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Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.03.2026

Pronounced on :07.04.2026

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014

T.C(A)No.373 of 2009

M/s Kerala Roadways (P) Ltd.,

39, Walltax Road,

Chennai 600 079.

.. Appellant/Petitioner

/versus/

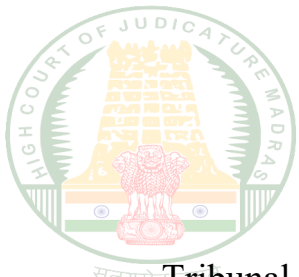
The Deputy Commissioner of Income Tax,

Central Circle II (3),

Chennai 600 034.

.. Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of Income Tax Act, 1961, against the order dated 30.01.2009 passed by the Income Tax Appellate



Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014

Tribunal, Chennai in I.T.(SS)A.No.87/MDS/2007 for the Block Assessment Period from 01.04.1996 to 31.03.2002 and 01.04.2002 to 22.01.2003.

For Appellant :M/s N.V.Balaji

For Respondent :Mr.D.Prabhu Mukund Arunkumar

T.C(A)No.1026 of 2009

The Commissioner of Income Tax,
Central II Chennai.

.. Appellant/Appellant

/versus/

M/s Kerala Roadways Limited,
39, Wall Tax Road, Chennai-79.

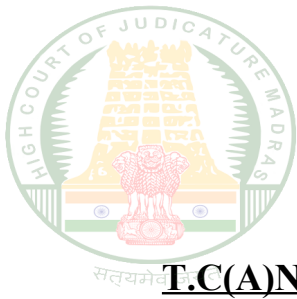
PAN No.AAACK1388P

.. Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of Income Tax Act, 1961, against the order of the Income-Tax Appellate Tribunal, "B" Bench, Chennai dated 18.07.2008 passed in IT (SS)A.No.47/MDS/2007.

For Appellant :Mr.D.Prabhu Mukund Arunkumar

For Respondent :M/s N.V.Balaji



Tax Case (Appeal) Nos.373 and 1026 of 2009 and 274 of 2014

T.C(A)No.274 of 2014

The Commissioner of Income Tax,
Central Circle-II, Chennai.

.. Appellant/Appellant

/versus/

M/s Kerala Roadways Private Limited,
39, Wall Tax Road, Chennai 600 079.
PAN:AAACK 1383P

.. Respondent/Respondent

Tax Case Appeal has been filed under Section 260A of Income Tax Act, 1961, against the order of the Income-Tax Appellate Tribunal, “C” Bench, Chennai dated 13.08.2013 in IT (SS)A.No.25/MDS/2011.

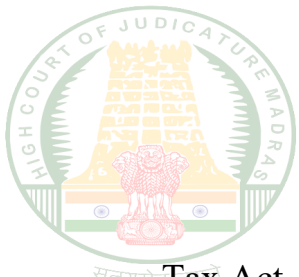
For Appellant :Mr.D.Prabhu Mukund Arunkumar

For Respondent :M/s N.V.Balaji

COMMON JUDGMENT

(Judgment was delivered by Dr.G.Jayachandran,J.)

M/s Kerala Roadways (P) Ltd is the assessee in this case. It is having its Head Office in Chennai and about 450 branches throughout the Country. The matter relates to the Block Assessment made under Section 158 BC of the Income



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Tax Act, 1961 r/w Section 143 (3) of the Income Tax Act, 1961 (in short "IT Act")
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for the period between 01/04/1996 to 31/03/2002 and from 01/04/2002 to 22/01/2003 pursuant to the search operation held between 22/01/2003 and 13/02/2003. The Block Assessment orders, Orders in revision, Appeal orders and the orders of the Tribunal, as well as the regular Assessment order passed for the AY 2002-2003 pending outcome of the search operation and the consequential orders passed thereof in connection with the computation of the alleged undisclosed income, are the subject matter in the appeals.

2. Out of three appeals under consideration, T.C.(Appeal) No: 373/2009 is by the Assessee: T.C.(Appeal) No: 1026/2009 and T.C.(Appeal)No.274/2014 are by the Revenue. Since the facts and law involved in this case are intertwined to each other, all these appeals are taken up together and orders passed as under:-

2(i)The facts leading to the appeals under consideration: The Assessee M/s Kerala Roadways (P) Ltd is a Private Limited Company engaged in the business of goods transportation. It has branches throughout the Country either of its own or through Agents. Between 22/01/2003 and 13/02/2003, search operation was

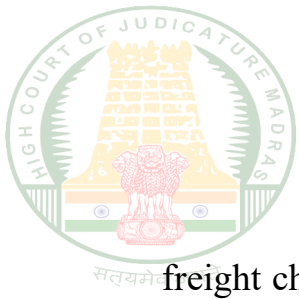


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carried by the Income Tax Department at the office premises of the assessee Company located in Chennai, Mumbai and Delhi. In the search, it was found that the assessee had failed to disclose its income as under:-

2(ii) Firstly, the assessee had transported goods without proper invoices under the 'token booking system' and the customers were charged higher freight charges. The receipts of freight charges under the 'token booking system' are not entered in the regular books of accounts. The details of goods transport under the token booking system used to be informed to the Company Directors and thereafter, records containing details of 'token booking' used to be erased. From the statements of the Branch Managers and the materials collected during the search proceedings, the average quantum of such 'token booking' found out to be Rs.1,58,53,395/-. Explanation sought from the authorised representative of the assessee and on verifying the explanation with the books of account, loading and unloading registers, the undisclosed income derived through token booking system was estimated as Rs 7,96,50,000/-.

2(iii) Secondly, suppression of the freight charges collected from the customers was found during the search operation. The assessee had collected



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freight charges under three different mode for the transport of consignments. They are : (1) To pay booking (means payment of freight charges at the delivery end and account at the delivery point). (2) Paid. (means payment collected at the booking point and accounted at booking point) and (3) To be Billed Booking (TBB) means freight billed on periodical basis for regular customers and accounted at booking point. Apart from the freight charges the other receipts, such as, handling charges, demurrage collections, Hamali collections etc., were collected at the delivery point from the customers. On cross verification of booking details entered at the booking points in a software called FMS (Freight Management System), the delivery details entered at the delivery point in the software called DMS (Delivery Management System) and delivery details sent to the Corporate Office every month from the respective branches along with the report called MIS reports in which the monthly consolidation of booking, delivery, lorry hire charges and other receipts and expenditures recorded, the Assessing Officer found suppression of freight income. The difference between the collection, as per MIS and collection, as per accounts for the three years period from 1998 to 2001 found to be Rs.3,99,88,299/- The explanation given by the representative of the assessee was not satisfactory to the

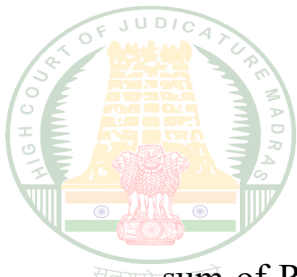


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assessing officer hence a sum of Rs.3,99,88,299/- was brought to tax under
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undisclosed income during the block period.

