

CASE NO.:
Appeal (civil) 4262 of 2007

PETITIONER:
Commissioner of Income Tax, Salem

RESPONDENT:
P.V.Kalyanasundaram

DATE OF JUDGMENT: 14/09/2007

BENCH:
S.B.SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 4262 / 2007
(arising out of SLP) No. 16462/2006)

HARJIT SINGH BEDI, J.

1. Leave granted.

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 260 A 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.34.85 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/- 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/- 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 158 BD 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:-

(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?

(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?

(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?

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.

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 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.

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.