IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.518 of 2007

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Late Bindeshwari Prasad Singh, (HUF) through karta Shivendra Prasad, D.N.Lane, Salimpur Ahra, P.O. Kadamkuan, P.S. Gandhi Maidan, District- Patna

.... Assessee-Appellants

Versus

1. Commissioner of Income Tax –II, Patna
2. Income Tax Officer, Ward-4(2), Patna

.... Assessing Officer-Respondents

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi, Advocate

For Income Tax Deptt. : Mr. Rishi Raj Sinha, Sr. SC
Mrs. Archana Prasad, Jr. SC

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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: 09-05-2016

Heard learned counsel for the appellant-assessee and learned senior counsel for the Income Tax Department.

The appeal has been filed against the judgment and order dated 25.5.2007 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in IT (SS)A No. 33/Pat/98 by which the Tribunal has upheld the addition of Rs. 3,96,750/- from agricultural income apart from others under the heading 'income from other sources'.

A search and seizure operation under Section 132(1) of the Income Tax Act,1961 was conducted in the business premises of N.K.Singh group of cases on 31.8.1996 and further dates and also at the residential premises of the assessee and at the various Branches of the State Bank of India. In the course of the search it was found that the assessee made huge investment in TDRs/FDRs and in immovable properties. In the block return filed by the assessee, apart from others, he showed agriculture income for the assessment years 1987-88 to 1997-98 to the tune of Rs. 9,30,000/-. The Assessing Officer directed the assessee to prove the genuineness of the claims made by him by adducing evidence and upon consideration of the explanation of the assessee restricted the agriculture income to only 25% of that declared by the assessee for each year and balance 75% was treated as income from other sources and it was added to the undisclosed income of the assessee. Aggrieved by the same the assessee approached the Tribunal with the result as stated above.

While admitting the appeal this Court framed the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Tribunal is justified in upholding the action of the Assessing Officer in part rejection of agricultural income in proceeding under Section 158BC read with 158BD which is to be based on material/evidence found in course of search or such other material or information as are available with the Assessing Officer and relatable to such evidence?"

At the outset when learned counsel for the appellant was asked by this Court to explain as to how the above substantial question of law can be said to arise after considering the fact that the agricultural income itself was brought into play by the assessee as part of the return of undisclosed income by him and was not a matter of search or seizure. It was for the Assessing officer to consider the same as justified or unjustified on the material/evidence found in the course of the search and such other material or information as was available to the Assessing officer and relatable to such evidence. The declaration of agricultural income in his block return for undisclosed income having been made by the appellant, it is not open to the appellant to turn around and say that the rejection of the same must be on the basis of material/evidence found in the course of search and seizure or material or information relatable to such evidence. Any person who takes a particular defence and makes a particular allegation has to justify the said defence or allegation made and the onus is entirely upon him. If the assessee has failed to satisfy the Assessing officer with regard to the agricultural income, it was certainly open to the Assessing officer on the basis of the materials and evidence brought on the record by the assessee himself to accept or reject the same.

It has clearly come in the assessment order that apart from his own statement no material has been brought by the assessee to justify the earning of such huge agricultural income in those years. Moreover, it has also to be kept in mind that the assessee was an Officer of the State Bank of India who had retired in the year 1985 and not otherwise engaged in agriculture, although he claims to have taken to agricultural work after retirement.

In the above circumstances, in the absence of material brought by the assessee to justify the said income, it was certainly open to the Assessing officer to have rejected the agriculture income and treat the same as undisclosed income. It is absurd to state that the rejection of the agricultural income has to be based on material/evidence found in course of search or such other material or information relatable to such evidence, as it is something which the assessee has himself come forward as a defence for undisclosed income brought forward by the assessee. If judged on the anvil of the same, the argument of learned counsel for the assessee would lead to a situation that all such undisclosed income claimed by the assessee in block return will have to be accepted in toto, as in such matters the material/evidence with respect to them could not have come out in the course of search and seizure. It is the assessee himself who has claimed the said undisclosed income and it was for the assessee to satisfy the Assessing Officer and failure to satisfy the Assessing Officer would definitely lead to the rejection of the claim to that extent leading to the assessment as made.

In the above circumstances, we are of the view that the Tribunal was justified in upholding the decision of the Assessing Officer for part rejection of the agricultural income in the proceedings under Section 158BC read with Section 158BD.

In the facts and circumstances of the case the substantial question of law as framed does not really arise in the matter.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

AFR/NAFR	
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