

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.550 of 2008

Dr. Gauri Shankar Prasad, son of Late Sukhdeo Narayan, resident of Chesire, Home Lane, Bariatu, P.S. Bariatu, Distt-Ranchj

.... Appellant/s

Versus

- 1. Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Patna, Patna.
- 2. The Commissioner of Income Tax (Appeals)-II, Patna.
- 3. Dy. Commissioner of Income Tax, Special Investigation Circle, Patna.

.... Respondent/s

with

Miscellaneous Appeal No. 551 of 2008

Dr. Gauri Shankar Prasad, son of Late Sukhdeo Narayan, resident of Chesire, Home Lane, Bariatu, P.S. Bariatu, Distt-Ranchj

.... Appellant/s

Versus

- 1. Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Patna, Patna.
- 2. The Commissioner of Income Tax (Appeals)-II, Patna.
- 3. Dy. Commissioner of Income Tax, Special Investigation Circle, Patna.

.... Respondent/s

with

Miscellaneous Appeal No. 552 of 2008

Dr. Gauri Shankar Prasad, son of Late Sukhdeo Narayan, resident of Chesire, Home Lane, Bariatu, P.S. Bariatu, Distt-Ranchj

.... Appellant/s

Versus

- 1. Income Tax Appellate Tribunal Patna Bench having its office zat Beerchand Patel Path.
- 2. The Commissioner of Income Tax (Appeals)-II, Patna.
- 3. Deputy Commissioner of Income Tax, Special Investigation Circle, Patna.

.... Respondent/s

with

Miscellaneous Appeal No. 553 of 2008

Dr. Gauri Shankar Prasad, son of Late Sukhdeo Narayan, resident of Chesire, Home Lane, Bariatu, P.S. Bariatu, Distt-Ranchj

.... Appellant/s



Versus

- 1.Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Patna, Patna.
- 2.The Commissioner of Income Tax (Appeals)-II, Patna.
- 3.Dy. Commissioner of Income Tax, Special Investigation Circle, Patna.

.... Respondent/s

with

Miscellaneous Appeal No. 554 of 2008

Dr. Gauri Shankar Prasad, son of Late Sukhdeo Narayan, resident of Chesire, Home Lane, Bariatu, P.S. Bariatu, Distt-Ranchj

.... Appellant/s

Versus

- 1.Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Patna, Patna.
- 2.The Commissioner of Income Tax (Appeals)-II, Patna.
- 3.Dy. Commissioner of Income Tax, Special Investigation Circle, Patna.

.... Respondent/s

Appearance :

(In MA No.550 of 2008)

- For the Appellant/s : Mr. D.V.PATHY
Mrs. Manju Jha
- For the Respondent/s : Mr. HARS BARDHAN PRASAD
Mrs. Archana Sahi
Mrs.Vijaya Laxmi Srivastava

(In MA No.551 of 2008)

- For the Appellant/s : Mr. D.V.PATHY
Mrs. Manju Jha
- For the Respondent/s : Mr. HARS BARDHAN PRASAD
Mrs. Archana Sahi
Mrs. Vijaya Laxmi Srivastava

(In MA No.552 of 2008)

- For the Appellant/s : Mr. D.V.PATHY
Mrs. Manju Jha
- For the Respondent/s : Mr. HARS BARDHAN PRASAD
Mrs. Archana Sahi
Mrs. Vijaya Laxmi Srivastava

(In MA No.553 of 2008)

- For the Appellant/s : Mr. D.V.PATHY
Mrs. Manju Jha
- For the Respondent/s : Mr. HARS BARDHAN PRASAD
Mrs. Archana Sahi
Mrs. Vijaya Laxmi Srivastava

(In MA No.554 of 2008)



For the Appellant/s : Mr. D.V.PATHY
Mrs. Manju Jha
For the Respondent/s : Mr. HARS BARDHAN PRASAD
Mrs. Archana Sahi
Mrs. Vijaya Laxmi Srivastava

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 22-06-2016

Heard learned counsel for the appellants in all the five cases
and learned counsel for the Income-tax Department.

