

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

MONDAY, THE NINTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL NOS: 205 AND 206 OF 2007

INCOME TAX TRIBUNAL APPEAL NO: 205 OF 2007

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 15-12-2006 passed in I.T.(SS).A.No. 118/Hyd/03 (Block Period 1989-90 to 1999-2000) on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad, preferred against the Order dated 03-07-2003 passed in Appeal No. 556/DCIT,KRM/CIT(A)-III/02-03 on the file of the Commissioner of Income Tax (Appeals - III), Hyderabad preferred against the Order dated 30-08-2001 passed in PAN/GIR No. R-816 on the file of the Deputy Commissioner of Income Tax, Circle - 1, Karimnagar.

**Between:**

Smt. Konda Sanjeeva Rani, W/o. Konda Ramesh, 4-1-8/7, Osmanpura,  
Karimnagar District

...Appellant

AND

Asst. Commissioner of Income Tax, Circle-I, Karimnagar

...Respondent

INCOME TAX TRIBUNAL APPEAL NO: 206 OF 2007

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 15-12-2006 passed in I.T.(SS).A.No. 119/Hyd/03 (Block Period 1989-90 to 1999-2000) on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad, preferred against the Order dated 15-07-2003 passed in Appeal No. 767/ACIT KRM/CIT(A)-III/02-03 on the file of the Commissioner of Income Tax

(Appeals - III), Hyderabad preferred against the Order dated 30-09-2002 passed in PAN/GIR No. ACIT. Cir-1 / R-956 on the file of the Assistant Commissioner of Income Tax, Circle -- 1, Karimnagar.

**Between:**

Smt. Konda Radhika, 4-1-8/7, Osmanpura, Karimnagar

**...Appellant**

**AND**

Asst. Commissioner of Income-Tax, Circle-1, Karimnagar

**...Respondent**

**Counsel for the Appellant : Mr AVA Siva Karikeya  
Rep Mr AV Krishna Koundinya  
(in Both the Appeals)**

**Counsel for the Respondent : Mr P Murali Krishna  
Senior Counsel for Income Tax  
(in Both the Appeals)**

**The Court delivered the following Common Judgment :**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**I.T.T.A. Nos.205 and 206 of 2007**

**COMMON JUDGMENT:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. A.V.A. Siva Kartikeya, learned counsel represents Mr. A.V. Krishna Koundinya, learned counsel for the appellants.

Mr. P. Murali Krishna, learned counsel for the respondent (Revenue).

2. These appeals filed by the assesseees under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act") emanate from common order dated 15.12.2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal").

3. The subject matter of these appeals pertains to block period 1989-1990 to 1999-2000. The appeals were admitted on the following substantial question of law:

“Whether the income tax appellate tribunal committed an error of law in reversing the well reasoned order dated 03.07.2003 passed by the Commissioner of Income Tax Appeals and in ordering deletion of addition of a sum of Rs.4,00,000/- on account of unexplained investment in the house property?”

4. Facts giving rise to filing of the appeals briefly stated are that the husbands of the assessees, namely, Konda Ramesh and Konda Srinivas, are the partners of M/s. Hanuman Parboiled Rice and Oil Mill, a partnership firm. A search under Section 132 of the 1961 Act was conducted on 09.03.1999 at the residence of Sri Konda Ramesh, namely, the husband of assessee in ITTA.No.205 of 2007 as well the office of the partnership firm. The search operations were completed on 05.05.1999. Certain material was found in the residential premises in respect of the expenditure incurred for construction of residential-cum-shopping

complex at Osmanpura, Karimnagar, which was seized. The husbands of the assessees, during the course of search operations, made statements under Section 132(4) of the 1961 Act that total investment in the construction was Rs.15 lakhs whereas only a sum of Rs.7 lakhs was accounted for.

