IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL No.22 of 2016

The Pr. Commissioner of Income Tax-3, Civil Lines, Nagpur.

Versus.

Mr. Brijkishor B. Agrawal.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders
	Shri S.N. Bhattad, Advocate for petitioner

CORAM : SMT. VASANTI A. NAIK AND KUM. INDIRA JAIN, JJ

DATED : 31st August, 2016

By this income tax appeal, the appellant income tax department has challenged the order of Income Tax Appellate Tribunal dated 6.11.2015 allowing the appeal filed by respondent assessee and setting aside the order levying penalty under section 271(1)(c) of the Income Tax Act.

The respondent-assessee who is a contractor had declared an income of Rs.1,07,24,040/- for the relevant assessment year. The assessee had shown the liability in the balance sheet to the extent of Rs.71,50,000/-. After the assessee filed the copies of accounts for the purpose of substantiating the liabilities, a question was raised whether the outstanding balance represented the loan or the outstanding balance was a trade credit. According to the assessee, he had entered into agreements with some persons for sale of agricultural land and in pursuance of the said agreements he had received advance in cash. The details of the said transactions were furnished by the respondent-assessee to the Department. A survey was conducted by the department and some persons were also sought to be examined on commission. The department was not able to trace all the persons who had entered into the agreements and had examined only Smt. Kanta Chhabariya who admitted that she had entered into an agreement for purchase of land from the assessee. The department, however, did not believe the case of the assessee as according to it, Smt. Kanta Chhabariya was not able to prove the source of her investment. In a statement of the assessee, that was recorded subsequently, it was stated that the amount was received in cash by him and on cancellation of the agreement, the same was repaid to the concerned persons. Since the Assessing Officer was not convinced with the explanation of the assessee, the assessee voluntarily offered a sum of Rs.72,00,000/- to be taxed for the relevant assessment year 2009-10 with a condition that no penalty proceedings would be initiated. The assessee pointed out that the aforesaid offer was with a view to buy peace of mind and with a view to overcome the discrepancies and mistakes that might have inadvertently occurred in the books of account and documents. The Assessing Officer, however, levied a penalty on the assessee under Section 271(1)(c) of the Act. The order of the Assessing Officer was challenged by the assessee before the Commissioner of Income Tax. The Commissioner of Income Tax dismissed the appeal filed by the assessee after holding that all the persons with whom the agreements were allegedly executed were not to be found and it was doubtful whether Smt. Kanta Chhabariya could have advanced an amount of Rs.4,50,000/- to the assessee towards purchase of the plot on the basis of income from tuitions. Being aggrieved by the order of the Commissioner of Income Tax (Appeals), the respondent-assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, on a consideration of the material on record by the order dated 6.11.2015 reversed the findings recorded by the Commissioner of Income Tax (Appeals) and directed the deletion of the penalty. The order of the Income Tax Appellate Tribunal dated 6.11.2015 is challenged by the department in this appeal.

On hearing the learned counsel for the department and on a perusal of the order of Commissioner of Income Tax (Appeals) and the impugned order, it appears that there is no scope for interference with the order of the Tribunal as no substantial question of law arises in this appeal. The Tribunal recorded a finding of fact that since the assessee is a contractor and was dealing in real estate, the execution of agreements of sale could not have been ruled out. The copies of the agreements were filed by the assessee and those agreements were also found, at the time of survey. Though some of the parties to the agreements could not be identified, some others were identified in view of their PAN numbers. It was held by the Tribunal that since some of the persons with whom the agreements were executed had mentioned their PAN numbers, their investment in the land could not have been doubted. The Tribunal found, after considering the law laid down in the judgments reported in 240 ITR 880 and 253 ITR 192, and the material on record, that the assessee had taken the cash from certain parties with whom the agreements of sale were executed. We do not find any illegality or perversity in the findings of facts recorded by the Tribunal. In fact, the finding of the Commissioner of Income Tax (Appeals) that it is difficult to believe that Smt. Chhabariya, who was taking tuitions would not be in a position to pay a sum of Rs.4,50,000/- for immovable property appears to be unreasonable. The judgment reported in **2014 (1) SCC 674** and relied upon by the learned counsel for the appellant cannot be made applicable to the facts of this case, specially when a finding of fact is recorded by the Tribunal that the case of the assessee that he had entered into agreements with the parties and the cash was received from them towards advance.

Since no substantial question of law arises for determination in this appeal, the appeal is dismissed with no order as to costs.

JUDGE JUDGE

Hirekhan

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed Order.

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P.A.