2(iv) Thirdly, on scrutiny of the lorry hire payment accounts, the payment in March 2001 found to be disproportionately high, when compared to earlier months. The amounts debited were in round sum like Rs.10,000/-, Rs.15,000/-, Rs.20,000/- Rs.25,000/- or Rs.30,000/- without details of lorry numbers, route and other details. This lumpsum amount credited at the end of the accounting year reversed at the beginning of the next accounting year giving credit. The explanation given by the Chief Accountant of the assessee company that the amount debited is for provision to pay the unsettled hire charges claimed or to be claimed for the lorry in transit, was not accepted by the Assessing Officer, as not in conformity to the account practice prescribed under the Companies Act, 2013. Hence, a sum of Rs.2 crores was considered as undisclosed income of the assessee during the block period under the head “inflation of lorry hire charges”.

2(v) Thus, on completion of assessment, the Assessing Officer passed an order dated 28/02/2005 computing a total income of Rs.14,03,98,300/- and levied a



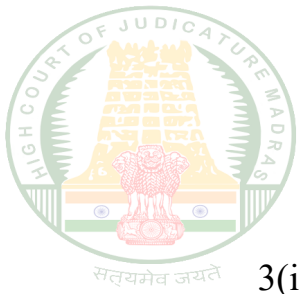
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sum of Rs.9,02,19,947/- as tax payable by the assessee after reserving the right to initiate the penalty proceedings separately.

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3. In the interregnum period, after the search, but before the completion of assessment, the assessee in response to the notice issued under Section 158 BC of the IT Act, filed return for the assessment year 2002-03 declaring loss of Rs.41,82,600/-. This was subjected to Revision by the Commissioner and he remitted back for fresh assessment, in view of the error in assessment causing prejudice to the Revenue. The Commissioner observed that the return filed after the date of search and the computation of loss of Rs.2,42,71,600/- in arriving at the total undisclosed income was wrong. Whereas, as against the block assessment order dated 28/02/2005, the assessee initiated appeal in Appeal No:CIT(A)/CHE/1/05-06. The appellate authority allowed the appeal in respect of :

3(i)Rs.3,99,88,299/- considered by the Assessing Officer as suppression of freight income deleted after being satisfied with the explanation and examination of the P & L Account. The Appellate Authority held that the said addition by the Assessing Officer is due to misunderstanding of the accounts, hence, erroneous.



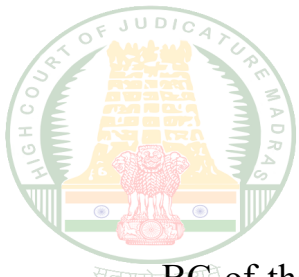
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3(ii)Rs.2 crores of lorry hire charges considered as inflated expenditure by the Assessing Officer deleted after being satisfied that the said amount is not a contingent liability but a liability *de-praesenti* which is permissible in mercantile system of accounting. The hire charge liability accrued in the previous year discharged in the subsequent year. As the provision for liability incurred been duly reversed on the first day of the following year and accounting done only on the actual payment, the Appellate Authority held that there is no inflation of expenditure.

3(iii)Reduced the undisclosed income on account of taken booking system from Rs.7,96,50,000/- to Rs.47,79,000/-, in view of the fact, all expenses incurred for recorded transaction also to be incurred for unaccounted transactions. So, the Appellate Authority estimated the unaccounted profit out of unaccounted transaction at 6% of the total unaccounted collection to fix the undisclosed income from unaccounted receipts.

4. In respect of the finding of the Assessing Officer on the returns filed for the assessment year 2002-2003 in response to the notice issued under Section 158



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BC of the IT Act, dated 11.08.2004, after the search, but before the adjudication, claiming loss of Rs.41,82,600/-, the Appellate Authority took up the matter on revision under Section 263 of the IT Act and set aside the entire block assessment order and directed the Assessing Officer to make fresh assessment, after giving reasonable opportunity to the assessee. The order of the Commissioner of Income Tax, dated 09/03/2007 read as under:-

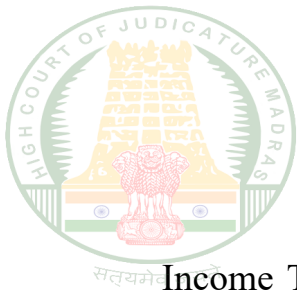
“I therefore, set aside the block assessment completed vide, order dated 28/02/2005 in the case of the assessee and direct the Assessing Officer to re-frame the block assessment order after ensuring that:

(i) Mistakes while filling up columns of Form No.2B are corrected and effect is correctly given while computing the undisclosed income of the assessee, and

(ii) the expenses of personal nature and expenses which are not allowable as per Income Tax Act about which the evidence is available in the seized material should be disallowed.

The Assessing Officer should give reasonable opportunity to the assessee before making fresh assessment.”

5. Consequent to the above order of the Commissioner of Income Tax, considering the above directions in the above order, the Deputy Commissioner of



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Income Tax verified the figures returned in Form-2 B, completed the assessment and issued order on 31/12/2007 fixing the total undisclosed income as Rs.4,67,00,770/- and the tax payable as Rs.2,14,38,841/.

6. This assessment order passed pursuant to the revision order appealed before the CIT(A) in Appeal No:CIT(A)/CHE/188/07-08. The Appellate Authority namely, CIT(A) partly allowed the appeal on 25/03/2008 with the following observations:-

“5.2 I have examined the facts of the case. In para 4 of order u/s 263 it is mentioned that the assessee had admitted before the CIT, Central-II, Chennai, that there was a mistake in filling Form No.2B. In view of this fact the CIT, Central-II, Chennai had directed the A.O. to ensure that mistakes while filling up columns of Form 2B are corrected. The A.O.has not got the filling of Form No.2B corrected. Since the A.O.has not followed the instruction of the CIT, Central II, Chennai the A.O., is directed to give an opportunity to the assessee to revise Form No.2B and then compute the total undisclosed income.



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“The A.O.has treated the total income of Rs.1,68,90,172/- shown in the return of income for A.Y 2002-03 as undisclosed income. He has treated the returned income of A.Y.2002-03 as undisclosed income for the reason that the return of income was filed on 12.03.2004 a date after the date of search. It is found that the return of income for asst.year 2002-03 declaring a total income of Rs.1,68,90,172/-was filed on 12.03.2004. The DCIT, Central Circle-II(3), Chennai, has passed the assessment order u/s 143 for the A.Y.2002-2003 on 25/02/2005. In this order the total income is assessed at Rs.1,68,90,170/- and the credit for TDS at Rs.17,89,147/-, advance tax at Rs.16,15,000/- and Self asst. tax at Rs.29,62,507/- totaling to Rs.63,66,654/- was given. This shows that the return of income for A.Y.2002-03 filed on 12/03/2004 was a valid return filed u/s 139(4) of the IT Act and the income shown in this return has been assessed to tax. This shows that the income returned in the return filed on 12.03.2004 falls within Section 158BB(1)(c)A() and does not fall under Sec.158BB(ca).

In the judgment passed in the case of ACIT v. A.R.Enterprises (2005) 274 ITR 110, the Hon'ble Madras High Court has held that the income disclosed on account of payment of advance tax cannot be held to be undisclosed income for the purpose of block assessment. This ratio appeals also in respect of TDS. The facts of the assessee's



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case clearly show that advance tax was paid in respect of the total income declared at Rs.1,68,90,172/- for the A.Y.2002-2003 after taking in to account the TDS deducted. The appellant's case is directly covered by the Hon'ble High Courts judgment referred above. Hence, the income of Rs.1,68,90,172/- shown in the return of income for the A.Y.2002-03 is not to be treated as undisclosed income. The A.O. is directed to recompute the undisclosed income after giving an opportunity to the appellant to revise Form No.2B."

