Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.16 OF 2017

The Principal Commissioner of Income Tax, Panaji ... Appellant

Versus

Prakash Kittur ...Respondent

Ms S Linhares, *Advocate for the Appellant.*
Shri N Sardessai, *Senior Advocate with Ms G Kamat, Advocate for the Respondent.*

CORAM: G.S. PATEL & NUTAN D. SARDESSAI, JJ
DATED: 20th September 2017

PC:-

1. We are unable to discern any substantial question of law among those proposed in paragraph 6:

> (A) Whether Hon'ble ITAT was right in allowing relief on estimation basis as the assessee could not produce any documents which has evidentiary value against the investment made and allowing further relief of Rs.10,43,000/- to the assessee relying on a hypothetical presentation of cash balance of the assesee.
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> (B) The Hon'ble ITAT while allowing expenditure on construction and land cost of Rs.1,51,82,300/- has overlooked the fact that no supporting evidence in respect of the expenses has been furnished by the assessee.

(C) The Hon'ble ITAT has erred in allowing relief on estimate base whereas the assessee has not maintained proper books of accounts and the assessee is not able to prove that the payment made are exclusively for expenses only. In absence of the documentary evidence the addition made by ld. AO ought to have been confirmed by the Hon'ble ITAT.

2. For the reasons we will briefly indicate we do not believe that any of these could legitimately be considered questions of law let alone substantial ones.

3. The assessee, the father of the present Respondent, was a real estate agent. The appeal is directed against an order dated 9th August 2016 of the Income Tax Appellate Tribunal, Panaji bench. This was in respect of two Assessment Years 2006-07 and 2007-08. It seems that a search and seizure was conducted on 16th April 2010 under Section 132(1) of the Income Tax Act. Some material was found relating to the assessee and this, according to the Revenue showed a nexus between the assessee and his son, the present Respondent.

4. A notice under Section 153C of the Income Tax Act dated 21st November 2012 was issued and served. The assessee, Venkaraddi Kittur filed a *nil* return. Notices under Sections 142(1) and 143(2) dated 18th February 2013 followed. The assessee appeared. Several hearings were held. The Assessing Officer by his order dated 30th March 2013 made additions for unexplained investments under Section 69 to the extent of Rs.25,43,300/- and added sale proceeds of land and building of Rs.1,70,00,000/-. The assessee appealed. The Commissioner of Income Tax on 23rd February 2016 allowed the appeal in part. Aggrieved, the Revenue appealed to the ITAT, which dismissed the Revenue's appeal on 9th August 2016. This is the order impugned.

5. We have considered the impugned order which is from page 33 onwards. What was before the ITAT was the appeal of the Revenue and a cross appeal by the assessee. The Revenue challenged the action of the CIT in reducing the addition made by the AO on account of unexplained investments and this resulted in assessee relief of Rs.15,00,000/-. The bench noted that while in the search and seizure, it was found that the assessee had purchased the property of about 1780 square metres at Calangute for a total consideration of Rs.25,43,000/- but without maintaining proper accounts, the Commissioner took into account that the assessee was an employee of the Government of Karnataka from 1954 to 1993 and received retirement and pensionary benefits thereafter. This Commissioner estimated the availed funds likely to have been available with the assessee as a result of Rs.15,00,000/-. In appeal the Revenue said there was no proof. The Bench found that the Commissioner had followed well-settled principles. In regard to non-proving of expenditure, the Commissioner found that all transactions were banked. The ITAT held that the Revenue in appeal was unable to dislodge the findings that the so-called assets in the hands of the assessee were agricultural land and not capital assets. It also found that there were known sources of income and these were for specific purposes where the assessee had functioned as a contractor or mediator on behalf of or at the request of two commercial entities. Having taken into account the actual status of the accounts, records, bills and vouchers, the ITAT came to the conclusion that the appeal of the Revenue called for no interference.

6. We are unable to see any infirmity in the order of the ITAT and certainly we are unable to see how it raises any question of law at all. This is not a matter of a complete misappreciation of the records or evidence. The Commissioner in the appeal before him took a view. The ITAT held that view to be plausible. It noted no perversity. We find no perversity either in the order of the ITAT. Certainly it cannot be said that on these facts it was not possible for any body, authority or Tribunal to come to the conclusion to which the ITAT did.

7. The appeal is dismissed. There will be no order as to costs.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**