

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS. 184597, 184600/2019 & 26703 OF 2020
IN/AND
CIVIL APPEAL NOS. 5256-5259 OF 2010

HUKUM CHAND JAIN (DEAD) ETC. ETC.

Appellant(s)

VERSUS

ASST.COMMR.OF I.T.CIRCLE-I, RAIPUR

Respondent(s)

O R D E R

By consent, the application for bringing on record the legal representatives of the appellant is allowed after condoning the delay and setting aside the abatement. Amendment be carried out forthwith.

Heard learned counsel for the parties.

The question formulated by the High Court can be discerned from paragraph 18 of the impugned judgment which reads thus:

"18....Whether on fact and in the circumstance of the case, the Tribunal was justified in law in holding that the principle of law laid down by the Kerala High Court in V. Kunhambu & Sons Vs. C.I.T. reported in 219 ITR 235(Ker) did not apply to the present case."

The High Court then proceeded to examine the matter as to whether the appellant-assessee could be allowed to retract his statement recorded under Section 132(4) of the Income Tax Act during search and seizure proceedings.

The High Court eventually concluded that the principle laid down in the matter of V. Kunhambu & Sons (Supra) did not apply to the present case.

Notably, the High Court has not reversed the finding of fact and conclusion recorded by the Income Tax Appellate Tribunal, recorded in paragraph 10 of its decision, which reads thus:

"10. We have heard the rival contentions and perused the material available on record. On our careful perusal of the facts, we are of the considered view that the confessional statements made during the search are often vulnerable on the ground that the persons giving such statements remained under great mental stretch and strain. They also did not the availability of relevant details, documents and books of accounts at the time of giving such statements in the absence of which precise computation relating to mode of utilization of such income and year of investment cannot be clearly furnished. *The assesseees are therefore, entitled to modify/clarify the statements after verifying necessary details from the relevant records at a later point of time. In the cases before us the AO was computing the income from undisclosed sources on the basis of material found at the time of search. He considered the same in relation to the declaration made u/s 132(4) by*

equally allocating the amount declared amongst the four assessees. He assessed the income at Rs. 7,50,000/- which clearly indicate that the search material did not point to any undisclosed income more than the amount originally offered by way of a statement u/s 132(4). The individual items otherwise considered in pursuance to notice u/s 158BC were also declared by the assessees if taken cumulatively at Rs. 5,57,500/- against which various details and explanations were furnished to the AO individually explaining the source of purported search material sought to be taxed otherwise. The total specific addition made by the AO amounted to Rs. 6,06,954/- which was duly explained under the provisions of section 158BC being covered up by the disclosure as offered by the individual assessees. We find force in the submission of the learned counsel that the addition on account of cost of construction was purely on the basis of report of the valuation officer which was also reduce on the basis of submission by the assessee. The AO could not specifically point out the items of unexplained investment in the construction on the basis of search material which in our view was a halfheartedly attempt on the part of the AO to reach to the magic figure of Rs. 7,50,000/- which in turn was allocated equally on the basis of statement u/s 132(4). The case laws cited by the learned counsel are relevant and applicable on the facts of the case in so far as the admission may be an extremely important piece of evidence but it could not be said that it is conclusive. It was open to the assessee who made the admission to show that it was incorrect and the assessee was able to establish before the authorities below that the search material did not disclose the correct state of facts as was made in a bonafide mistake which the Revenue cannot seek to sustain an addition only on the basis of admission in the first place. The statement was reputable and was explained by the assessee at a later stage and therefore, we do not find any infirmity in the orders of the learned CIT (Appeals) in respect of the

individual assesseees who rightly deleted the addition to the extent of undisclosed income computed by the AO over and above the undisclosed income returned by the individual assesseees in pursuance to notice u/s 158BC. Therefore, in the case of the assessee, the appeals filed by the Revenue stand dismissed."

(emphasis supplied in italics)

Once the assessee had offered explanation to the Assessing Officer and, more so, the queries made by the Assessing Officer in the form of question No. 10 stood satisfied and accepted by the Assessing Officer on the basis of which he computed the tax liability of the assessee, the question of going back to the issue as to whether it was open for the assessee to retract the statement recorded under Section 132(4) of the Income Tax Act, does not arise.

In our opinion, the High Court formulated incorrect question to be answered in the fact situation of the present case.

The view taken by the Appellate Tribunal, in our opinion, is a possible view. Hence, the same is affirmed in terms of this order.

The appeals are allowed accordingly.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(VINEET SARAN)

.....J
(DINESH MAHESHWARI)

New Delhi
February 19, 2020

ITEM NO.102

COURT NO.7

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5256-5259/2010

HUKUM CHAND JAIN(DEAD) ETC. ETC.

Appellant(s)

VERSUS

ASST.COMMR.OF I.T.CIRCLE-I,RAIPUR

Respondent(s)

(I.A. NOS. 184597, 184600/2019 & 26703 OF 2020)

Date : 19-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Salil Agarwal, Adv.
Mr. Bhargava V. Desai, AOR
Mr. Uma Shankar, Adv.
Ms. Aditi Diwan, Adv.
Mr. Tejanpujji, Adv.

For Respondent(s)

Mr. B. V. Balaram Das, AOR

Mr. Arijit Prasad, Sr. Adv.
Ms. Niranjana Singh, Adv.
Mr. Nachiketa Joshi, Adv.
Mrs. Anil Katiyar, AORUPON hearing the counsel the Court made the following
O R D E R

By consent, the application for bringing on record the legal representatives of the appellant is allowed after condoning the delay and setting aside the abatement. Amendment be carried out forthwith.

The Civil Appeals are allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)

COURT MASTER (SH)

(VIDYA NEGI)

COURT MASTER (NSH)

[Signed order is placed on the file]