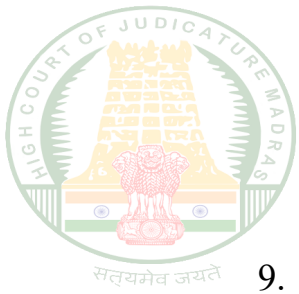
7. Before the ITAT, the Revenue filed appeal being aggrieved by the observation of the CIT (A) that income disclosed on payment of advance tax cannot be held to be undisclosed income for the purpose of block assessment. The applicability of the dictum laid in *ACIT –vs- A.R.Enterprises* reported in *[(2005) 274 ITR 110 (MAD)]* to the facts of the case was doubted by the revenue in their appeal before ITAT. However, the Tribunal concurring with the view of the appellate authority, dismissed the appeal filed by the revenue *vide* order dated 15/07/2009. Further appeal to the High Court by the Revenue in Tax Case (Appeal) No:1409/2009 was dismissed following the dictum laid in *A.R.*



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Enterprises case (cited supra). The SLP filed before the Supreme Court was also dismissed on 16/12/2011 leaving the question of law open.

8. Thus, the returns filed for the assessment year 2002-2003, though after the commencement of search operation but prior to block assessment order had come to end holding in favour of the assessee that the returns filed disclosing the income and payment of advance tax before the order passed in the block assessment pursuant to the search, cannot be held as an income undisclosed. While so, in respect of block assessment, pursuant to CIT (A) order dated 25/08/2008 which remanded the matter to the AO for re-compute the undisclosed income after giving an opportunity to the appellant to file revise Form No: 2B, order was passed by the Assessing Officer on 31/12/2010 reiterating the earlier order dated 31/12/2007 since the assessee did not come forward to file the revised Form 2B. This order dated 31/12/2010 computing the total undisclosed income as Rs.4,67,00,770/- and the tax payable as Rs 2,14,38,541/. as assessed earlier came to be challenged by the assessee before the CIT (A) in ITA No: 444/10-11.



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9. The appellant referring the order of the Appellate Authority in CIT (A) CHE/188/07-08 dated 25/08/2008 wherein it was ordered to the effect that for the AY 2002-2003, the disclosure of income Rs 1,68,90,172/- in the return filed after the search proceedings to be taken as income disclosed, therefore the assessee contended that, the assessment order showing the income disclosed as 'Nil' for the block period which includes the AY 2002-03 is incorrect. The appellate authority accepted the revised Form 2 B which the assessee failed to produce before the Assessing Officer. By giving effect to the order of his predecessor dated 25/03/2008, the appellate authority held that the income of Rs 1,68,90,172/- shown in the return for the AY 2002-03 should be taken in the computation of income. He also held that there is no justification to compute the lorry hire charges of Rs.2,42,71,600/- as undisclosed income. Hence, this amount was also deleted. After holding so, the Appellate Authority vide, order dated 14/07/2011 in ITA No:444/1-11 partly allowed the appeal for statistical purpose .The above order of the appellate authority came to be challenged before the ITAT by the Revenue. The assessee filed his Cross Objection filed by the assessee. The Tribunal, vide order dated 13/08/2013, dismissed the Appeal by the Revenue on merits and



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dismissed the Cross Objection of the assessee as infructuous. Being aggrieved, the Revenue has filed appeal before the High Court.

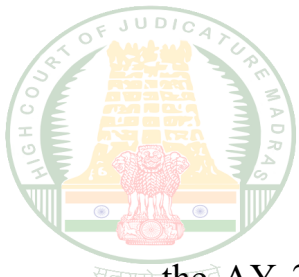
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10. The specific facts in brief and the Substantial Questions of Law for consideration in each of the appeal are:

TC (Appeal) No: 373/2009:

11. This appeal is directed against the order passed in IT (SS) A. No: 87/Mds/2007 dated 30/01/2009 on the file of ITAT.

12. In this appeal, the assessee is the appellant. Search action on the appellant started on 22/01/2003 and completed on 13/02/2003. For the block assessment for the period 01/04/1996 to 31/03/2002 & 01/04/2002 to 22/01/2003, the assessing officer computed a total income of Rs 14,03,98,300/-. In consequence to the search, on receipt of the notice u/s158 BC calling upon the assessee to file return of undisclosed income, the assessee filed return declaring loss of Rs 41,82,600/- for the AY 2002-2003. Accordingly assessment order was passed on 25/02/2005 for



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the AY 2002-2003. Later, the Assessing Officer noticed the fact that a positive income of Rs 1,68,90,172/- disclosed by the assessee for the assessment year 2002-2003 in the return filed on 12/03/2004 was erroneously accepted by him, though the said disclosure was, after the commencement of search proceedings and pursuant to the notice issued under Section 158 BC. Therefore, opined the said disclosure cannot be taken as a voluntary disclosure. Hence, the Assessing Officer *vide*, his letter dated 13/02/2006, sent a proposal to the Commissioner to revise the block assessment order, dated 28/02/2005, exercising his the power under Section 263 of the IT Act.

13. Accordingly, the Commissioner, *vide* his order dated 09/03/2007 accepted the proposal and on considering the mistake in the Form-2B submitted by the assessee and the admission of the assessee that the break-up of income was given wrongly due to inadvertence, held the block assessment order is erroneous and prejudicial to the revenue. Hence, set aside the block assessment order dated 28/02/2005, and ordered the Assessing Officer to frame fresh assessment.



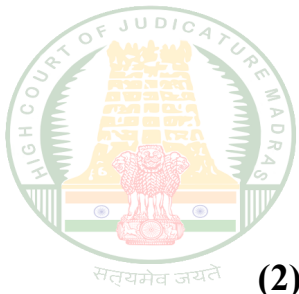
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14. The assessee aggrieved by the order passed in the Revision, filed Appeal IT (SS) A No: 87/Mds/2007 before the Income Tax Appellate Tribunal (ITAT). The Tribunal, *vide* its order in Open Court on 28/01/2009 (signed on 30/01/2009) dismissed the appeal stating that the facts of the case in hand is identical to the facts of the case decided by it in Shri V.K. Moidoo Hajee –vs- CIT (A) dated 12/01/2009 as same is binding on it.

15. Against the above order of the Tribunal, this appeal is filed under Section 260 A of the Income Tax Act, 1961 by the assessee and same is admitted for considering the following Substantial Questions of Law:-

(1)Whether the Income Tax Appellate Tribunal was right in holding that the order made under Section 263 of the Income Tax Act by the Commissioner of Income Tax revising the block assessment order made by the respondent under Section 158BC of the Act read with Section 143(3) of the Act is valid in law?



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(2) Whether the Tribunal is right in ignoring the decision of the Madras High Court in the case of ACIt v. A.R. Enterprises, (2005) 274 ITR 110, where it was held that when the advance tax paid by the assessee for any assessment year the corresponding income could not be said to be undisclosed income?

(3) Whether the Tribunal is right in ignoring the various grounds of appeal raised before it relating to the theory of merger and other specific items raised in the grounds of appeal?

(4) Whether the Tribunal is right in ignoring the fact that the transactions which were already the subject matter of regular assessment would not again become the subject matter of block assessment?

TC (Appeal) No: 274/2014 :

16. This appeal is against the order passed in IT (SS) A.No: 25/Mds/2011 dated 13/08/2013.



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17. Revenue is the appellant. Appeal is directed against the order of the ITAT which has confirmed the order of the CIT(A), dated 14/07/2011. Both the appeal by the Revenue as well as the Cross Objection by the assessee were dismissed by the ITAT in the common order dated 13/08/2013.

