



## **MAD HC: Telescoping Without Explaining Source Not Permissible**

### **Facts of the case**

Smt. N. Saroja and her three sons N. Ravichandran, N. Muralidharan, and N. Mohanraj were living jointly at Mayiladuthurai and carrying on jewellery business individually and as HUF under different trade names. On 23rd May, 2003, a search was conducted at their residential and business premises, during which incriminating documents, loose sheets, jewellery, and cash were seized. Based on the materials collected, the Assessing Officer ('AO') completed block assessment for the period from 1st April, 1997 to 23rd May, 2003. The AO opined that a house property purchased by the brothers showing sale consideration of Rs. 14 lakhs were actually worth more than Rs. 1.50 crores, and payments totalling Rs. 61,69,000 were evidenced through loose sheets recovered during the search. Additionally, out of 9525.060 grams of gold jewellery found in their possession, only 6155.710 grams were accounted for, leaving 3032 grams unexplained. The AO treated the unexplained jewellery as investment from undisclosed income and computed undisclosed income of Rs. 17,47,909 for each brother and Rs. 3,79,040 for Smt. Saroja. The CIT (Appeals) partly allowed the assessee's appeals, and the Income Tax Appellate Tribunal (ITAT) dismissed the assessee's appeals while partly allowing the Department's appeals. Aggrieved, the assessee appealed to the Madras High Court.

### **Assessee's contentions**

The assessee argued that the loose sheets recovered during the search had no probative value as they were neither signed nor written by the assessee or the vendor. They contended that in a civil suit filed by them against the seller, the Civil Court had held that the actual sale consideration for the property was only Rs. 14 lakhs and not Rs. 1.5 crores. They further argued that the jewellery kept at their residence should be treated as business stock, and that telescoping of the deficit in explained cash balance should be allowed before arriving at the undisclosed income.

### **Revenue's contentions**

The Department argued that the loose sheets contained detailed contemporaneous entries of payments made for the property, including advance of Rs. 1,00,000, first instalment of Rs. 40,00,000, and various other payments totalling Rs. 62,68,950. The Department submitted that the assessee admitted the recovery of loose sheets but failed to explain the unaccounted payments. Regarding the jewellery, the assessee could not produce any evidence to show that the excess jewellery was part of their business stock or wealth tax returns. The Department contended that telescoping cannot be allowed without the source of cash being explained.



### **Ruling by Madras HC**

The Madras High Court dismissed all the appeals filed by the assesseees and upheld the orders of the ITAT. The Court held that the law of evidence regarding appreciation of evidence in tax proceedings is not the same as in civil or criminal cases. U/s 132(4) and (4A) of the Income-tax Act, 1961 ('the Act') the onus falls on the assessee to explain any contradiction, variation, omission, or addition in the books of accounts. Referring to the Supreme Court decision in *CBI vs. V.C. Shukla (1998)* (the Jain Hawala Dairy case), the Court observed that while loose sheets or scraps of paper cannot be termed as "books of account" for the purpose of section 34 of the Indian Evidence Act, 1872, for the purpose of assessing tax under the Act, such loose sheets containing entries contemporaneous with the transaction are trustworthy, if fairly corroborated. The Court held that the probative value of entries in loose sheets recovered from assesseees, who are in the habit of making regular business records contemporaneously, is high, and the onus to disprove those entries is on the assesseees. In the present case, the assesseees admitted the recovery of loose sheets but only gave a vague denial, which was insufficient to shift the onus of proof. Regarding the jewellery, the Court held that it was a pure question of fact, and since the assesseees failed to disclose the excess jewellery in their wealth tax returns or business stock, it was rightly treated as undisclosed income. On the issue of telescoping, the Court held that the theory of telescoping excess from one head to another is permissible only if the source is satisfactorily explained. Without explaining the source of cash, the relief of telescoping is impermissible in law.

#### **Citation:**

N. Saroja [TS-400-HC-2026(MAD)]

#### **Our Comments**

This judgment establishes that loose sheets recovered during a search u/s 132 of the Act have high evidentiary value in income tax proceedings, even if they do not qualify as "books of account" under the Indian Evidence Act. The onus is on the assessee to disprove the entries found in such loose sheets, and a vague denial is not sufficient. The evidentiary value of such loose sheets would be high if the assessee is in the habit of making contemporaneous entries of business and other transactions. Further, the theory of telescoping cannot be invoked to adjust unexplained cash against investments unless the assessee satisfactorily explains the source of such cash. The Court also clarified that tax proceedings operate in a different evidentiary realm from civil suits, and findings of a Civil Court regarding sale consideration are not binding on tax authorities when independent incriminating documents exist.