All the five appeals relate to the same assessee for five
different assessment years which have been filed against a common
order dated 16.05.2008 passed in I.T.A. Nos.93/Pat to 97/Pat of 2007
by the Income Tax Appellate Tribunal, Patna Bench, Patna and
accordingly, they have been heard together and are being disposed of
by this common order.

The appellant was an Officer of the Animal Husbandry
Department, Government of Bihar and posted as Regional Joint
Director of the said Department at Ranchi during the years 1990-91,
as District Animal Husbandry Officer, Ranchi from 1992 to June,
1995 and as District Animal Husbandry Officer, Chaibasa from June,
1995. He is one of the main accused in the cases registered by the
C.B.I. in connection with misappropriation of funds of the Animal
Husbandry Department, Government of Bihar.



A notification under Section 148 of the Income Tax Act, 1961 (in short “the Act”) was issued to the assessee followed by notices under Section 142 (1) of the Act on 12.11.1997 asking him to file income and expenditure account, capital account as on the first date and on the last date of the previous year and further the statements of all assets and liabilities, whether included in the accounts or not and whether standing in his own name or in the name of someone else as on the first date and on the last date of the previous year, directing him to comply with by 15.12.1997. On failure to comply with the same for a long period, the reminders along with show cause for penalty under Section 271 (1) (b), prosecution under Section 276CC and Best Judgment Assessment under Section 144 of the Act were issued vide letters dated 01.07.1998. Thereafter, by letters dated 01.11.1998, the copies of the valuation reports in respect of the properties in Nasik in the names of the family members of the assessee were issued and he was asked to explain the source of investment in these properties, for which the date of compliance was fixed on 30.11.1998. However, despite service of notices, no compliance was made and, therefore, Best Judgment Assessment was made for all the assessment years.

The allegations against the assessee regarding misappropriation of funds from the Animal Husbandry Department are as



follows:-

“Regarding fraudulent and dishonest withdrawal of contingency bills under major head 2403 (AHD) on the basis of fake allotment letters, sending the bills to the District Treasury, Chaibasa and Ranchi on the basis of false certificate showing receipt of Cattle feed, Fodder, Veterinary medicines and other materials during his tenure on different posts as enumerated above; receiving pecuniary benefits in lieu of drawing the bills of payment and opening of benami bank accounts and investment in property in the names of family members out of the fraudulent withdrawals.”

On the basis of the materials on the record, including the investigation reports and different bank accounts, cash, jewellery moveable and immovable properties etc. found in the name of the assessee and his family members, the Deputy Commissioner of Income Tax Department, Circle-1, Patna, the Assessing Officer assessed the income of the assessee, at different substantial amounts for the different years under Sections 144/147 of the Act and penalty proceedings were separately initiated by separate orders dated 12.03.1999 for the different assessment years. The appeals preferred against the said orders, being Appeal Nos. 282 to 286/A-1/04-05,



were dismissed on 07.11.2006 by the Commissioner of Income Tax (Appeals)-1, Patna. Further appeals before the Income-tax Appellate Tribunal, Patna Bench, Patna, being I.T.A. No.93/97/Pat/2007, were also dismissed, by order dated 16.05.2008. Aggrieved by the same, the present appeals have been filed, which were admitted on the following substantial questions of law:-

- “(i) Whether in view of the provisions of the Criminal Law Amendment Ordinance the assets both moveable and immovable could be a subject matter of assessment under the Act particularly, when the same are a subject matter of absolute attachment and are to be restored to the State Government?
- (ii) Whether the assessment of income and the corresponding investments amount to taxation of the same income twice?
- (iii) Whether the valuation of assets as made by the Valuation Officer of the Income Tax Department could be made a basis of re-assessment under the provisions of Section 147 of the Act?
- (iv) Whether the confirmation of additions on the basis of the statement of a third party without an opportunity of cross examination or any other relevant or corroborative



evidence or material justified?”