18. The revenue question the legality of CIT (A) order deleting the addition of Rs.1,68,90,172/- made by the Assessing Officer. According to the revenue, the decision of this court in *ACIT-vs- A.R.Enterprises* reported in [350 ITR 489] is no more a good law, since it was reversed by the Hon'ble Supreme Court of India subsequently. The Appellate Authority erred in accepting the revised return along with corrected Form-2 B filed before it to justify the deletion.

19. This contention of the Revenue was negative by the Tribunal holding that, the judgment of the Hon'ble Supreme Court in *A.R. Enterprises case (cited supra)* may not directly apply to the assessee's case, since in the case in hand, the



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assessee had not only paid the advance tax, but had also filed the return for the assessment year 2002-2003 and the assessment completed under Section 143(3) of the IT Act. The income was not only disclosed, but also assessed before the Block Assessment Order. Therefore, it is not possible to hold that the said income is still an undisclosed income.

20. The further case of the Revenue is that, in the revision order, the Commissioner directed the assessee to file the revised Form-2B before the Assessing Officer and for him to appreciate it and assess the returns. The assessee failed to file the revised Form-2B before the Assessing Officer. Based on the materials, the Assessing Officer has passed an order. While so, in the appeal, the CIT (A) ought not to have entertained the revised Form-2B, which is beyond the scope of the order passed by the Commissioner under Section 263 of the IT Act. This plea also was not found in favour of the Revenue by the Tribunal.



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21. Hence the Appeal by the Revenue challenging the order of the Tribunal dated 13/08/2013 raising the following Substantial Questions of Law:-

“1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not following the judgment of the Honourable Supreme Court in the case of ACIT v. A.R.Enterprises reported in [350 ITR 489]?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition when the assessee has filed its return of income after the date of search and provision of Section 158BB(1)(a) will apply?

3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition of Rs.1,68,90,170/- for the assessment year 2002-2003, when the same was not recorded in the books of accounts nor any return was filed by the assessee before the date of search?”



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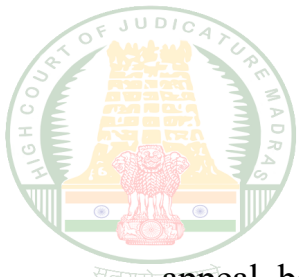
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22. T.C.(Appeal)No:1026/2009 is filed against IT (SS) A.No: 47/Mds/2007 dated 18/07/2008.

23. Revenue is the appellant. The Block Assessment order dated 28/02/2005 computing the undisclosed income of the assessee during the block period as Rs.14,03,98,300/- and the total tax payable is Rs 9,02,19,947/- challenged by the assessee in CIT(A)/CHE/1/05-06. The Appellate Authority, *vide*, his order dated 01/12/2006, the Appellate Authority allowed the appeal of the assessee partly in respect of undisclosed income on account of token booking and reduced the estimated undisclosed income under this head from Rs.7,96,50,000/- to Rs.47,79,000/- but other grounds raised by the assessee were negatived and appeal dismissed.

24. Aggrieved, as against the Tribunal order which reduced the estimated undisclosed income from Rs.7,96,50,000/- to Rs.47,79,000/- the revenue preferred



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appeal before the Tribunal in IT(SS)A.No:47/Mds/2007 and same came to be partly allowed. The tribunal found error in the order of the CIT (A) in arriving at the undisclosed income and reducing it to Rs.47,79,000/-. The tribunal found no reason for the observation of the CIT (A) that the assessee had to incur unaccounted expenditure against the unaccounted receipts. Also held the general proposition propounded by the CIT (A) that each unaccounted receipt detected during the search there has to be a corresponding unaccounted expenditure. Hence remitted back to the file of the CIT (A) to re examine the matter and pass a fresh order after giving adequate opportunity to the assessee.

25. The Revenue being aggrieved by the order of the Tribunal which partly allowing the appeal of the assessee and confirmed the portion of the order of the CIT (A) held in favour of the assessee, challenge the order of the Tribunal dated 18/06/2008 before this court raising the following Substantial Questions of Law:-

1. Whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal was right in law in deleting the addition of Rs.3,99,88,299/- made on account of suppression of freight charges even



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though Management Information Report sent to the Corporate Office did not tally with those appearing in the regular books of accounts?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting an addition of Rs.2,00,00,000/- made on account of Lorry Hire Charges, even though the explanation of the assessee was that the Companies Act, requires to be done for the Liabilities that accrued and payable but the accrual of such expenditure has not been proved by the assessee?

Submissions - Discussion - and - Conclusion:

TC(Appeal) No: 373/2009:

26. The Learned Counsel for the assessee who is the appellant in TC(Appeal) No: 373/2009 and respondents in TC (Appeal) No.1026 of 2009 and TC(Appeal) No:274/2014 submits that, the revisional jurisdiction exercised by the Commissioner under section 263 of the IT Act is improper. Due to his improper order giving wide and sweeping directions to the assessing officer , the regular



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assessment for the AY 2002-2003 based on the returns filed within the time limit prescribed under law been again subjected to assessment under the block assessment. As per the law prevailing on the date of order, the law laid in *A.R. Enterprises* was holding the field. The assessee had not only paid the advance tax for Rs.1,68,90,172/- also disclosed the same in the returns filed on 12/03/2014. This was much prior to the block assessment dated 28/02/2005. In *ACIT –vs- A.R. Enterprises* reported in *[(2005) 274 ITR 110]*, Madras High Court has held that, where advance tax had been paid by the assessee for any assessment year, income could not be said to be undisclosed. After approving the method of accounting followed by the assessee, the Commissioner ought not to have given direction in his revisional order to re-examine expenses which were already subjected to regular assessment and block assessment. The Tribunal, without discussing the issue upheld the order of the Commissioner of Income Tax, passed under Section 263, relying on its own judgment in *V.K. Moidoo Hajee dated 12/01/2009* ignoring the judgment of the Jurisdictional High Court rendered in *A.R. Enterprises case (cited supra)*.



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27. Per contra, the Learned Senior Counsel for the respondent /Revenue claims that, Section 263 of the Act empowers the Commissioner to examine any order passed by the Assessing Officer and direct a fresh assessment, if it's assessment examined is found to erroneous or prejudicial to the revenue. In the instant case apparently due to wrong application of law, the assessing officer had failed to take note of the blank in Form 2 B the omission to disclose the search proceedings had warranted the Commissioner to set aside the block assessment order and to consider the explanation of the assessee afresh and also to provide for opportunity to revise the Form 2 B.

28. The assessee failed to exercise the opportunity given to revise its Form 2B before the Assessing Officer. Fresh block assessment was passed on 31/12/2007 demanding tax of Rs.2,14,38,841/-. The assessee who failed to availing the opportunity given to file revised Form-2B before the assessing officer, after suffering the fresh assessment order, preferred appeal and placed the revised Form- 2B with explanation before the appellate authority. The appellate authority



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accepted the revised Form 2 B and partly allowed the appeal following the dictum laid in A.R. Enterprises. In the appeal by the Revenue before Tribunal, it was contended that Supreme Court has reversed the finding of the High Court in A.R. Enterprises, therefore it is no longer good law. Tribunal after referring its earlier judgment rightly allowed the appeal by revenue.

