matter of these civil appeals.

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5. At the outset, we may state that none appeared for the assessees though served. M/s V.V. Enterprises ostensibly was a firm floated for carrying on the business of prize tickets and for collecting deposits from the public. K. Palanisamy was the man behind the said activity. His statement was recorded on various dates. He has admitted that the partners were fictitious. They were not eligible to any shares in the profits of the firm. K. Palanisamy has further stated that monies were lying in various banks in FDRs. in the names of these so-called partners. He further claimed that part of this amount belonged to the members of the public. This part of the statement was not accepted by the Department. In view of the aforesaid position the A.O.

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proceeded to frame the assessment in the hands of Palanisamy on protective basis and in the hands of deposit holders for unexplained deposits. The most important aspect of the case is that although M/s V.V. Enterprises was stated to be a registered firm, there were no bank accounts in the name of such a firm. There were no accounts in the name of any of the partners of the alleged firm. There were no deposits in the name of the alleged firm. There were no deposits in the name of any of the partners of the alleged firm. None of the assesseees have been able to explain the source of the deposits in the names of the relatives. When asked, they have pointed their fingers to K. Palanisamy. In the circumstances, the Department was right in coming to the conclusion that the alleged firm of M/s V.V. Enterprises was not genuine. The assessee could not establish the source of deposits. The Department was right in coming to the conclusion that there was no evidence in support of the claim of the assessee that the aforesated amount was collected from the members of the public. The assessee had failed to show that the collections did not represent his income. In order to find out whether the assessee is the owner of any money in terms of Section 69A of the said Act, the principle of Common Law Jurisprudence in Section 110 of the Evidence Act, 1872 can be applied. In the case of Chuharmal v. C.I.T. reported in (1988) 3 SCC 588 it has been held by this Court that the word 'income' in Section 69A of the Income Tax Act has wide meaning which meant anything which came in as gain. In the present case, the assessee did not adduce any evidence to show that the aforesated amount did not belong to him. In the facts of this case, therefore, the Department was right in drawing inference that the assessee had the aforesated amount as his income which was subject to tax under Section 69A. In our view, the Tribunal should not have interfered with these findings of fact rightly recorded by the A.O. and the C.I.T.(A).

6. In the present case, the Tribunal has further held that the partners were employees of public sector undertakings; that they had acted as partners; that the firm was floated and, therefore, though the firm was illegally constituted, however, the very existence of the firm was never in doubt. The Tribunal held that members of the public have placed their deposits with the said firm through the relatives and friends. The Tribunal has further held that though the aforesated amount ought to have been deposited in the name of the firm, it was not so done and, therefore, it was necessary to link up the said amounts with the books of the firm and to the extent possible should be shown as amounts received by the said firm as deposits from various persons. We do not see any basis for recording the aforesated findings. There is no evidence to show that members of the public have been placing their deposits

A with the said firm through their relatives and friends, therefore, there was no question of linking up all these amounts with the books of the firm as ordered by the Tribunal. In the above facts, the Department was right in holding that income on unexplained investments cannot be considered in the hands of the firm found to be fictitious. Therefore, the Tribunal had erred in directing linking up of the deposits with the accounts of the alleged firm.

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7. Where a deposit stands in the name of a third person and where that person is related to the assessee then in such a case the proper course would be to call upon the person in whose books the deposit appears or the person in whose name the deposit stands should be called upon to explain such deposit. In the present case, there is no evidence recording registration of the firm. In the present case, books of accounts are not properly maintained. In the present case, there is no explanation regarding the source of investment. In the present case, the evidence of K. Palanisamy, indicates that even the partners of the firm were fictitious. In the above circumstances, the Tribunal had erred in directing linking up of the deposits with the accounts of M/s V.V. C
D Enterprises. In fact, the directions given by the Tribunal to the A.O. for such linking up was not even capable of compliance. The onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks. In the circumstances, the Department was right in making individual assessments in the hands of respondent-assessee, K. E
Chinnathamban. Similarly, the Department was right in making the individual assessments in the names of other respondent-assesseees, who are parties to connected civil appeals herein.

8. Accordingly, the above civil appeals filed by the Department are allowed with no order as to costs.

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Appeals allowed.