

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

W.T.A.No.7 OF 2015

DATED:23.4.2015

Between:

Sampathirao Apparao ... Appellant

And

Income Tax officer

Ward-2

Srikakulam ... Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

W.T.A.No.7 OF 2015

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JUDGMENT: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is preferred against the judgment and order of the learned Tribunal,

dt.22.10.2010, in relation to assessment year 2004-2005, and sought to be admitted on the following suggested questions of law.

1. “Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in disbelieving the version of the assessee regarding the advances paid for the purchase of agricultural lands during the relevant years?
2. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in treating the advances given by the assessee as cash on hand and treating the same as addressable under the Wealth Tax Act?
3. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in disbelieving the proof produced by the assessee to substantiate the advances paid for purchase of agricultural land without there being any valid reasons being attributed by the department to the contra?
4. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in coming to the conclusion the non-materialization of the purchase of lands and receipt back of the advances by the assessee from the vendors as a fictitious transaction?
5. Are the decisions rendered by all the three authorities are arbitrary, illegal and perverse?”

We have heard the learned counsel for the appellant and gone through the impugned judgment and order of the learned Tribunal.

We are unable to admit this appeal for the following reasons.

The learned Tribunal has come to a fact finding, on the issue of unexplained cash credit, in the manner as follows.

“In all these cases, the assessees have taken a common stand that the agricultural income was accumulated over a period of years 1980-81 from the agricultural income earned from lease hold land but no documentary evidence was filed in support of these contentions. Before the A.O., the assessees have taken a stand that land was taken on lease from father-in-law of Shri S. Appa Rao, but during the appellate proceedings, it was claimed to have taken from S. Laxmaiah. Even before us no evidence was filed to prove these facts that the assessees have ever taken agricultural land from anyone. In revenue’s record, the yearly entries are to be made by the revenue officials with regard to the ownership of the agricultural holdings and

also the person who cultivate the agricultural land. In the absence of any documentary evidence or otherwise, we are unable to accept the contention of the assessee that they have ever cultivated the agricultural land in any of the years. Since the opening cash balance as on 31.3.2001 was shown by the assessee in their cash flow statement filed before the CIT(A), the onus is upon them to prove the accumulation of the opening balance as on 31.3.2001. Neither before the lower authorities, nor before us the assessee could place a satisfactory explanation about the accumulation of the opening balance.”

On the issue with regard to brokerage income of HUF, the learned Tribunal has found as follows:

“We find that in this regard also nothing has been placed before us to prove that the HUF was engaged in the business of brokerage. Therefore, whatever income from brokerage was declared in the name of the HUF, it was rightly treated to be an income of the individual assessee S. Appa Rao.”

On the question of receipt of gift of Rs.50,000/- in cash, the learned Tribunal has found as follows:

“Before the lower authorities, the assessee has not filed a satisfactory explanation from whom he has received the gift. Despite of repeated request of the A.O., the assessee could not file the confirmation letters nor could he produce him for examination. Since the assessee could not prove the source of gift properly, the revenue has rightly treated the same as an income from undisclosed sources u/s.68 of the Act.”

Now, while deciding the wealth tax appeals, the learned Tribunal found as follows. It was claimed by the assessee that upto the financial year 2000-2001 relevant to the assessment year 2001-02 in the case of S. Appa Rao, the advances were given at Rs.21 lakhs. In the case of Smt.

S. Dhanalaxmi, W/o. S. Appa Rao, the advances were given upto 2000-01 at Rs.49,49,000/- and in the case of HUF, i.e. S. Appa Rao (HUF), the advances were given upto financial year 2000-01 at Rs.49 lakhs. It was found by the learned Tribunal that these advances were claimed to have been given towards the purchase of agricultural land but none of the purchases have been materialized and it was contended by the assessee that the advances were finally returned back

subsequently. It was further recorded by the learned Tribunal as follows:

“During the course of assessment proceedings or before the CIT(A), the assessee could not substantiate these facts either by producing the proposed transferor/debtor or by producing any sale agreement. In the absence of relevant evidence, the entire amount was treated to be the cash available with the assessee and the A.O. has assessed the wealth tax in the hands of respective assessee after allowing a benefit of exemption of Rs.50,000/- as per provisions of Section 2(ea)(vi) of the Wealth Tax Act.”

Thereafter, it was recorded by the Tribunal as follows:

“In the absence of material evidence, the revenue has treated these advances as a cash available in the hands of the assessee. Similar is the position before us as nothing is placed to prove these facts.”

In view of the aforesaid fact finding, we do not find any illegality or infirmity in the order of the learned Tribunal. Issue of perversity is absolutely misplaced on these fact findings, which is based on materials disclosed by the assessee. We dismiss the appeal accordingly. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

23.4.2015

GJ