29. Therefore the Learned Counsel for the Revenue submitted that, in any case the appeal by the assessee is liable to be dismissed since the judgement rendered by the High Court in A.R. Enterprises been reversed by the Supreme Court and the proposition of law settled in favour of the department. The assessee can no more take advantage of filing the advance tax and return after initiation of block assessment proceedings pursuant to search operation.

30. That apart, as the facts narrated above, pursuant to the order passed by the Commissioner u/s 263 of the IT Act, the block assessment order dated 28/02/2005 got set aside. Fresh Assessment order dated 31/12/2007 came to be



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passed demanding tax of Rs 2,14,30,841/- That order was challenged by the assessee in CIT (A)/CBE/07-08 and partly allowed directing the AO to recompute the undisclosed income. Challenging this order Revenue filed appeal before the ITAT in IT (SS) A No: 63/Mds/08. That appeal was dismissed on 15/07/2009. The TC (Appeal) No: 1409/2009 and further SLP to Supreme Court preferred by the revenue also got dismissed. Thus, the order of the CIT (A) dated 31/12/2007 has reached its logical end

31. Meanwhile, the AO had re-computed the undisclosed income and passed order u/s 251 r/w 143(3) of the IT Act on 31/10/2010. The recomputed assessment order dated 31/10/2010 was challenged by the assessee successfully before the CIT (A) vide order dated 14/07/2011 passed in ITA No 444/10-11. That order challenged by the Revenue as well as the assessee before the Tribunal in IT(SS) A No: 25/(Mds)/2011. Tribunal dismissed both the revenue appeal and the assessee cross objection vide order dated 13/08/2013. Against the concurrent finding of the appellate authority and the Tribunal the Revenue has filed TC (Appeal) 274/2014



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and same is pending consideration before us along with the other appeals. We reserve our discussion on the merit of that appeal to the later part of this order.

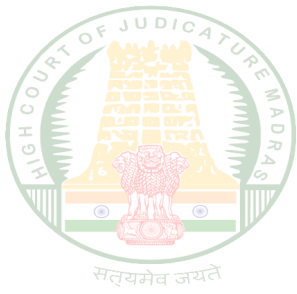
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32. As far as TC (Appeal) 373/2009 filed by the assessee is concern, the issues in short are whether the Commissioner of Income Tax can order the Assessing Officer to revise the block assessment order made under Section 158 BC r/w Section 143(3) of the Act while exercising his power under section 263 of the IT Act and whether the undisclosed income on the date of search will be a disclosed income if advance tax is paid and returns filed after initiation of block assessment proceedings consequence to search.

33. Section 263 of the Income Tax Act, 1961 reads as below:-

“263. Revision of orders prejudicial to revenue.—

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the



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circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

[Explanation—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

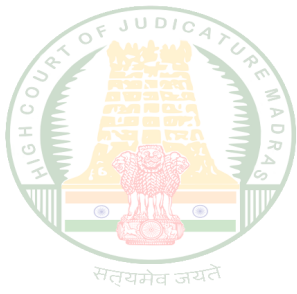
(a) an order passed [on or before or after the 1st day of June, 1988 by the Assessing Officer shall include— (i) an order of assessment made by the Assistant Commissioner [or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [Joint Commissioner] under section 144A;

(ii) an order made by the [Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120;

(b)“record” [shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed]



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(3) Notwithstanding anything contained in sub-section (2) an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, [National Tax Tribunal] the High Court or the Supreme Court.

Explanation- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section [29 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded. “

34. From the reading of this Section, it is clear that the Commissioner of Income Tax, if it comes to his knowledge that the assessment order is erroneous or prejudicial to the Revenue, can direct the Assessing Officer to make fresh assessment or even modify, alter cancel the assessment, after giving opportunity of hearing to the assessee. The only restriction bar for the Commissioner to exercise the power under Section 263 is the period of limitation prescribed under sub-section (2) subject to sub-section (3).

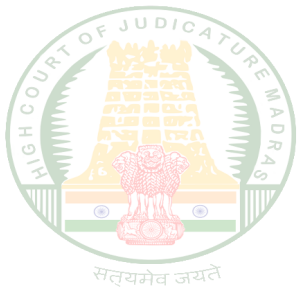
35. Therefore, we hold that the Commissioner is empowered to examine any assessment order and exercise power under Section 263 of IT Act, if he is satisfied



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on examination of the records that the assessment order is erroneous or prejudicial to the Revenue. Whether the order is under Section 143(3) of the Act or under Section 158 BC r/w 143(3) of the IT Act, is immaterial. The plenary power of the Commissioner exercise revisional jurisdiction is to protect the interest of the revenue and same cannot be fettered by untenable reasons. The apparent error in the block assessment applying wrong principle of law due to lack of enquiry had compelled the Assessing Officer to forward the proposal to invoke Section 263. The Commissioner, on his part, had applied his mind and on verification of records, had passed order recording reasons.

36. The second limb, which is also relevant and significant, since the judgment of the High Court rendered in *A.R. Enterprises case (cited supra)* and relied by the assessee, reversed by the Supreme Court and the law laid by the Supreme Court is in favour of the Revenue. The operative portion of the Supreme Court Judgment in *ACIT, Chennai –vs- A.R. Enterprises* reported in [2013 (29) *Taxmann.com 50 (SC)*] reads as under:-



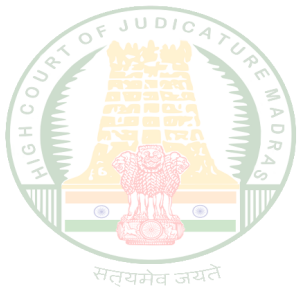
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“37.We are, therefore, of the view that since the Advance Tax payable by an assessee is an estimate of his “current income” for the relevant financial year, it is not the actual total income, to be disclosed in the return of income. To repeat, the vital distinction being that the “current income” is an estimation or approximation, which may not be accurate or final; whereas the “total income” is the exact income disclosed in a valid return, assessable by the Revenue. The fact that the “current income” is an estimation implies that it is not final and is subject to further adjustments in the form of additional or reductions, as the case may be, and would have to be succeeded by the disclosure of final and total income in a valid return. It will be a misconstruction of the law to construe the undisclosed income for purposes of Chapter XIVB as an “estimate” of the total income, which is assessable and chargeable to tax. Therefore, we are unable to accept that payment of Advance Tax based on “current income” involves the disclosure of “total income”, as defined in Section 2(45) of the Act, which has to be stated in the return of income. The same is evidenced in the scheme of Chapter XIVB, in particular.”

44.Since the tax to be deducted at source is also computed on the estimated income of an assessee for the relevant financial year, such deduction cannot result in the disclosure of the total income for the relevant assessment year. Subject to the monetary limit of the total income, every person is obligated to file his return of income even after tax is deducted at source. Hence, for the reasons stated in the preceding



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paragraphs, we are of the opinion that mere deduction of tax at source, also, does not amount to disclosure of income, nor does it indicate the intention to disclose income most definitely when the same is not disclosed in the returns filed for the concerned assessment year.”

