

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

I.T.T.A.No.236 of 2015

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act"), is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad in I.T.A.No.1770/Hyd/2013 dated 28.08.2014 for the assessment year 2007-08.

The respondent-assessee derived income from consultancy and remuneration from the partnership firm M/s. Vishnu Priya Finance. During the survey operations conducted in the case of Sri G.Sanjeeva Reddy, partner of M/s.S.V.Constructions, it was found that the assessee had entered into a sale agreement, along with three other members, for purchase of land against which part payment of Rs.4.90 crores was admitted to have been made by the date of the survey. Out of the assessee's admitted share of Rs.1,22,50,000/-, Rs.1,17,50,000/- was treated as unexplained investment and added to the returned income. Further, a sum of Rs.25,00,000/- was also brought to tax, treating it as undisclosed additional investment, in the land by the assessee since receipt of Rs.1.00 crore, found during the survey, was not admitted by the assessee.

In appeal the Tribunal, by its order dated 25.01.2012, confirmed both the additions made in the assessment order. Penalty proceedings were initiated thereafter. The Assessing Authority held that the assessee had failed to prove the creditworthiness of the creditors and source for further investment of Rs.25,00,000/- and imposed penalty of Rs.47,96,550/- under Section 271(1)(c) of the Act.

The assessee questioned the penalty order before the Commissioner of Income Tax (Appeals), both on the ground of limitation and with respect to the additions. The Commissioner of Income Tax (Appeals) held that there was no infirmity in the order of the Assessing Officer with regards limitation. On the issue of addition of Rs.1,17,50,000/-, the assessee contended that the contributions were received from seven members, who had come together, and had invested through the assessee; a strong reason, to disbelieve such contributions, was on account of the fact that the entire transactions were in cash, and the contributing parties could not explain their contributions with the

help of verifiable sources; their main sources were agricultural income and sale of agricultural lands which were again in cash; the Assessing Officer recorded the statements from majority of such parties (5 out of 7), but such statements were not taken into consideration by the Assessing Officer for want of verifiable evidence/information; the assessee had explained, on the spot, the investment by producing creditors; the creditors had substantiated with respect to advancing sums; it was only the Assessing Officer who disbelieved that they had no creditworthiness, and this could not be treated as concealment. The Commissioner of Income Tax (Appeals) held that two creditors, one among whom was shown to be a Software Engineer, and another was shown to have agricultural income, were neither called nor examined by the Assessing Officer to judge their creditworthiness; additions made in quantum proceedings were different from penal proceedings, and the angle of concealment was not fully established on the issue of investments which were treated as unexplained to attract penalty under Section 271(1)(c) of the Act; and no penalty was leviable on Rs.1,17,50,000/- representing the contributions for investment by the assessee which were treated as unexplained income without proving the angle of concealment. To this extent, the Commissioner of Income Tax (Appeals) gave relief to the assessee. With regards addition of Rs.25,00,000/-, the Commissioner of Income tax held that penalty was leviable thereon representing the unexplained investments, where concealment was established by the facts of the case. The CIT (A) held that penalty was not leviable on the addition of Rs.1,17,50,000/- which also represented explained investment in the hands of the assessee, since no concealment was shown to have been established, and the submission of the assessee was merely disbelieved. The appeal was partly allowed.

In appeal by the Revenue, the Tribunal held that the additions made in the quantum proceedings were different from penalty proceedings; merely by disbelieving the explanation of the assessee, the Revenue could not come to the conclusion that the assessee had concealed the income, and had furnished inaccurate particulars; the assessee had filed confirmatory letters, and the Assessing Officer had examined the persons all of whom had confirmed advancing the amounts; assessment proceedings and penalty proceedings were separate and distinct; once the assessee was able to furnish a *bona fide* and plausible explanation in respect of the material facts, the burden cast by Explanation 1 of Section 271(1) (c) of the Act was discharged; merely because the explanation furnished by the assessee was considered unsatisfactory and unreasonable, it would not justify invocation of Clause (a) to levy penalty under Section 271(1)(c) of the Act; and there was no infirmity in the order of the Commissioner of Income Tax (Appeals).

Penalty under Section 271(1)(c) of the Income Tax can be levied only in cases where the Assessing Officer, or the Commissioner of Income Tax (Appeals), are satisfied that any person has concealed the particulars of his income, or has furnished inaccurate particulars of such income. The penalty proceedings initiated against the respondent-assessee was on the ground that he had concealed the particulars of his income. Both the Commissioner (Appeals) and the Tribunal have recorded a finding that the assessee had not concealed the income, and the Assessing Officer had merely disbelieved his version. The Tribunal is a final court on fact and, save a perverse finding or a finding based on no evidence, no substantial question of law can be said to have arisen necessitating interference under Section 260-A of the Act. Both the Commissioner of Income Tax (Appeals) and the Tribunal have assigned reasons for arriving at the satisfaction that there was no concealment of income on the part of the assessee and, based on such findings, held that no penalty could be levied on the additions made of Rs.1,17,50,000/-. We find no error in the order, much less a substantial question of law, necessitating interference in appeal.

The appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

04th November 2015.

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

—

—

—

—

—

—

—

—

I.T.T.A.No.236 of 2015

—

Date: 04.11.2015

JSU