

COMMISSIONER OF INCOME TAX, SALEM

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v

P.V. KALYANASUNDARAM

SEPTEMBER 14, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Income Tax Act, 1961—s. 260A—Assessee purchasing land for Rs 4.10 lakhs—Notes on loose sheets recovered in the course of raid from assessee—Department on basis of statement of seller though contrary that sale was for a higher price and making assessment on basis thereof—CIT and Tribunal holding in favour of assessee—Appeal under s. 260A raising substantial questions of law pertaining to actual sale price of the property, implications of statements and counter statements made by seller, reliance on notes on loose sheets recovered—Dismissed by High Court—Interference with—Held: Order of High Court suffers from no infirmity—Questions so raised were all questions of fact and not substantial question of law.

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Judgment/Order—Writing of—Quoting from an order of some authority particularly a specialized one—Propriety of—Held: Cannot per-se be faulted as this procedure can often help in making for brevity and precision, but any 'borrowed words' used in a judgment must be acknowledged as a courtesy to the true author.

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Respondent-assessee purchased certain land. The sale deed showed Rs 4.10 lakhs as sale price. During search of certain premises, the Department found certain notes on loose sheets allegedly in the hands of the respondent and the respondent could not give any explanation for the same. The Department recorded the statement of the seller that he had received Rs 34.85 lakhs as sale consideration. Thereafter, seller gave a contradictory statement and then again reverted to the earlier statement. The Assessing Officer took Rs 34.85 lakhs as sale consideration for assessment and made an addition of Rs 3,75,005 as undisclosed income. Both the Commissioner of Income Tax and the Tribunal held in favour of assessee. Appellant-Revenue filed appeal under section 260A of the Income Tax Act 1961 raising substantial questions of law that whether the revenue was justified in fixing higher sale consideration amount than what was declared; that when the assessee did not

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- A. give any explanation to the notings found and revenue was able to corroborate the same with the statement of seller for determination of actual sale value, whether the lower authority was justified in interfering; and when consistent sworn were taken into consideration along with evidence found at the time of search, would all be liable to be rejected on basis of one statement in between the contradicting the earlier ones. High Court dismissed the appeal on the basis that no substantial question of law arose for consideration. Hence the present appeal.

Dismissing the appeal, the Court

- C HELD: It is true that the Division Bench of the High Court has borrowed extensively from the orders of the Tribunal and the Commissioner and passed them off as if they were themselves the author's. Quoting from an order of some authority particularly a specialized one cannot per-se be faulted as this procedure can often help in making for brevity and precision, but any 'borrowed words' used in a judgment must be acknowledged as such in any appropriate manner as a courtesy to the true author(s). Even then, the questions raised can in no way be called substantial questions of law. The fact as to the actual sale price of the property, the implication of the contradictory statements made by vendor or whether reliance could be placed on the loose sheets recovered in the course of the raid are all questions of fact. Therefore, there is no infirmity in the order of the High Court. [Para 6] [953-B, C, D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4262 of 2007.

From the Judgment and Order dated 08.02.2006 of the High Court of Judicature at Madras in Tax Case (Appeal) No. 138 of 2006.

- F G.E. Vahanvati, Solicitor General, Hrishikesh Baruah and B.V. Balaram Das for the Appellant.

K. Swami, Yousa Lachenpa and Prabha Swami for the Respondent.

- G The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Leave granted.

- H 2. This appeal by way of special leave is directed against the judgment of the Division Bench of the Madras High Court dated 08th February 2006 whereby the appeal filed by the Revenue under section 260A of the Income-tax Act 1961 (hereinafter called the "Act") against the order of the Income-

tax Tribunal allegedly raising questions of law has been dismissed on the premise that no substantial question of law in fact arose for consideration. The facts leading to the appeal are as under:-