37. As a result of the above discussion, we hold that, paying advance tax or filing return, after initiating block assessment process, but before passing of block assessment order will no way help the assessee, who failed to disclose the income and filed his return with the normal period prescribed. Filing the return during the extended period of limitation, after initiation of search proceedings, without any proof for deduction of TDS, the income though disclosed later for the particular Assessment Year (AY), it has to be drawn as the undisclosed income of the assessee during the block period under assessment. Otherwise, any evader of tax in order to escape the consequence of not disclosing the income, can file his return disclosing the bulk of his undisclosed income as income of the particular Assessment Year (AY) soon after the search commences, but before completion of search proceedings and assessment. Block Assessment as a result of search cannot



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be substituted by the regular assessment to dilute the effect of undisclosed income unearthed during the search proceedings .

38. In fine, T.C.(Appeal) No.373 of 2009 preferred by the assessee stands dismissed.

T.C.(Appeal) No.1026 of 2009

39. The block assessment order dated 28/02/2005, beside taken up for revision by the Commissioner as narrated in T.C.(Appeal)No.373 of 2009 and its finality, the assessee, on being aggrieved by the levy of Income Tax of Rs.9,02,19,947/- challenged it in CIT(A)/CHE/1/05-06.

40. The CIT(A) vide. order dated 01/12/2006 substantially allowed the assessee appeal by deleting the addition of Rs.3,99,88,299/- made by the Assessing Officer being suppression of freight charges. Deleted the addition of Rs.2 crores



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made on account of anticipated lorry hire charges payable in near future on accrual basis. Regarding total receipt of Rs.7,96,50,000/- under the 'token booking system' held as un-account receipts by the Assessing Office, the Appellate Authority estimated the income from such unaccounted receipts at 6% and reduced the undisclosed income under this head from Rs.7,96,50,000/- to Rs.47,79,000/-.

41. The Revenue challenged the order of the CIT (A) terming it as erroneous and reasoning for deleting the additions made by the Assessing Officer as baseless. The Tribunal confirmed the order of the CIT(A) in respect of deleting the addition of Rs.3,99,88,299/- by terming it as misunderstanding of accounting by the AO and there is no discrepancy in the collection stated in MIS report and the Financial Accounting Package. The deletion of Rs.2 crores by the CIT(A) confirmed holding that the assessee is following mercantile system of accounting, whereas the Revenue adopting the accrual basis, has wrongly construed the provision made for payment of hire charges as unaccounted, despite the fact that the unpaid hire charges amount reversed on the first day of the succeeding AY. The Tribunal at the same time found fault in the observations made by the CIT (A) in respect of



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undisclosed income under 'Token Booking System' by placing on record that the search has brought out documentary evidence for collection of Rs.1,58,53,395/- and same admitted by the Executive Director of the Assessee Company that it is collection of freight charges for the goods transported without valid invoices. Taking the average for the block period, a sum of Rs 7,96,50,000/- assessed to tax as undisclosed income through 'token booking system'. While so, the reduction of the said income to Rs. 47,79,000/- by the Appellate Authority applying a principle that for each unaccounted receipts there will be corresponding unaccounted expenditure is a proposition, what is not applicable to the case in hand. Observing so, the Tribunal vide its order dated 18/07/2008 remitted the matter back to the file of the CIT (A) to re-examine the matter and pass fresh order after giving adequate opportunity of hearing the assessee.

42. The Learned Counsel for the Revenue /appellant mainly contended that the addition of Rs.3,99,88,299/- being the difference apparently found from the two system of accounting maintained by the assessee, there cannot be any deletion. The order of the appellate authority as well as the Tribunal is an error apparent.



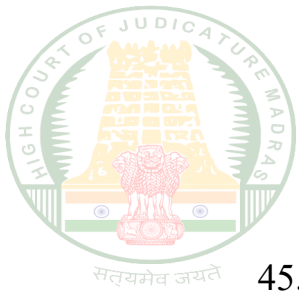
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Likewise, the deleting the addition of Rs.2 crores made on account of lorry hire charges though explained by the assessee was in tune with the Companies Act of accounting standard and done for the liabilities that accrued and payable, same not proved by the assessee through their books of accounts.

43. Per contra, the Learned Counsel for the assessee /respondent submitted that these are purely question of facts and when both the appellate authority and the tribunal has concurrently held in favour of the assessee, court need not entertain the appeal because an alternate view is also possible, unless the concurrent view on facts by the authority below is perverse.

44. To buttress his argument, the Learned Counsel for the assessee relies on the judgment of the Supreme Court rendered in *Kondiba Dagadu Kadam –vs- Savitribai Sopan Gujar and others* reported in *[(1999) 3 SCC 722]*.



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45. We find no reason to contradict the principle that, High Court while exercising its power under Section 260 A of the Income Tax shall ensure and satisfy that the case involves a substantial question of law. Unless the conclusion drawn is perverse, contrary to mandatory provisions of law or contrary to law, same need not interfered in exercise power u/s 263 even if the said finding on facts is erroneous in the opinion of the court. However in this case we find that for deleting the addition of Rs.3,99,88,299/- being the difference apparently found from the two system of accounting maintained by the assessee, the appellate authority has propounded a strange principle that, unaccounted receipts will incur unaccounted expenditure, therefore has to be deleted from addition under undisclosed income. This principle if to be accepted it will be legalizing the shadow account for evading tax. Hence to that extend we find the order of the Tribunal which has confirmed the order of the CIT (A) need to be interfered and reversed being a perverse finding on fact.

46. Therefore, while confirming the deletion of the addition of Rs.2 crores the provisional expenditure towards future hire charges, set aside the order of



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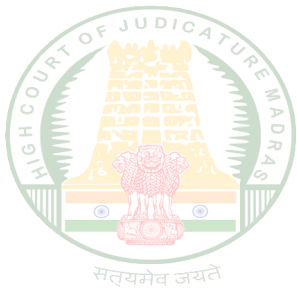
deleting the addition of Rs 3,99, 88,299/- made on account of suppression of freight charges. In so far as the order of the Tribunal remitting the matter to the CIT (A) to re-examine the suppression of unaccounted income through ‘ token booking system’ stands confirmed.

47. Accordingly, TC (Appeal) No: 1026/2009 filed by the Revenue partly is allowed.

TC (Appeal) No: 274/2014 :

48. The block assessment order dated 28/02/2005, interfered by the Commissioner exercising power u/s 263 of the IT Act and same was set aside with direction to the Assessing Officer to reframe the block assessment order after ensuring that:-

“I therefore, set aside the block assessment completed vide order dated 28.02.2005 in the case of the assessee and direct the Assessing Officer to re-frame the block assessment order after ensuring that:



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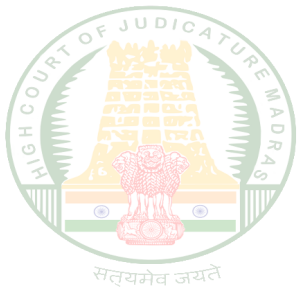
(i) Mistakes while filling up columns of Form No.2B are corrected and effect is correctly given while computing the undisclosed income of the assessee; and

(ii) the expenses of personal nature and expenses which are not allowable as per Income Tax Act about which the evidence is available in the seized material should be disallowed.

The Assessing Officer should give reasonable opportunity to the assessee before making fresh assessment.”

