IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 39 OF 2015

The Commissioner of Income Tax
Aaykar Bhavan
Patto Panaji, Goa. … Appellant

Versus

Shri Roy Antao
Opp. Santosh Garage, Near Art Ads,
Vidyanagar, Margao,
Major in age,
PAN : AEAPA3194H … Respondent

Ms. Asha Desai, Advocate for the Appellant.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **6th July, 2015**

ORAL ORDER *(Per F. M. Reis, J.)*

Heard Ms. Asha Desai, learned Counsel appearing for the Appellant.

2. The above Appeal challenges the order dated 18.07.2014 for the assessment year 2007-08 passed by the Income Tax Appellate Tribunal, Panaji.

3. Briefly, it is the contention of the Appellant that the Respondent filed his returns of Income Tax for the subject assessment year on 28.03.2008 declaring a total income of Rs.45,150/-. It is further their case that with regard to the spouse of the Respondent, an Order under Section 143(3) of the Income Tax Act was passed on 08.10.2009 making an addition towards capital gains amounting to a sum of Rs.55,58,525/-. Accordingly, penalty was imposed under Section 271(2)(c) of the said Act on 25.02.2010 against the Respondent.

4. Being aggrieved by the said Order, the Respondent preferred an Appeal before the Commissioner of Income Tax who allowed the said Appeal by its Order dated 28.09.2013. Being aggrieved by the said Order, the Appellant preferred an Income Tax Appeal No. 384 of 2013 which came to be dismissed by Order dated 18.07.2014. Being aggrieved by the said Orders, the Appellant preferred the above Appeal contending that the Tribunal has erroneously deleted the penalty under Section 271(1)(c) levied by the Assessing Officer by ignoring the distance measured by the Assessing Officer to prove that the land sold is within eight kilometres from the Municipal limits.

5. Ms. Asha Desai, learned Counsel appearing for the Appellant, in support of the above Appeal has taken us through the Orders passed by the CIT Appeals as well as the Income Tax Appellate Tribunal to contend that the findings arrived at by the Authorities are perverse and, consequently, calls for interference by this Court. Learned Counsel further pointed out that the Respondent has deliberately suppressed and failed to disclose the capital gains in respect of the sale transaction which entitled the revenue to impose the penalty in terms of Section 271(1)(c) of the said Act. Learned Counsel has thereafter taken us through the said provisions and pointed out that the Assessing Officer was justified to impose the said penalty and, as such, interference by the Appellate Authorities is totally erroneous which calls for interference by this Court on the aforesaid substantial questions of law.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. On going through the Order of the Assessing

Officer, we find that he has imposed penalty under Section 271(1)(c) of the said Act to the tune of Rs.14,40,912/- on the ground that the Respondent had not correctly filed his returns for the subject assessment year and had avoided to pay the capital gains. In the Appeal preferred before the CIT Appeals, we find that the learned Commissioner has taken note of the explanation given by the Respondent and the fact that the Respondent was also relying upon a certificate issued by the local Sarpanch and the Engineer from the Public Works Department to inter alia hold that the Respondents had not deliberately suppressed any material,. The Commissioner thereafter held that the Assessee had disclosed the correct amount of the sale consideration and to claim deductions/exemption for Agricultural land, it had relied upon the certificate from the Village Panchayat, certificates from the Kadamba Transport Corporation Limited and the Public Works Department Engineer, wherein it is certified that the road distance was more than eight kilometres from the nearest Municipal limits. It was also noted that the Assessing Officer had made further investigations and found with the aerial crow fly distance in a straight line distance of the land in question was less than eight kilometres and in fact the Assessee had thereafter paid the taxable dues of capital gains. The Commissioner as such came to the conclusion that the Respondent bonafidely claimed exemption depending upon certain certificates from the Government as well as the local self Governmental Authorities. Consequently, the Commissioner allowed the Appeal preferred by the Respondent.

7. On perusal of the Order passed by the learned Tribunal dated 18.07.2014, we find that the Tribunal also found that the Respondent-Assessee had disclosed the correct amount of the sales transaction whilst filing the returns. The

Tribunal also noted that based on the said Certificates the Respondent had claimed exception on a belief that the land was beyond 8 kilometres from the Municipal limits and that the Respondents had also paid the dues payable on such capital gains. The Tribunal as such found that the Respondent had acted bonafide and dismissed the Appeal preferred by the Appellant.

8. The learned CIT Appeals and the learned Income Tax Appellate Tribunal have concurrently come to the conclusion on the basis of the material on record that the Respondent had acted bonafide in claiming an exemption on the assumption that the subject land was not within 8 kilometres from the Margao Municipal limits. These findings have been arrived at based on the material on record as referred to in the impugned Orders passed by the learned Tribunal. The Authorities have also relied upon the Judgments referred to in the impugned Orders to come to such conclusions. We find no perversity in such findings nor any error committed by the Authorities below whilst passing the impugned Orders. The learned Tribunal based on the material on record, has rightly come to the conclusion that there was no ground to initiate penalty proceedings in terms of Section 271(1)(c) of the Income Tax Act as the Respondent had duly made the disclosures bonafidely.

9. We, accordingly, find that there are no substantial question of law that arise in the present Appeal for consideration of this Court and, as such, the Appeal stands rejected.

K. L. WADANE, J. **F. M. REIS, J.**

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