HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

ITTA No. 303 OF 2003

JUDGMENT: (per the Hon'ble Sri Justice A. Ramalingeswara Rao)

This appeal is directed against the order dated 30-01-2003 passed in I.T (S.S) A.No.220/Hyd/1997 for the block period 1986-87 to 1996-97 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A' (for short, 'the Tribunal').

The assessee, Sri Sawarmal Agarwal, is the appellant before this Court. Though the appellate order of the Tribunal had dealt with several questions/issues raised by the assessee, the only question that falls for our consideration in the present appeal is with regard to the depreciation and payment of interest on the car purchase. Thus, the substantial question of law framed for consideration in the memorandum of appeal reads as follows:

> " Whether on the facts and in the circumstances of the case the Hon'ble Tribunal is right in disallowing the appellants claim for depreciation and payment of interest on the car purchased by him from out of the business funds."

The appellant – assessee belongs to the group of Sri R. Satyaprakash Agarwal & Sons. He is the proprietor of M/s. Sitaram & Sons and has various other business concerns. The entire group was involved in textile business. There were search and seizure operations in the premises of the assessee on 09-01-1996. During the course of assessment proceedings, notice under Section 158 BC of the Income Tax Act, 1961 (for short, 'the Act') was issued on 21-08-1996. The assessee appeared along with his representative and furnished the necessary details.

After obtaining the approval of the Commissioner of Income Tax

(Appeals) for getting the books of accounts audited under Section 142(2A) of the Act, an order was passed on 23-12-1996. The order was served on the assessee and also the auditors nominated by the Commissioner of Income Tax on 26-12-1996. After receiving the special audit report, show cause notice dated 03-07-1997 containing the proposed additions was served on the assessee on 04-07-1997. On the same day i.e., on 04-07-1997, the asseesee filed return of income for the block search period returning a total undisclosed income of Rs.11,75,119/-. The assessee also furnished a reply to the show cause notice on 14-07-1997. Ultimately, the assessment was completed and investments in purchase of car along with other items were shown as additions. The total unaccounted income was shown as Rs.41,15,038/-. Challenging the same, the assessee preferred an appeal before the Tribunal and the Tribunal through the impugned order, accepted the contention of the asseesee with regard to the investment made in acquisition of car and accordingly allowed set off of the income against the investment in the car. But so far as allowance of depreciation and interest is concerned, it did not accept the contention of the assessee on the ground that the learned counsel for the assessee was not able to provide evidence to show that the car was used for the business purpose of the assessee. Against the said order of the Tribunal to the extent of disallowance of depreciation and interest on the car, the present appeal is filed.

Before the Tribunal, the assessee did not produce any evidence to show that the car was used for business purpose and in the absence of any evidence, the Tribunal did not accept the plea of the assessee. In the present appeal, the appellant could not demonstrate on the basis of record that the car was used for business purpose and, therefore, we cannot disturb the said finding of fact recorded by the Tribunal. Accordingly, we conclude and answer the substantial question of law in favour of the Revenue and against the assessee.

The appeal is accordingly dismissed. Miscellaneous petitions, if any, also stand closed. There shall be no order as to costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

24-02-2015
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