

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.535 of 2007

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Bishwajit Pandey son of Sri Ramashish Pandey, resident of Pathak House,
Brahmapura, Muzaffapur.

.... Assessee/ Appellant/Appellant
Versus

ACIT, Central Circle, Muzaffarpur.

....Assessing Officer/Respondent/Appellant/
Respondent/s

With

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Miscellaneous Appeal No. 555 of 2007

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Bishwajit Pandey son of Sri Ramashish Pandey, resident of Pathak House,
Brahmapura, Muzaffapur.

.... Assessee/ Appellant/Appellant
Versus

ACIT, Central Circle, Muzaffarpur.

....Assessing Officer/Respondent/Appellant/
Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Nandan Singh, Senior Advocate
Mr. Sriram Krishna, Advocate
Dr. Kamal Deo Sharma, Advocate

For the Respondent/s : Mrs. Archana Sinha, Advocate
Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-03-2017

In these two appeals filed by the assessee under Section
260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')
challenge are made to a common order passed by the Income Tax
Appellate Tribunal, Patna (hereinafter referred to as 'the Tribunal') in



IT(ss)A No.78(Pat)/04 and IT (ss)A. No.97 (Pat)/04 for the block assessment period 1996-97 to 2002-03, therefore, they are being disposed of by this common order.

2. The appeals are pending since 2007 and therefore, at this stage of admission itself, they are heard and necessary questions of law considered and decided with the consent of the parties.

3. The appeals decided by the Tribunal arise out of the orders passed in appeals and cross-appeals filed by both the assessee and the revenue. Facts in brief indicates, that, notice under Section 158BC was issued to the assessee on 2nd of September, 2002 calling upon him to file a return for the block period ending 19.07.2001 in the prescribed performa. After the returns were filed, assessment orders dated 29.08.2003 (Anexure-1) was passed by the Assistant Commissioner of Income Tax, Central Circle, Muzaffarpur (hereinafter referred to as 'the Assessing Officer'), making assessment in accordance to Annexure-1 to the assessment order. Challenging the order of assessment, appeal was filed before the Commissioner of Income Tax (Appeals)-I, Patna [hereinafter referred to as 'CIT (Appeals)'] by the assessee and vide Annexure-2 dated 08.07.2004, the CIT (Appeals) having allowed the appeal in part, matter travelled to the Tribunal at the instance of the assessee in the appeal and the cross appeal filed by the department, both of which were decided by a



common order. Even though the revenue has not challenged the order of the Tribunal, the assessee has challenged the same.

4. The first ground canvassed in these appeals were that in the final account statements submitted by the assessee for the block period in question, certain amounts as advance receipt for sale of land between the period 1990-2000 and 2002-03 were indicated by the assessee. However, a sum of Rs.7,00,000/- which was received towards advance for sale of the land was included as income of the assessee. Challenge is made to the said addition made by the Assessing Officer. The Tribunal having disallowed this addition, learned counsel took us through the findings recorded in paras-2 onwards of the Tribunal to say that this addition has been made without taking note of the evidence and various other factors, which were considered by the CIT (Appeals) and in an arbitrary manner, the deductions permitted by the appellate authority have been interfered with.

5. It is seen that the assessee before the Assessing Officer had given statement of accounts indicating receipt of various amounts as advance for purchase of land. It was contended by the assessee that he had received the advance from prospective customers after negotiation and the same were reflected in the Annual Ledger Account along with the names and addresses of the parties, who had given the advance. The Assessing Officer disbelieved the same and a sum of



Rs.7,00,000/- was added as income. Before the CIT (Appeals), a plea was raised that the Assessing Officer did not conduct proper verification, an enquiry was not done and challenge was made to the additions. We find that the Tribunal has discussed this issue from paragraphs 2 onwards up to paragraph-6 and has come to the conclusion that in the absence of proper evidence being available and based on unverified papers and without there being any evidence substantiating the transactions, if the addition was made, there is no error in the same.

6. We find that the aforesaid finding recorded by the Tribunal is based on due appreciation of the evidence and materials that came on record. It is a finding of fact and we see no reason to interfere into the aforesaid finding recorded by the Tribunal as far as this ground is concerned.