At the outset, learned counsel for the appellant does not press the aforesaid third question of law, as evidently the basis of re-assessment was not merely the valuation of assets but several other grounds and pieces of evidence.

With regard to the first question, it is the stand of learned counsel for the appellant that since the assets moveable and immovable which were the subject matter of assessment under the Act, had also been attached under the provisions of the Criminal Law Amendment Ordinance, 1944 by the orders of the Court and they were to be eventually restored to the State Government, hence, no assessment could have been made with respect to the same properties. It is submitted that on account of the provisions of the Criminal Law Amendment Ordinance, 1944, the subject matter of the assessment being liable to forfeiture to the State Government, the assessment of the same under the Income-tax Act would be wholly unjustified and illegal as after the attachment it ceased to be the property or income of the appellant, as is clear from the scheme of the Criminal Law Amendment Ordinance.

Learned counsel for the Revenue, on the other hand, submits that the aforesaid stand is not tenable, as liability under the Income-tax Act is not upon the property, rather upon the assessee and thus the



applicability of the Criminal Law Amendment Ordinance, 1944 has no relevance so far as the assessment under the Income Tax Act is concerned.

Although the submission of learned counsel for the appellant, at the first instance appears to be attractive but it is wholly misconceived according to us. The assessment under the Act is of any person having any income of certain extent in a particular assessment year; the income may be derived from legal or illegal sources but so long as it is an income for the particular assessment year, the liability to be taxed for the same under the Income Tax Act remains. The question of attachment of the property under the Criminal Law Amendment Ordinance is wholly irrelevant for the said purpose. So far as making of the assessment of the person who has derived that income by whatever manner in a particular assessment year is concerned, the liability would remain, irrespective of the attachment or even the forfeiture of the property if it so happens and it would be open to the Department to recover the liability under the assessment order through whatever process is permitted under the Act and Rules.

Even on a consideration of the Criminal Law Amendment Ordinance, 1944, it is evident that the attachment is only made where a person has committed any scheduled offence on the application of the State Government, and the amount of money or value of other



property is believed to have been procured by means of the offence. It further provides that if such money or property cannot for any reason be attached, then other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property may be attached. It must be understood that mere attachment of the property cannot be equated with its forfeiture to the State Government. Such forfeiture depends upon the person whose property has been attached being ultimately convicted by the criminal court. Even after the conviction a finding has to be recorded as to what part of the property has been procured by the convicted person by means of the scheduled offence and the District Judge is required to pass an order of forfeiture only with respect to that part along with personal attachment, etc. and thus neither the final forfeiture nor the forfeiture of the independent property is necessarily made as a result of the attachment. The effect of attachment is merely to prohibit the person or any one else from dealing with such property. So far as any right upon third party thereafter is concerned, the property continues to be in the name of the said person until a final order of forfeiture of part or whole of the property is passed. Thus it does not appear that the Criminal Law Amendment Ordinance, 1944 envisages anything against the assessment under the Act of any person, who has been found to be in possession of income for a particular year, on the basis



of such assets moveable or immovable or otherwise.

On the second question of law aforesaid, it is submitted by learned counsel that the manner in which the income has been assessed has led to the taxation of the same amount twice, firstly as the amounts in the bank account and again in the form of assets being the various investments made from the said amounts in the bank. It is, thus, submitted that taxing both as the income of the appellant has resulted in double taxation.

The Tribunal in its order as regards the argument on behalf of the appellant that telescoping should be allowed for investments made by the appellant and the deposits made in the bank account held that no nexus has been established amongst the deposits made in the bank and investments made in various moveable and immovable properties and for the said reason rejected the contention of the assessee.

Learned counsel for the Revenue supports the said stand of the Tribunal and further submits that it was a continuous process going on practically on day to day basis and since the income was being generated continuously, it could not be said that it was the money in the bank which has gone into the investment into moveable and immovable assets and thus there could be no question of permitting the telescoping since direct nexus has not been shown.