3. The respondent-assessee vide a registered sale deed dated 26.10.1998 purchased certain land at Brindavan Road, Fairlands, Salem for a sum of Rs. 4.10 lakhs. During a search of the office and residential premises of Polimer Net Work, certain notes on loose sheets allegedly in the hands of the respondent were found and seized by the department. In his statement recorded on 8.12.1998, the assessee submitted that he could not remember as to why the notings had been made. The statement was further confirmed by another statement on 11.12.1998. The department also recorded the statement of the vendor Rajarathinam on 8.12.1998 which too was confirmed on 11.12.1998 in which he admitted that he had in fact received a total consideration of Rs. 34.35 lakhs and that the sum of Rs. 4.10 lakhs reflected in the sale deed had been received by him by way of a demand draft and the balance in cash. Rajarathinam however retracted from his statement on 8.1.1999 and filed an affidavit deposing that the sale price was Rs. 4.10 lakhs only and that his statements earlier given to the authorities were incorrect. In a subsequent statement recorded on 20.11.2000 Rajarathinam again reverted to his earlier portion and deposed that the sale price was Rs. 4.85 lakhs. The Assessing Officer concluded that the sale consideration was actually Rs. 34.85 lakhs and not Rs. 4.10 lakhs as had been recited in the sale deed. He accordingly adopted the aforesaid enhanced figure for the purpose of assessment and made an addition of Rs. 3.75.005/- as undisclosed income for the broken period 1.4.1998 to 8.12.1998. The matter was thereafter taken to the Commissioner of Income-tax (Appeals), who after examining the entire matter, observed that the statements given by Rajarathinam could not be relied upon more particularly as the floor price fixed by the authorities for such property was much lower than the value which would result if the sale deed had been registered at Rs. 34.85 lakhs. The Commissioner accordingly deleted the addition made. An appeal was thereafter preferred by the Revenue against the order of the Commissioner before the Income-tax Appellate Tribunal. The Tribunal in its order dated 6th July 2005 held that the notings on the loose pieces of paper on the basis of which the initial suspicion with regard to the under valuation had been raised were vague and could not be relied upon as it appeared that the total area with respect to the sale deeds and that reflected in the loose sheet was discrepant. It was also observed that as per the guidelines for registration the fair value for registration on the relevant date was Rs. 244/- to Rs. 400/- per s.ft. and the sale consideration for Rs. 850/-

A per s.ft. claimed by the Revenue was unrealistic and ignored the ground
situation. It was further held that the tax of approximately Rs. 1.84,000/-
B determined on the basis of the addition would not show that the assessee
had acquiesced in the addition made by the department or that it was conclusive
evidence of the sale price as the deposit had been made in an obvious effort
to save himself from further harassment from the revenue and to escape a
much higher liability to the payment of tax on undisclosed income should
proceedings under section 158BD of the Act be initiated. On these findings,
the Tribunal dismissed the appeal. It is in these circumstances that an appeal
under section 260-A was filed in the High Court. Before the High Court the
following substantial questions of law were raised:-

C (a) Whether or not when the Returns and the Statements of the seller
admit higher sale consideration actually received, the revenue is justified
in fixing the sale consideration at the higher amount than what has
been declared?

D (b) When the assessee did not give any explanation to the notings
found and at the same time the revenue is able to corroborate the
same with the statement of the seller for the purpose of determination
of actual sale value, would the lower authority be justified in interfering
with the same?

E (c) When consistent sworn were taken into consideration along with
evidences found at the time of search, would all be liable to be
rejected on the basis of one statement in between contradicting the
earlier ones which was also explained away as a result of intimidation?

F 4. The High Court relying heavily on the order of the Commissioner and
the Tribunal held that no substantial questions of law had been raised and
accordingly dismissed the appeal. It is this situation that the present matter
is here before us.

G 5. Mr. G.N. Vahanvati, the learned Solicitor General has at the very
outset raised serious objection to the order of the High Court pointing out
that Division Bench had merely plagiarized substantial portions from the order
of the Commissioner and Tribunal in arriving at its conclusion and no
independent assessment on the questions of law that arose for consideration,
had been made. He also pointed out that several questions of law pertaining
to the implications of the statements and the counter statements made by
H Rajarathinam did arise in the case and the matter had not been dealt with by

the High Court in that perspective and it was therefore appropriate that the matter be remitted for fresh decision. The learned counsel representing the assessee respondent has however pointed out that the Commissioner of Income-tax in particular, had after a very elaborate discussion of the matter, concluded on a finding of fact with regard to the nature of the transaction and this view had been accepted by the Tribunal as well. He has accordingly submitted that no substantial questions of law have been raised in this matter and the issues raised were purely questions of fact. A B

6. We have heard the learned counsel for the parties and have gone through the record. It is true that the Division Bench of the High Court has borrowed extensively from the orders of the Tribunal and the Commissioner and passed them off as if they were themselves the author's. We feel that quoting from an order of some authority particularly a specialized one cannot per-se be faulted as this procedure can often help in making for brevity and precision, but we agree with Mr. Vahanavati to the extent that any 'borrowed words' used in a judgment must be acknowledged as such in any appropriate manner as a courtesy to the true author(s). Be that as it may, we are of the opinion that the three questions reproduced above can, in no way, be called substantial questions of law. The fact as to the actual sale price of the property, the implication of the contradictory statements made by Rajarathinam or whether reliance could be placed on the loose sheets recovered in the course of the raid are all questions of fact. We therefore find no infirmity in the order of the High Court. Accordingly, we dismiss the appeal. C D E

N.J.

Appeal dismissed.