49. Accordingly, fresh Assessment order dated 31/12/2007 came to be passed by AO demanding tax of Rs.2,14,30,841/- That order was challenged by the assessee in CIT (A)/CBE/188/07-08. The appeal of the assessee was partly allowed vide order dated 25/03/2008 with a below observation and a direction to the AO:-

“5.2 I have examined the facts of the case. In para 4 of Order u/s 263 it is mentioned that the assessee had admitted before the CIT, Central II, Chennai that there was a mistake in filling Form No.2B. In view of this fact the CIT, Central-II, Chennai had directed the A.O. to ensure that mistakes while filling up columns of Form 2B are corrected. The A.O. has not got the filling of Form No.2B corrected. Since the A.O. has not followed the instruction of the CIT, Central II, Chennai the A.O. is directed to give an opportunity to the assessee to revise Form No.2B, and then, compute the total undisclosed income CIT,



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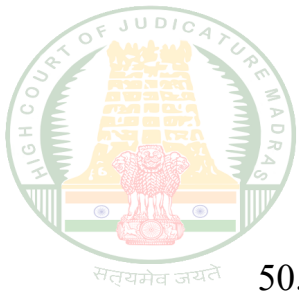


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Central II, Chennai the A.O. is directed to give an opportunity to the assessee to revise Form No.2B and then compute the total undisclosed income.

“The A.O. has treated the total income of Rs.1,68,90,172/- shown in the return of income for A.Y.2002-03, as undisclosed income. He has treated the returned income of A.Y.2002-03 as undisclosed income for the reason that the return of income was filed on 12.03.2004 a date after the date of search. It is found that the return of income for asst.year 2002-03 declaring a total income of Rs.1,68,90,172/- was filed on 12.03.2004. The DCIT, Central Circle-II(3), Chennai has passed the assessment order u/s 143 for the A.Y.2002-03 on 25.02.2005. In this order the total income is assessed at Rs. 1,68,90,170/- and the credit for TDS at Rs.17,89,147/-, advance tax at Rs.16,15,000/- and Self Asst.tax at Rs.29,62,507/- totalling to Rs.63,66,654/- was given. This shows that the return of income for A.Y.2002-03 filed on 12/03/2004 was a valid return filed u/s 139(4) of the IT Act and the income shown in this return has been assessed to tax. This shows that the income returned in the return filed on 12/03/2004 falls within Section 158BB(1)(c)(A) and does not fall under Sec.158BB(ca).

In the judgment passed in the case of ACIT v. A.R. Enterprises [(2005) 274 ITR 110], the Hon'ble Madras High Court has held that the income disclosed on account of payment of advance tax cannot be held to be undisclosed income for the purpose of block assessment. This ratio applies also in respect of TDS. The facts of the assessee's case clearly show that advance tax was paid in respect of the total income declared at Rs.1,68,90,172/- for the A.Y.2002-03 after taking into account the TDS deducted. The appellant's case is directly covered by the Hon'ble High Courts judgment referred above. Hence, the income of Rs.1,68,90,172/- shown in the return of income for the A.Y.2002-03 is not to be treated as undisclosed income. The A.O. is directed to recompute the undisclosed income after giving an opportunity to the appellant to revise Form No.2B.”



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50. Pursuant to the direction of the CIT (A), the AO passed order u/s 251 r/w 143(3) of the Act on 31/12/2010. In this order the AO stated that the assessee was given an opportunity to file the revised Form 2 B but the appellant has not availed the opportunity. Hence the total income determined as Rs 4,67,00,770/- u/s 158 BC r/w 143(3) r/w 263 of IT Act.

51. Aggrieved by the fresh assessment order dated 31/12/2010 which was identical to the assessment determined in the earlier order dated 31/12/2007, the assessee filed appeal before CIT (A). The Appellate Authority after extracting the facts of the case and the outcome of the connected litigation deleted all the additions and allowed the appeal partly for the purpose of statistics vide order dated 14/07/2011.

52. In this order, the appellate authority took note of the order dated 25/03/2008 passed by his predecessor in CIT (A) CBE/188/07-08 in the appeal filed by the assessee challenging the assessment order dated 31/12/2007 and held



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that the income returned for the Assessment Year 2002-03 should be taken as Rs 1,68,90,172/- in the computation of undisclosed income for the block period. The appellate authority further held that in the revised Form 2 B, filed on 09/03/2007 as per the order of the Commissioner passed u/s 263 and his explanation for the lorry hire charge Rs 2,42,71,600/-.satisfied that it is only accounting aspect and cannot come under the definition of undisclosed income. Hence same to be deleted from the assessment order.

53. The Revenue filed appeal before the Tribunal challenging the deletion of Rs 1,68,90,172/- by treating it as disclosed income for the AY 2002-03 following the judgment of High Court in T.C.(A)No.1409/2009 dated 05/01/2010 which is challenged before the Hon'ble Supreme Court and pending. Further the judgment of High Court rendered in *A.R. Enterprises case (cited supra)* for the proposition that the TDS and payment of Advance Tax would make out the corresponding income disclosed and the relevant income cannot be treated as undisclosed income relied by the Appellate Authority and the Tribunal. This Judgment of the



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High Court later reversed by the Hon'ble Supreme Court. Hence the said
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preposition no more holds the field.

54. The Tribunal considering the dismissal order of SLP arising from TC (A) No: 1409/2009 confirming the deletion of Rs.1,68,90,172/- and the facts of the case in A.R. Enterprises, dismissed the appeal of the Revenue holding that the assessee herein not only paid the advance tax but also filed the return for the Assessment Year 2002-2003 in the normal course and assessment completed under Section 143(2) of the Act before the block assessment order. It also held that the Form 2 B submitted before the appellate authority is not a revised Form but a corrected Form after rectifying the mistakes apparent in the return filed by the assessee.

55. The Learned Senior Standing Counsel for the Revenue submitted that, it is not correct to say that the treatment of Rs.1,68,90,172/- as disclosed income has reached finality on dismissal of SLP preferred by the Revenue challenging the

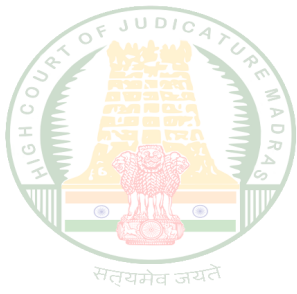


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order passed in TC (A) No: 1409/2009. In fact the Supreme Court has not considered the question of law in this case but expressly left it open. The question of law came up for consideration subsequently in *ACIT –vs- A.R.Enterprises reported in [350 ITR 489]*, in which, the Hon'ble Supreme Court has categorically held that payment of advance tax *per se* will not indicate the intention of the assessee to disclose the income, if he fails to file return of income by the due date under Section 139 of the Act. In the instant case, the return filed for the AY 2002-03 on 01/09//2004 after the due date. Hence the treatment of Rs.1,68,90,172/- as disclosed income is against the law.

56. Search qua payment of advance tax and filing of return disclosing the income came up for consideration before the Supreme Court in *ACIT , Chennai – vs- A.R. Enterprises*. To hold the payment of advance tax as disclosure of income the assessee has to satisfy the following conditions:-

(a)if the search is conducted after the expiry of the due date for filing return, payment of advance tax is irrelevant in construing the intention of the assessee to disclose income. Such a situation would find place within the first category carved out by Section 158B i.e., where income has clearly not



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been disclosed. The possibility of the intention to disclose does not arise since, the opportunity of disclosure has lapsed i.e., through filing of return of income by the due date.

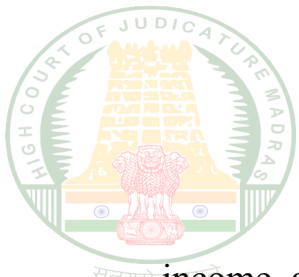
(b) If, on the other hand, search is conducted prior to the due date for filing return, the opportunity to disclose income or, in other words, to file return and disclose income still persists. In which case, payment of advance tax may be a material fact for construing whether an assessee intended to disclose.

