IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO. 8 OF 2015

(M/S. Yashoda Hybrid Seeds Pvt. Ltd. thr. MD vs. Assistant Commissioner of Income Tax, Wardha)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
NOVEMBER 30, 2015.

Heard Shri Samarth, learned counsel for the appellant - assessee and Shri Parchure, learned counsel for the respondent – Department.

Following two questions are pressed into service by Shri Samarth, learned counsel for the appellant.

"(I) When there is no concealment of income by the appellant and when the appellant has paid the taxes fully upon disclosure of income, which may be under wrong head, whether penalty under the provisions of section 271(1)(c) of Income Tax Act, could be levied ?

(II) Whether the Income Tax authorities below have exceeded the jurisdiction in imposing the penalty, when entire income was disclosed by the appellant and the appellant has paid all the taxes on it ?"

The assessee filed the return for the Assessment Year 2007-08 and in that return, filed on 15.11.2007, disclosed total income of Rs.9,59,620/- and agricultural income of Rs.87,98,520/-. It was processed under Section 143(1) on 05.03.2009 and during scrutiny, notice under Section 143(2) was issued on 18.09.2008.

The facts show that survey under Section 133A of the Income Tax Act was undertaken at the four establishments between 12.11.2009 to 14.11.2009. The survey revealed that three concerns to whom agricultural produce was sold by the assessee company, did not have any separate existence. The address of R.S.P.L. was in fact the address of residence of the Directors Shri Shankar and Smt. Uma Pawade. There was no shop or office of Ashtavinayak Seeds or Balaji Seeds. Gumashta license and stamps of Ashtavinayak were recovered from the Directors chambers at registered office of the assessee.

The information was sought under Section 133(6) from the Tahsildar, Hinganghat and it revealed that as per 7/12 extracts, on the land on which cotton was claimed to have been grown, Soyabean crop and Tur was cultivated. Part of the lands were lying barren. No records relating to expenses pertaining to agricultural or any separate agriculture division was found or produced. From the office of the assessee, the documents showing sale of plots under various names were also found. Income from those sales was never offered to tax at the hands of company or its Directors. "*Gupchup*" ledger was also found and it recorded out of book sales. On 13.11.2009, statement of Managing Director was recorded and that statement has been reproduced in penalty order dated 17.06.2010 in para 5.

In this background, on 25.11.2009,

representative of assessee furnished letter duly signed by Managing Director, offering additional income of Rs.88 lakh to tax for the Assessment Year 2007-08. The contention that this was offered to buy peace or then income was already disclosed and as such there is no concealment of income, raised by Shri Samarth, learned counsel, needs to be looked into in this background.

The Assessment Year 2007-08 was completed on 24.12.2009 after survey and Assessment Year also mentions statement of Managing Director recorded on 13.11.2009. He has stated that -

> *"In Assessment Year 2007-09 we had done farming on leased land but income shown from the above agriculture in the return is not correct. We have maintained "Gupchup" ledger sales which were never accounted in regular books maintained by us. Along with this income, the income of the company from sale of plots in the names of Radha Nagar, Yashoda Nagar, Ganesh Nagar etc. was by mistake recorded as agriculture income in the return of income. We accept this mistake. Hence, we will revise the return for A.Y. 2007-08 in which agricultural income was shown as Rs.88,00,000/- and in the revised return we should offer to tax Rs.88,00,000/- as "Income from Other sources". This would be over and above the regular returned income."*

The provisions of Section 271(1)(c) of the Income Tax Act, are attracted when inaccurate particulars of income are given or income is appropriated under wrong head, so as to avoid the tax liability. The judgment of the Hon'ble Apex Court in the case of *C.I.T., Ahmedabad vs. Reliance Petroproducts Pvt. Ltd.*, reported at AIR 2010 SC 1881, shows that there the assessee had filed a return declaring loss and return was finalized under Section 143(3), determining income at Rs.2,22,688/-. The penalty proceedings under Section 271(1)(c) of the Income Tax Act were initiated on account of concealment of income/ furnishing of inaccurate particulars of income. That particular expenditure was claimed by the assessee on the basis of expenditure made for paying interest on the loans incurred by it, by which amount the assessee purchased some IPL shares by way of its business policies. The Hon'ble Apex Court has found that the assessee did not earn any income by way of dividend from those shares. The company had in its return claimed disallowance of the amount of expenditure for the sum of Rs.28,77,242/- under Section 14A of the Act. It is in this background that the Hon'ble Apex Court found that it was not amounting to furnishing inaccurate particulars or concealment of income. The finding, therefore, is after considering the facts and no general proposition, as such, has been laid down.

In the case of *Anoopgarh Kraya Vikraya Sahakari Samiti Ltd. vs. Assistant Commissioner of Income Tax*, at (2015) 124 DTR (Raj) 165, the assessee had disclosed details about his income including the fact of sale of Dal mill and receipt of consideration.

Depreciation was claimed by the assessee treating the same as a depreciable asset. The written down value too was referred but the error crept in treating the transaction as long term capital gain. The High Court held that it could not have been treated as concealment of particulars of its income as the claim was debatable one and there was no specific finding that the assessee had submitted false or incorrect amount.

In the case of *Commissioner of Income-Tax vs. S. Khader Khan Son*, reported at (2008) 300 ITR 157 (Mad), the learned Single Judge has found that the word "*may*" used in Section 133A(3)(iii) of the Income Tax Act, makes it clear that the materials collected and the statement recorded during the survey, under that section, are not conclusive piece of evidence by itself.

In facts before us, the existence of Gupchup ledger, out of book sales, not disclosing of said income in regular books of account, are all admitted facts. These admitted facts are further supported by the statement of Managing Director, recorded on 13.09.2009 during survey operations. The income which was not even disclosed as business income was treated as agricultural income in the return which was presented and in relation to which during scrutiny, notice under Section 143(2) was issued.

In this situation, it is apparent that all above judgments which take a particular view on the strength of material found on record, have no application. Here, the assessee has on one hand stated that the income was disclosed to buy peace and on the other hand, has also contended that the statement to that effect has been recorded under duress. The stand, therefore, is inconsistent. Apart from this inconsistent statement, the material on record is also sufficient to show that there was concealment, warranting penalty under Section 271(1)(c) of the Act.

In view of the arguments advanced, we find that substantial questions of law do not arise for determination. Income Tax Appeal is, therefore, dismissed. No costs.

JUDGE **JUDGE**

*GS.