

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.NO.544 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred against the order of the Income Tax Appellate Tribunal, Hyderabad (Tribunal), in I.T.A.No.1717/Hyd/2014 dated 27.03.2015.

The appellants herein filed the appeal before the Tribunal against the order of the CIT (Appeals), Hyderabad, dated 30.06.2014 for the assessment year 2005-06. Pursuant to a search and seizure, action under Section 132 of the Act was taken in the group cases of Sujana Universal Industries Ltd., Hyderabad, during the financial year 2004-05. The respondents were assessed to tax under Section 143(3) read with Section 153C of the Act. An assessment order was passed on 22.12.2006 determining the total income as Rs.65,60,469/- as against the returned loss of Rs.99,73,735/-. The Assessing Officer added Rs.52,85,744/- by recomputing the income under the head 'Income from House Property'. He also disallowed loss on the sale of fixed assets claimed by the assessee for Rs.10,74,750/-. Aggrieved thereby, the respondent herein preferred an appeal to the CIT (Appeals) who dismissed the appeal. Consequently, the assessing Officer levied a penalty of Rs.22,81,879/- under Section 271(1)(c) of the Act by his order dated 26.03.2009. Aggrieved thereby, an appeal was preferred. The assessee contended before the CIT (Appeals) that the assessee had neither concealed any income nor furnished inaccurate particulars of income for the year under consideration and that levy of penalty, under Section 271(1)(c) of the Act, was not justified. The CIT (Appeals) by his order dated 30.06.2015, followed the judgment of the Supreme Court in the case of **CIT v. Reliance**

Petroproducts Pvt. Ltd. ^[1], and held that the assessee had neither concealed the income nor furnished inaccurate particulars of income for the year under consideration; and, therefore, the penalty under Section 271(1)(c) of the Act was liable to be cancelled. Aggrieved thereby, the revenue carried the matter in appeal to the Tribunal.

By the order under appeal, the Tribunal held that addition, under the head 'Income from House Property', was made by the Assessing Officer only by recomputing the income; due to an arithmetical mistake, in the computation statement filed by the assessee along with its return of income, the impugned additional had been made; this was evident from the Statement of Taxable income, a copy of which was submitted; from the statement, it was clear that the assessee had disclosed all the facts, relating to the earning of income from property, in the return of income filed by them; no particulars of income from house property were suppressed; the addition of Rs.52,85,744/- had been made on recomputation of income under the head 'income from house property'; as such, levy of penalty under Section 271(1)(c), with regards to the addition of Rs.52,85,744/-, was not warranted; the assessee had neither concealed any income nor furnished inaccurate particulars of income for the year under consideration; there was no seized material based on which additions were made in the assessment; the loss on sale of fixed assets had been shown in Schedule 10 to the Profit & Loss Account; the assessee did not furnish any particulars with regard to his income; and the addition made by the Assessing Officer was technical in nature. The Tribunal held that levy of penalty under Section 271(1)(c) of the Act, in respect of this addition, was not warranted.

An appeal under Section 260A of the Act can be entertained only if a substantial question of law arises for consideration. It is only if the appellants are able to satisfy the Court that the finding recorded by the Tribunal is based on no evidence or the finding is perverse, can a substantial question of law be said to arise necessitating interference

in appeal under Section 260A of the Act. In the present case, the Tribunal has held that the addition made by the Assessing Officer was on recomputation of the income under the head 'income from house property' and "loss on sale of fixed assets"; the assessee had neither concealed any income nor furnished inaccurate particulars of income for the year under consideration; and that the addition was merely technical in nature. It is not even the case of Sri J.V.Prasad, learned Standing Counsel for the Income Tax Department, that the above referred findings of the Tribunal are either perverse or are based on no evidence. We see no reason, therefore, to interfere with the order of the Tribunal in the exercise of jurisdiction under Section 260A of the Act.

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

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

2nd November 2015
RRB

[\[1\]](#) (2010) 322 ITR 158