THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

I.T.T.A.No.418 of 2016

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 260A of the Income-tax Act, 1961, is sought to be maintained by the assessee on the following substantial questions of law in relation to the assessment year 2004-05:

1) Whether on the facts and circumstances of the case, the Tribunal was right in disallowing all the claims of the assessee as regards brokerage and cost of improvement expenses in spite of the fact that the assessee provided necessary evidences and materials to substantiate its claim?
2) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in disallowing the claim of the assessee with regard to agricultural income?

Perusal of the order dated 01.03.2016 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', in I.T.A.No.1466/Hyd/2014, reflects that the issue raised by the assessee before the Tribunal was with regard to the deductions to be effected while computing the long term capital gains and the quantification of the agricultural income.

Though the appellant-assessee filed a revised return admitting the sale consideration of Rs.1.00 crore, he claimed deductions therefrom at Rs.2.00 lakhs towards brokerage and Rs.9,75,500/- towards cost of improvement. Earlier, the assessee had claimed Rs.1,70,000/- towards brokerage and Rs.5,20,000/- towards cost of improvement. However, he failed to provide any proof in support of these claims despite the Assessing Officer asking him to do so during the course of scrutiny proceedings. The Assessing Officer therefore took the original cost of the plot into account and reworked the long term capital gains, ignoring the claims made by the assessee towards brokerage and cost of improvement.

Though the assessee raised this issue before the Commissioner of Income-Tax (Appeals) and thereafter before the Tribunal, he did not choose to file an application to adduce additional evidence but straightway filed certain documents purportedly in proof of these claims. The Tribunal found fault with this course of action but, despite the same, it looked into the documents produced. However, as those documents were unauthenticated and the identity of the persons who had received the alleged amounts from the assessee was not even established, the Tribunal eschewed the same from consideration. That apart, payment of amount towards brokerage was also not supported by relevant withdrawals or the sources for such payment. Given these facts, we find no irregularity in the Tribunal refusing to take into account this documentary evidence.

So far as the issue of computation of agricultural income is concerned, the assessee established that he owned agricultural land and accordingly, the Assessing Officer accepted the agricultural income to the tune of Rs.8.00 lakhs. However, the additional material sought to be produced by the assessee in proof of his claim that the agricultural income exceeded Rs.8.00 lakhs was again defective as no application had been filed by him to receive the said evidence. That apart, the documents placed before the Tribunal did not indicate in clear terms as to whether the amount claimed by the assessee towards agricultural income actually arose out of such activity. The Tribunal entertained a doubt as to whether the assessee was himself cultivating the agricultural land owned by him or leased it out to some third party. Opining so, the Tribunal rejected this claim of the assessee also. We find no error having been committed by the Tribunal in this regard also.

On consideration of the aforestated reasoning of the Tribunal, we are of the opinion that no question of law, much less a substantial question of law, arises for consideration in this appeal.

The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

ANIS, J

Date: 03.11.2016
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