5. Thereafter, show cause notices dated 07.09.2000 under Section 158BD of the 1961 Act were issued to the assessees seeking explanation on various points mentioned in the notice. The assessees were asked to show cause why a sum of Rs.11 lakhs should not be brought to assessment as undisclosed income for the block period. The assessees filed their returns showing NIL as their undisclosed income. The Assessing Officer, by an order dated 30.08.2001, *inter alia* held that the assessees' husbands, during the course of search proceedings, had categorically admitted that the total investment in the construction was Rs.15 lakhs only and

the accounted portion was Rs.7 lakhs. The Assessing Officer, on the basis of admission made under Section 132(4) of the 1961 Act during the course of search proceedings, *inter alia*, held that there is no proof to the contrary and accordingly treated the difference amount of Rs.8 lakhs as unexplained investment and since both the assesseees had 50% share in the construction, he, therefore treated Rs.4 lakhs each as undisclosed investment for the block period in the hands of the assesseees.

6. Being aggrieved, the assesseees filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner by an order dated 03.07.2003, *inter alia*, held that the Assessing Officer erred in making the addition of Rs.4 lakhs each as undisclosed income solely on the basis of sworn statements made by their husbands at the time of search. It was further held that the statements made at the time of search cannot be

made the sole basis for making an order of assessment. It was also held that the Assessing Officer should have referred the issue pertaining to the cost of construction to the Valuation Cell and got the valuation conducted by the Departmental Valuation Officer and should have arrived at the correct cost of construction. A finding was recorded that in any case the Assessing Officer should have got the valuation done by the Inspector attached to him. Accordingly, the order passed by the Assessing Officer was set aside.

7. Being aggrieved by the aforesaid order, the Revenue filed the appeals before the Tribunal. The Tribunal by a common order dated 15.12.2006, *inter alia*, held that the husbands of the assesseees in the statements made under Section 132(4) of the 1961 Act had categorically stated that the investment made on the construction was Rs.15 lakhs. It was further held that mere opinion of a valuer cannot obliterate the statements made by the husbands

of the assesseees. It was also held that in case the statements made by the husbands of the assesseees at the time of search were not correct, the assesseees should have brought some cogent material to disprove the same. The Tribunal therefore set aside the orders passed by the Commissioner of Income Tax (Appeals) and restored the addition in case of both the assesseees. Hence, these appeals.

8. Learned counsel for the assesseees submitted that the Tribunal ought to have appreciated that mere statements of the husbands of the assesseees at the time of search, cannot form the basis to assess the income of the assesseees. It is submitted that the statements made under Section 132(4) of the 1961 Act during the course of search proceedings ought to be accompanied by the material which may be collected during the course of search proceedings.



9. In support of the aforesaid submissions, reliance has been placed on the decisions of the Delhi and the erstwhile Andhra Pradesh High Courts in **Commissioner of Income-Tax vs. Harjeev Agarwal**<sup>1</sup> and **Commissioner of Income-Tax, Hyderabad vs. Naresh Kumar Agarwal**<sup>2</sup>.

10. On the other hand, learned counsel for Revenue has submitted that no substantial question of law arises for consideration in these appeals and the Tribunal has recorded cogent the reasons for setting aside the order passed by the Commissioner of Income Tax (Appeals). It is further submitted that the Assessing Officer had rightly relied on the statements recorded under Section 132(4) of the 1961 Act during the course of search proceedings and the Tribunal has rightly restored the order passed by the Assessing Officer.

---

<sup>1</sup> (2016) 70 Taxmann.com 95 (Delhi)

<sup>2</sup> (2015) 53 Taxmann.com 306 (Andhra Pradesh)

11. In support of his submissions, reference has been made to Division Bench decisions of High Courts of Madras and Kerala in **Thiru A.J. Ramesh Kumar vs. Deputy Commissioner of Income Tax** <sup>3</sup> and **Commissioner of Income-Tax vs. Hotel Meriya**<sup>4</sup>.