7. The next ground canvassed was with regard to addition of a sum of Rs.1,79,019/- as undisclosed income for the assessment year 1996-97. There being a difference between the opening balance shown in the revised balance sheet and the amount worked out, the same was added as undisclosed income. The Assessing Officer and the CIT (Appeals) both recorded concurrent findings to say that the assessee has failed to explain the difference by leading cogent evidence and, therefore, the Tribunal upheld this addition. However, while doing so, the Tribunal lost sight of the fact that the subject matter of addition



was one that was already declared in the regularly filed return before the search operation and, therefore, this could not be a subject matter of block assessment. Under these circumstances, this addition was not permissible. The CIT (Appeals) also have allowed this deduction on this account alone. The Tribunal while doing so did not consider this aspect properly. Once the capital amounting to Rs.1,79,019/- was reflected in the original returns filed before the block assessment and there was no reopening of the assessment in accordance with law with regard to the original return filed and assessment ordered, the amount could not be added in the block assessment. To that effect, an error has been committed by the Tribunal.

8. Accordingly, with regard to ground no.2 of the assessee, these appeals are allowed, the order passed in this regard passed by the Tribunal with regard to ground no.2 stands rejected.

9. The question of law in this regard would be, that the Tribunal has committed an error in adding the capital amount of Rs.1,79,019/- as undisclosed assets when in the original regular return filed this was permitted, reopening with this assessment in the block assessment being impermissible, the addition has to be quashed. To that effect, these appeals are allowed.

10. The next ground is with regard to payment of receipt of certain amount as gift from appellant's brother, an NRI Sri Satyajit



Pandey. Both the Assessing Officer and the CIT (Appeals) have found that the assessee has failed to prove that this amount was received as gift from the brother. The concurrent findings recorded by the Assessing Officer and the CIT (Appeals) and the Tribunal in this regard needs no consideration. To that account also, the appeals stand rejected.

11. The last and the final ground or the substantial question of law would be as to whether the Tribunal was right in directing for payment of interest under Section 158BFA (1) when the CIT (Appeals) had disallowed the interest on cogent reasons. While directing for payment of interest, the Assessing Officer came to the conclusion that there being delay in filing of the return, interest under Section 158BFA(1) is liable to be charged. However, the learned appellate authority, namely the CIT (Appeals), found that the seized material was allowed and taken into custody on 17.06.2003 and they were not made available to the assessee and, therefore, he could not file the return in time. The CIT (Appeals) recorded the following finding to disallow the interest:-

“After careful perusal of the facts and circumstances referring to this ground of appeal, I find that the contention of the appellant is correct in as much as the last photo copy of seized material was allowed to be taken on 17.06.2003. Unless and until the copy of the seized paper is made available to the appellant, he could not be expected to file the return. Therefore, there was no such delay as could be a ground for charging of interest u/s



158BFA (1). The interest charged is cancelled.”

12. This is a reasonable finding and while considering ground no.5 of the revenue and allowing it, the Tribunal has simply recorded a finding that there is delay in filing of the return which is attributable to the assessee and, therefore, interest was rightly assessed. However, while doing so, the Tribunal did not take note of the finding recorded by the learned Appellate Authority, as indicated hereinabove, wherein the delay is attributed to the Department in the matter of submitting photo copies of the seized documents which resulted in delay of filing of the return and if that be so, charging of interest under Section 158BFA (1) was not permissible.

13. Accordingly, this question is answered in favour of the assessee by holding that the delay in filing of the return is not attributable to the assessee and, therefore, interest under Section 158BFA (1) was not chargeable. To that effect also, the order passed by the Tribunal is quashed.

14. Accordingly, both these appeals are allowed in part. The order of the Tribunal so far as it directs the addition of the revised capital as an income, i.e. ground no.2, discussed from paras-7 onwards of the order of the Tribunal impugned and ground no.5 of the Revenue discussed at para-22 of the order of the Tribunal in the matter of charging of interest are quashed. Remaining part of the order passed by



the Tribunal is upheld.

15. Both these Appeals are allowed and disposed of accordingly.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N. A. F. R.
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