IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.557 of 2014

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Mustaque Ahmad, Son of Late Shadat Hussain, resident of Nafis Colony, Bari Path, Bhikna Pahari, P.O. Saidpur, P.S. Pirbahore, Patna - 800006, Prop. Brilliant Prakashan AND Samar Offset, B. M. Das Road, P.O. Bankipur, P.S. Pirbahore, District - Patna

.... Appellant

Versus

1. The Commissioner of Income Tax- II, Patna, having its office at Central Revenue Building, Birchand Patel Marg, Patna - 800 001
2. The Deputy Commissioner of Income Tax, Circle - 5, having its office at Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chouraha, Patna - 800 001

.... Respondents

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Appearance :

For the Appellant : Mr. D.V.Pathy
Mrs. Manju Jha

For the Respondents : Mr. Archana Sinha @ Archana Shahi
Sr. Standing Counsel
Mr. Alok Kumar, Ms. Shalini Bihari

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

5 10-03-2016 The present appeal under Section 260A of the Income Tax Act, 1961 is directed against an order dated 04.07.2014 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short "the Tribunal"), in ITA No. 69/Pat/2011 for the assessment year 2004-05.

2. The appellant has raised the following substantial questions of law said to be arising from the order of the learned Tribunal :-

(1) Whether on the facts and circumstances of this case, the Hon'ble Tribunal was in error in holding that the appellant

failed to adduce any evidence in respect of cash in hand of Rs.50,62,746/- as on 01.04.2003 without consideration of the fact that the same were out of brought forward balances from the Balance Sheet for the period ended 31.03.2003 which formed part of the records of the respondent no. 2 and were considered by him in a proceeding of reassessment for the period 2003-04?

(2) Whether the Hon'ble Tribunal was in error innot considering the fact that the Balance Sheet for the period ended 31.03.2002, 31.03.2003 and 31.03.2004 which were available with the respondent no. 2 at the time he passed order of reassessment for the assessment year 2004-5 and that the sources of investments in the Fixed Deposit, Post Office etc. derived its source from the brought forward balances of the preceding assessment year?

(3) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was in error in not considering the well settled principle that the closing cash balances of a proceeding year are opening balance of the subsequent year and applying this principle, the closing balance as on 31.03.2003 would automatically be the opening balances of the subsequent year which were sufficient to explain the investments in question?

(4) Whether non-consideration of the material on record renders the order of the Tribunal perverse?

3. The Assessing Officer passed the order of assessment dated 9.12.2009 for the assessment year 2004-05 after considering the reply filed. He considered the opening capital Rs.99,12,547.99 as on 01.04.2003 and the cash in hand as on 31st March 2004 at Rs.24,69,246/-. The learned Assessing Officer assessed taxable income after disallowing miscellaneous expenses at Rs.50,68,825.59p.

4. It is the said order which was challenged by the appellant before the Commissioner of Income Tax (Appeals),

Dhanbad. The learned Commissioner of Income Tax, (Appeal), discussed the addition of Rs.50,68,825/- by treating the following investments/amounts as unexplained:-

(a) NSCs	Rs.12,20,000
(b) FD in SBI	Rs.10,09,579.59
(c) FD in BOI	Rs.2,50,000
(d) RD in SBI	Rs.65,000
(e) RD in Post Office	Rs.55,000
(f) Closing cash bal. In hand	Rs.24,69,246
Total	-----------------
	Rs.50,68,825.59

5. The learned CIT, Appeal found that the personal balance sheet was not being annexed and that no books of accounts were maintained in respect of personal assets and investments. It was found that onus was on the assessee to prove the accreditation of the cash balance with credible evidence for the relevant assessment year, which the assessee failed to prove. The plea that the cash balance has been brought forward from the previous year was found to be unjustified as no attempt was made to bring on record to prove accumulation of the cash and to which period it was related or the source of the cash. It was found that substantial investments were attributed to cash in hand. There is no inspiring evidence by way of books of accounts or balance sheet to prove such investments. In view of the said fact, the finding recorded by the Assessing Officer was

maintained. In further appeal, the learned Tribunal has observed in paragraph-6 of its order as follows:-

> **"6.** As regards, Ground No. 2 to 8,we concur with the views of the Ld. CIT (A) that no personal balance sheets were annexed with the returns of income and admittedly no books of account were maintained in respect of persons assets and investments. It is observed that the sources of funds available for personal investments comprised Rs.1,05,000/- by way of withdrawals from the proprietorship concern and Rs.50,62,746/- was claimed as cash balance brought forward from the preceding year. There is no indication in the assessment order that the opening and closing balances shown in the cash flow statement had been subjected to verification at any stage, the only pleading taken by the assessee is that cash balance had been brought forward from previous years in the absence of such corroborative evidence. We find no infirmity in the order of Ld. CIT (A). Thus Ground No. 2 to 8 of the assessee are dismissed."

6. We have heard learned counsel for the parties and found that no substantial question of law arose for consideration. The grievance of the appellant is that the authorities under the Act erred in law in not treating the closing balance of the previous year and the opening balance of the assessment year in question, which is bound to be same. Therefore, the entire basis of the addition is flawed.

7. We do not find any merit in such argument as the said aspect has been considered not only by the Assessing Officer but by the Commissioner of Income Tax (Appeal) as well as the Tribunal. The very basis of assertion of the closing balance has been found to be untenable. The

source of cash has not been found to be justified. In the absence of the books, or the balance sheets, the assertion that there was closing balance has not been rightly accepted. It is finding of fact, which alone is sought to be disputed in the present appeal.

8. In view of the above, we do not find any substantial question for consideration by this Court. This appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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