We are inclined to accept the stand of learned counsel for the



Revenue in this regard and find no force in the submission of learned counsel for the appellant. It is not disputed that the source of income was being generated continuously by the appellant and his other co-accused and further the appellant has been unable to show before the authorities of the Department that a particular amount from a particular bank account has been used for the purchase of specific property, movable and immovable, and in the said circumstances, there could be no question of any telescoping being permitted.

On the last question, it is submitted by learned counsel for the assessee that it was not open to the assessing officer to have confirmed the addition on the basis of mere statement of a third party without giving an opportunity of cross-examining to the appellant and without there being any other relevant or corroborative evidence or material. Learned counsel specifically refers to addition of Rs. Twenty Five Lacs in the assessment year 1995-96 on the statement of one Md. Syeed.

Learned counsel for the Revenue submits that the said issue has specifically been considered both by the assessing office as also the CIT (Appeals) in his appellate order. It is submitted that the statements made by different witnesses with regard to giving such sums of money to the assessee could be considered as corroborative pieces of evidence.



In this regard, reference is made to the observation of the CIT appeals, which are follows:

“Regarding the ground relating to A.O. making assessment on the basis of reports of CAG, CBI, I.T. Investigation Directorate and other persons as well as relying on the statements of Sri Sharad Kumar and other suppliers without making available copy of such report, perusal of assessment order clearly shows that the appellant is trying to take shelter behind his own default. Since he did not file any return in response to notice under Section 148 nor made any compliance even through notice under Section 142 (1) was served. It could not be said that appellant was not granted due opportunity. In fact A.O. even issued the show cause notice under Section 271 (1) (b) and 276CC but still appellant did not file either the return or reply to any query. There are no established sources of income of the appellant’s family members as well as the various group concerns. In this background it was but natural that A.O. would make estimate of appellant’s income on the basis of materials available on record. CAG’s report, C.B.I.’s FIR/charge sheet and the facts found by Income-tax (Inv.) Directorate are all available to the A.O. which he has very



carefully considered and also relied appropriately. In addition, statement of supplies as far as relevant to the present appellant were also available with him. In this background it was but natural that if appellant chose not to reply any of the queries raised by the A.O. over the period wherein he had not even filed the return in response to notice under Section 148, A.O. would consider those materials. These materials are basically available to the public. CAG's report was a public property. C.B.I.'s FIR/charge sheet was also available to the appellant being an accused. In addition, investigation made by the I.T. Department also was more or less known even to the appellant. The statements recorded by the various agencies from the suppliers named in the assessment order were also available on record. Since appellant himself did not comply, he could not be given any copies, the gist of which however were conveyed to him for elucidating his explanation through notice under Section 142 (1)."

At another place it has been held by the CIT as follows:-

"Regarding the statements on oath of Dr. Ajit Kumar Verma, Sri S.C. Verma and certain other suppliers to be Md. Sayeed etc., this issue is already adjudicated upon



earlier in this order. These statements were recorded and appellant was confronted but due to repeated non-compliances default laid with the appellant alone.”

On a consideration of the aforesaid facts and circumstances, it is evident that the assessee had been given sufficient opportunity in the matter. At no point of time, did he raise the plea that copies of the statements of such persons or such evidence ought to be supplied to him or that he intended to cross examine them. In the absence of any such stand by the assessee before the Assessing Officer or any such demand by the assessee before the A.O., it is not open to him to turn around and claim that he has been denied the opportunity of cross-examination and the statements in question could not be used against him.

Considering the entirety of the evidence and materials which had come up against the assessee, including the huge amount of assets both moveable and immovable, investments made by the assessee, it could not be said that the said statements, which have been concurrently accepted as relevant or corroborative evidence or material used for the purpose of addition, could not have been taken into consideration.

Thus, in the light of the aforesaid discussions, we do not find any merit in the appeals. Question No.1 is answered in affirmative,



question No.II is answered in the negative and question No. 4 is answered in the affirmative. All the three questions are answered in favour of the revenue and against the assessee.

The appeals are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22.12.2016
Transmission Date	