12. We have considered the rival submissions and have perused the record.

13. Section 132 of the 1961 Act deals with Search and Seizure. Section 132(4) of the said Act provides that authorized officer may during the course of search or seizure examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-Tax

---

<sup>3</sup> (2022) 139 Taxmann.com 190 (Madras)

<sup>4</sup> (2010) 195 Taxman 459 (Kerala)

Act, 1922 or under the 1961 Act. Explanation to Section 132(4) provides that examination of any person referred to in Section 132(4) may not be merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding either under the Indian Income-Tax Act, 1922 or under the 1961 Act.

14. Thus, it is evident that a statement recorded under Section 132(4) of the 1961 Act is evidence within the purview of evidence under Section 158BD of the 1961 Act read with Section 3 of the Indian Evidence Act, 1872 and Section 131 of the 1961 Act and is admissible in evidence.

15. The Supreme Court in **Pullangode Rubber Produce Co. Ltd vs. State of Kerala**<sup>5</sup> in paragraph 4 held as follows:

“4. There is material on record to show that in respect of the assessment year 1963-64, the year previous to the one with which we are concerned in this case, the Tribunal refused to refer similar questions which the assessee wanted it to refer to the High Court. But, at the instance of the assessee those questions were referred to the High Court as ordered by the High Court and the High Court answered those questions in favour of the assessee. It is no doubt true that entries in the account books of the assessee amount to an admission that the amount in question was laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.”

---

<sup>5</sup> (1973) 91 ITR 18 (SC)

An admission is an extremely important piece of evidence, but the same is not conclusive as it is open for the person making admission to show that it is incorrect.

16. In the instant cases, the husbands of the assesseees made statements under Section 132(4) of the 1961 Act during the course of search. The fact that total cost of construction was Rs.15 lakhs was reiterated by the assesseees on 03.05.1999. Once the statements were recorded on oath, the statements had an evidentiary value and the presumption is that the statements made under Section 132(4) of the 1961 Act are true and correct unless the assesseees plead that the statements have been obtained forcibly or by coercion or undue influence. Once the statements are recorded under Section 132(4) of the 1961 Act, the same can be used as evidence against the assesseees. In such a case, the burden lies on the assesseees to establish that the admission made in the statements is either incorrect or wrong.

17. In the instant cases, the assesseees have failed to discharge the said burden. It is not the case of the assesseees that their husbands made statements either under coercion or undue influence. No attempt has been made by the assesseees to explain such an admission. Therefore, in the facts and circumstances of the case, the Tribunal rightly set aside the order passed by the Commissioner of Income-Tax (Appeals).

18. It is pertinent to note that the Division Bench of the Delhi and erstwhile Andhra Pradesh High Courts in **Harjeev Agarwal (supra)** and **Naresh Kumar Agarwal (supra)** did not consider the decision of the Supreme Court in **Pullangode Rubber Produce Co. Ltd (supra)**. The aforesaid decisions are not applicable to the fact situation of the present cases.

19. In view of the preceding paragraphs and for the aforementioned reasons, the substantial question of law

framed by this Court is answered in favour of the Revenue and against the assesseees.

20. In the result, the appeals fail and are hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Sd/- K. SRINIVASA RAO  
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad
2. The Commissioner of Income Tax (Appeals - III), Hyderabad
3. The Deputy Commissioner of Income Tax, Circle-1, Karimnagar
4. The Assistant Commissioner of Income Tax, Circle - 1, Karimnagar
5. One CC to Sri AV Krishna Koundinya, Advocate [OPUC]
6. One CC to Sri P Murali Krishna, Advocate [OPUC]
7. Two CD Copies

VA/gh

FR

**HIGH COURT**

**DATED:09/12/2024**

**COMMON JUDGMENT**

**ITTA.Nos.205 & 206 of 2007**



**DISMISSING BOTH THE APPEALS**

*9 copies  
for  
19/12/24*