(c) An assessee is entitled to make the legitimate claim that even though the search or the documents recovered, show an income earned by him, he has paid advance tax for the relevant assessment year and has an opportunity to declare the total income, in the return of income, which he would file by the due date. Hence, the fulcrum of such a decision is the due date for filing of return of income vis-a-vis date of search.

(d) According to Section 139(1), every person who is assessable under the Act, must file a return declaring his or her total income during the previous year on or before the due date, for assessment under Section 143. Hence, the 'disclosure of income' is the disclosure of the total income in a valid return under Section 139, subject to assessment and chargeable to tax under the provisions of the Act.

(e) It is important to bear in mind that total income is distinct from the estimated income, upon the basis of which, advance tax is paid by an assessee. Advance tax is based on estimated income, and hence, it cannot result in the disclosure of the total income assessable and chargeable to tax.

57. The search in this case commenced on 22/01/2003. The assessee has filed return for the Assessment Year 2002-03 on 12/03/2004 declaring taxable



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income as Rs.1,68,90,170/-. This was processed on 27/08/2004 under section 143(1). Later taken up for scrutiny in response to section 143(2) notice. The due date for filing return for the AY 2002-03 under Section 139 for a Company extended for that year upto 31st October 2002.

58. Thus from the record it is clear that the assessee has filed the return only after the due date and after the search operation. Therefore the belated disclosure of income after the due date and after the search operation will not entitle the assessee to make a legitimate claim that Rs 1,68,90,170/- to be treated as disclosed income even if the said income disclosed in the returns subjected to regular assessment.

59. Re-capitulating the facts of the instant case, the undisclosed income was computed on 28/02/2005 in the block assessment after calling for the explanation from the assessee giving adequate opportunity of hearing. The returns filed for the AY 2002-03 for regular assessment by the assessee only on 12/03/2004 after the due date for that AY. The regular assessment based on the returns done on



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25/02/2005 just few days prior to the block assessments. After noticing the error, that as per Section 158 BB(ca) the return of income Rs 1,68,90,172/- disclosed after the search operation ought to have been taken as 'NIL', the assessing officer himself had sent proposal to the Commissioner of Income Tax for revision u/s 263 of the Act. Accordingly, the Commissioner has examined the records and passed order on 09/03/2007 to reframe the block assessment. The block assessment as directed by the Commissioner made on 31/12/2007. The appeal against the reframed block assessment by the Assessee partly allowed by holding, the income returned in the return filed on 12/03/2004 falls within section 158BB(1)(C) (A) and does not fall under Section 158BB(ca). Hence considering the dictum laid by the High Court in ACIT –vs- A.R. Enterprises the appellate authority directed the AO to re-compute the undisclosed income receiving the revised Form 2 B from the assessee. The Assessee did not file the revised Form 2B before the AO for him to recompute the undisclosed income. Hence the AO has passed the assessment order 31/12/2010 identical to the order dated 31/12/2007. The assesss who failed to file the revised Form 2B, had preferred appeal before the CIT (A) and filed fresh Form 2B before the appellate authority. Citing the earlier dismissal order of his predecessor passed on 25/03/2008 in the appeal by the Revenue challenging the



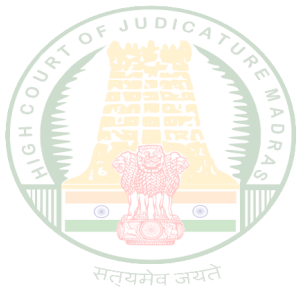
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deletion of Rs 1,68,90,172/- as undisclosed income and the loss claimed after making correction to Form 2B the remaining Rs 2,42,71,600/- assessed as undisclosed income was also deleted. Before the Tribunal, the Revenue had raised the irregularity in accepting the revised Form 2B by the appellate authority and the error in following the judgment reversed by the Supreme Court. However, same not considered by the ITAT.

60. Difference between Section 158BB(1)(c)(A) and Section 158BB(ca) can be clearly understood by plain reading. Hence, those provisions are extracted under:-

“158BB(1)The undisclosed income of the block period shall be the aggregate of the total income of the previous year falling within the block period computed, [in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence]as reduced by the aggregate of the total income or as the case



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may be, as increased by the aggregate of the losses of such previous years, determined-

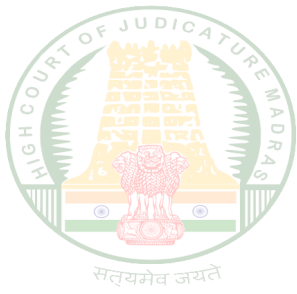
(a) where assessments under Section 143 or Section 144 or section 147 have been concluded [prior to the date of commencement of the search or the date of requisition] on the basis of such assessments;

(b) where returns of income have been filed under section 139 [or in response to a notice issued under sub-section (1) of section 142 or section 148] but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

(c) where the due date for filing a return of income has expired, but no return of income has been filed-

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount



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not chargeable to tax for any previous year falling in the block period.

(Ca)where the due date of filing a return of income has expired, but no return of income has been filed, as nill, in cases not falling under clause(c)]”

61. The dismissal of the earlier appeal by the Revenue by CIT (A) not conclusive of the issue since, against the said order further successive appeals by the Revenue ultimately in SLP the Hon’ble Supreme Court though dismissed the appeal, left open the question of law. We find that the law settled by the Supreme Court in *ACIT -v- A.R Enterprises* reported in (350 ITR 489) and same holds the field. Therefore, it is clear that the impugned order of the tribunal suffers misapplication of law, condonation of procedural flaw and perversity by not following the dictum of the Supreme Court citing an illusionary reason.

62. As a result, the impugned order of the tribunal dated 13/08/2013 confirming the order if the CIT (A) dated 14/07/2011 is set aside. The assessment



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order dated 31/12/2010 passed u/s 251 r/w 143(3) of the IT Act on 31/10/2010 is
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confirmed. In fine IT (A) No: 274/2014 is allowed.

RESULT:-

(1) T.C. (A).No:373 of 2009: the appeal filed by the assessee is dismissed. No costs.

(2) T.C.(A).No:1026 of 2009: the appeal filed by the Revenue partly allowed. No costs.

(3) T.C (A) No: 274/2014 the appeal by the revenue is allowed. No costs.

(Dr.G. JAYACHANDRAN,J.)

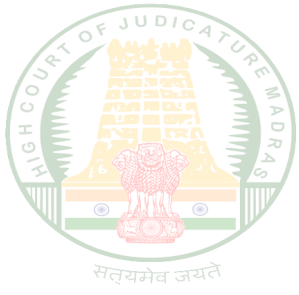
(R.SAKTHIVEL,J.)

07.04.2026

Index:yes

Neutral citation:yes/no

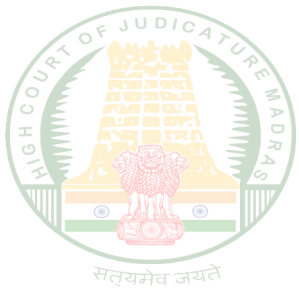
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To
The Deputy Commissioner of Income Tax,
Central Circle II (3), Chennai 600 034.



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Dr.G. JAYACHANDRAN,J.

and

R.SAKTHIVEL,J.

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delivery Common Judgment made in
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