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

INCOME TAX APPEAL NO. 74 OF 2009

(The Commissioner of Income Tax-III, Nagpur Vs. Smt. Sitadevi w/o Purananlal Agrawal & 2 others)

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

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Shri S. N. Bhattad, Advocate for the appellant.
Shri K. P. Dewani, Advocate for the respondents.

CORAM : B. P. DHARMADHIKARI AND P. N. DESHMUKH, JJ.
DATED : 09 OCTOBER, 2015

Heard.

2. Following question has been pressed into service before this Court.:

> Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in not appreciating that the payment of any tax by assessee can only be considered if the assessee has made specific offer in this regard from the date of making such offer and in absence of such an offer, the department cannot appropriate the seized amount towards a liability proposed to be created in future and no payment can be deemed to have been made by the assessee till

the creation of such liability?

3. After hearing the learned Counsel, we find that the Income tax Appellate Tribunal (ITAT) in paragraph 10 of its order has noted the facts. The facts show that during search on 25/8/2004, assessee surrendered income of Rs.2.00 crores approximately, which included cash amount of Rs.28.80 lakh. This cash amount was seized on 25/8/2004 itself. The ITAT has further mentioned that this amount of Rs.28.80 lakh remained available with the Government from the date of search and it was adjusted by Department against the tax liability arising as a consequence of search operation. The ITAT expressly noted that "subsequently" (*Emphasis added*) the Commissioner of Income Tax (CIT) exercised jurisdiction under Section 263 of the Act and withdrew deduction under Section 80-IB.. The Assessing Officer, while giving effect to this order of CIT, recalculated the interest chargeable under Sections 234-A and 234-B of the Act without giving credit for the amount of cash so seized and appropriated.

4. We find that rectification order is passed on 15/12/2008 after the order of Commissioner, Income Tax-III, Nagpur under Section 263 of the Act dated

26/12/2007.

5. The facts noted supra, therefore, clearly show that A.O. ignored the earlier adjustment of tax liability against cash of Rs.28.80 lakh already with the Department from 25/8/2004. The demand for interest is for the period from 25/8/2004 till January, 2007. As said amount was already appropriated towards interest by the Department itself, there is no need of any specific offer by assessee authorizing that course of action. Assessee never objected to it and thus impliedly, ratified the same.

6. It is therefore apparent that on the facts noted supra, the question raised does not arise from the order of ITAT.

7. The appeal is rejected. No costs.

JUDGE **JUDGE**