NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 77 of 2016

M/s Dunson Byapar Pvt. Ltd. Having Its Address At- Vandana Building M. G. Road, Raipur, 492001, Pan No. AABCD 1680 P

---- Appellant

Versus

Deputy Commissioner Of Income Tax- 1(1) Central Revenue Building, Civil Lines, Raipur, 4920001.

---- Respondent

For Appellant:	Shri S. Rajeshwara Rao, Advocate.
For Respondent:	Smt Naushina Afrin Ali, Advocate.

Hon'ble The Chief Justice

Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per **Deepak Gupta, Chief Justice**

16/11/2016

1. This Appeal is not maintainable.

2. Briefly stated, the facts of the case are that the Assessing Officer came to the conclusion that the Assessee/Company had made bogus claims for agricultural income. Out of the amount being shown as agricultural income, the Assessing Officer held that 65% was bogus claim and only 35% of the agricultural income was accepted to be correct.

3. Aggrieved by the order of the Assessing Officer, the Assessee filed an Appeal before the CIT(Appeals) who set aside the order of the Assessing Officer and held that the claim for agricultural income was genuine. He further held that some amount must be deducted for the expenses and therefore, held that the Assessee was entitled to claim deduction/exemption of 90% of the income claimed as agricultural income and 10% would be the expenses for generating agricultural income.

4. Aggrieved by the said order of the CIT(Appeals), the Assessee as well as the Revenue filed an Appeal before the ITAT. The stand of the Revenue before the ITAT was that the order of the Assessing Officer was correct and that the learned CIT(Appeals) had gravely erred in setting aside the order of the Assessing Officer. As far as the Assesssee is concerned, it claimed deduction/exemption of 100% agricultural income. The ITAT in its order has made certain observations with regard to the correctness of the order indicating that it was not satisfied with the order of the CIT(Appeals). It would be pertinent to quote paragraphs 11 & 12 of the order of the ITAT which read as follows:-

> 11. Smt Sheetal Verma & Shri DK. Jain, ld D.Rs also brought to our notice that these assessee companies are also connected with shell companies acquired from Kolkata involving huge amount of unjustified share premium. She also submitted that in the present situation, a large number of such companies have been subject to 263 action at Kolkata. Hence, she submitted that it is not on record whether these companies purchased/acquired in the present case have been subject to action u/s.263 at Kolkata. She further submitted that the present issue should be considered from the classic case of money laundering by shell companies in which after formation and loading of bogus share capital and unexplained disproportionate share premium in the last stage of money is introduced as cash realised. She submitted that the claim of agricultural income in this case should also be examined from this perspective.
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> 12. Per contra, ld counsels submitted that the statement of Smt Sheetal Verma & Shri DK. Jain ld D.Rs. is not at all emanating out of the orders of the authorities below. He submitted that there is no such issue arising in this case. He further submitted that there is no information whatsoever that the aforesaid companies have been subject to action u/s.263 at Kolkata. However, ld counsel submitted that in order avoid unnecessary litigation and buying peace of mind, he is ready to accept the order of the AO in this case. In this regard, ld counsel filed separate letters in the case of all three assessees, in which he has stated as under:
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> > “with reference to above, we request your honour kindly allow us the above to withdraw above appeals and that we agree the order of ld DCIT 1(1), Raipur.”

5. A bare perusal of the aforesaid order clearly shows that learned Counsel appearing for Assessee before the ITAT had made a submission that with a view

to avoid unnecessary litigation and peace of mind, he was ready and willing to accept the order of the Assessing Officer. He also filed three handwritten letters/notes in this regard with respect to the three different Assessees. Thereupon, the learned ITAT permitted the counsel to withdraw the Appeals since he was ready to comply with the order of the Assessing Officer. In view of this, the Appeal of the Revenue did not survive and it was also dismissed. Now, the only submission of learned Counsel for the Appellant is that the counsel for the Assessee has made this statement without informing or without taking any consent of the Assessee. In our considered view, the Appellant cannot be permitted to urge that his Counsel had no instructions. The remedy, if any, of the Assessee lies in taking action against the Counsel but not in filing the Appeal.

6. In judicial proceedings or quasi judicial proceedings, we have to accept the judicial record to be correct. To be fair to learned Counsel for the Appellant, it is not denied that counsel appearing for the Assessee before the ITAT had made this submission. All that is said is that he had no authority to make such submission. We are afraid that we cannot accept this argument because if a party gives power of attorney to the counsel to argue the case, it also gives him the power to withdraw the same.

7. Since no question of law much less any substantial question of law arises in this Appeal, the same is accordingly dismissed.

Sd/-	Sd/-
(Deepak Gupta)	(Sanjay Agrawal)
CHIEF JUSTICE	**JUDGE**

Priya