IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.225 of 2015

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Asha Pandey, wife of Sri Ramashish Pandey Resident of Pathak House, Brahmanpura Chowk, Muzaffarpur

.... Assessee/ Appellant/s
Respondent/Appellant

Versus

ACIT Central Circle, Muzaffarpur......Assessing Officer /Respondent/s/Appellant

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Appearance :

For the Appellant/s : Mr. Dr.Kamal Deo Sharma
For the Respondent/s : Mr. Rishiraj Sinha, Sr. SC, Income Tax
Ms. Shilpi Keshri, Income Tax

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 29-01-2018

This is an appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 challenging the order passed by the Income Tax Appellate Tribunal, Patna Bench in IT(ss)A No. 80 (Pat)/2004.

By the impugned order the appeal filed by the Revenue has been allowed and interference has been made into the order passed by the Commissioner of Income Tax, Patna on 17.05.2004 with regard to certain relief granted to the assessee for the Block Assessment Years 1996-97 to 2002-03. The assessee with the Block return filed revised capital accounts and balance-sheet for the assessment years. Assessments were made and challenging the order of assessment the appellants were filed by the assessee before the C.I.T. Appeal, Patna, and by order passed on 17.05.2014 the appeal was allowed in part and the Commissioner of Appeals deleted an addition and made by the Assessing Officer to the tune of Rs.3,70,000/- on account of unexplained sundry advance arising out of agricultural income and sundry advance on agriculture income. The Commissioner of Appeals also deleted addition of the amount of Rs.78,000/- which was added to the income of the assessee on account of unexplained expenditure incurred on travel to the United States of America (USA) and finally interest charged under Section 158BFA(1) of the Act was deleted by the learned Commissioner on all these three counts. The Revenue's appeal having been allowed by the Appellate Tribunal this appeal by the assessee primarily on account of the fact and the grounds that the memorandum of appeals having allowed all the deletions after going through the documents and evidenced that come on record which justified the deletion the Tribunal has interfered into the reasonable order without any just cause or reason and in a perverse manner without appreciating the documents has interfered.

It is the case of the assessee before us that finding recorded by the Tribunal are perverse in nature, it ignores the reasons that weighed with the appellate authority for permitting the deletion and without even appreciating the documents and evidence that have come on record the deletion has been interfered with. It is said that which is perverse in nature and which does not meet the requirement of law is unsustainable.

Having hearing learned counsel for the parties at length we find that the following three questions were considered by the Appellate Tribunal and interfered with. The questions are –

> *"1. For that the ld. Commissioner of Income-tax (Appeals).I, Patna has erred in deleting the addition of Rs.3,70,000/- on account of unexplained sundry advances in spite of the fact that the agricultural income and sundry advances claimed to have been generated out of past saving from agricultural income were not shown in regular return of income.*
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> *2. For that the ld. Commissioner of Income-tax (Appeals)-I, Patna has erred in deleting the additional of Rs.78,000/ on account of unexplained expenditure incurred on travel to USA accepting the assessee's claim that the air tickets were purchased by assessee's NRI son residing in USA. The learned CIT(A)-I has*

accepted the assessee's claim which is not supported by any material evidence.
3. For that the ld. Commissioner of Income-tax (Appeals)-I Patna has erred in cancelling the amount of interest charged u/s 158BFA(I) on the ground that there was delay in supplying the photocopies of the seized documents to the assessee by the Department. The learned Commissioner of income-tax (Appeals)(A)-I, Patna has failed to appreciate that the charging of interest under Section 158BFA(I) is mandatory and therefore this issue is not appealable."

As far as addition of Rs.3,70,000/- on account of unexplained sundry amount on agricultural income is concerned, we find that in the appellate order passed by the C.I.T. details of the agricultural amount including the sale and purchase made have been indicated and it is found that advances received from sale of land comes to Rs.2,88,462/- and balance from agricultural income comes to Rs.81,538/- and, therefore, the total sum of Rs.3,70,000/- is found to be proper and agricultural income and even though in the Return it is has not been disclosed but by filing evidence and documents the transactions were explained before the Commissioner of Appeals along with the copies of seized materials, GM 4 and various other documents and the Commissioner of Appeals found that there are agricultural incomes and advances taken for various years preceding to the commencement of the block period but even if they were not disclosed in the Return the transactions having been established the sundry amounts cannot be treated as part of undisclosed income for the purpose and allowed the addition and for doing so the reasons indicated by the learned Tribunal reads as under :-

> *"In support of this the appellant has filed the copies of seized material (GM -4) pages 76 to 80 and SP page 1 to 10) which show agricultural income and advances taken for the years preceding to the commencement of the block period. In other words the seized materials itself shows that she not only had considerable agriculture land but also had income from such land. It is an admitted fact by the AO as well as by the appellant that agricultural income was not being disclosed in the regular returns. But it is also true that agriculture income was not being disclosed even in respect of income tax returns that pertained to assessment years prior to the commencement of the block period. However the failure or omission on the part of the appellant to disclose agricultural income in the return pertaining to the pre block period does not mean that she did not have funds by way of agricultural income or by way of sale of agriculture land. In other word the claim of the appellant that she had*

funds represented by sundry advances to the extent of Rs.3,70,000/- prior to the commencement of the block period cannot be brushed aside merely on the ground that she failed to show in the regular returns. On the contrary the failure to show agricultural income and sale of agricultural lands shows that there was an existence of funds not being disclosed in regular returns that has now served as a source of sundry advances of Rs.3,70,000/- brought forward on 1.4.95 in the block return. Under the circumstances these sundry advances cannot be treated as part of undisclosed income for purposes of block period assessment. If the agriculture income were being disclosed with regular return and sundry advances were not disclosed with the regular returns, the things would have been different in that case. The addition of Rs.3,70,000/- is , therefore, deleted."

In our considered view the learned Commissioner has given detailed reasons for deleting the addition and while dealing with this issue the learned Tribunal has not applied its mind properly but in paragraph-6 in a cryptic manner held that the assess did not disclose the income in her regular Return and evidence have not been produced to substantiate the contention. However, the evidence produced before the Commissioner of Appeal by way of affidavits and documents and discussed by the appellate authority detail was not at all adverted to and the same has been rejected. In our considered view this perverse finding cannot be upheld.

Similarly, with regard to ground no. (2) pertaining to deletion of Rs.78,000/- on account of expenditure incurred for travel to USA in detailed order passed by the appellate authority has found that the assessee's son was a NRI, he was staying in USA and the expenditure incurred have been detailed by the appellate authority. The conversion reading is also given and finding the direction on being satisfied her amount was actually incurred for travel to the USA. With regard to this issue also the Tribunal has simply interfered by holding that same is not established without adverting to consider the evidence and material that come and, therefore, this amount with regard to previous addition for agricultural income is a perverse finding which cannot be upheld.

As far as charging of interest under Section 158BFA(I) of the Act is concerned, similar grounds have already been considered by a Co-ordinate Bench of this Court while dealing with the issue in Misc. Appeal Nos. 535 of 2007 and 555 of 2007 filed by the son of the appellant, disposed of on 30.03.2017, and Misc. Appeal No. 175 of 2015 filed by the appellant's husband disposed of on 23.01.2018. Detailed orders were passed allowing the aforesaid appeals, and charging of interest interfered with. For the same grounds and reasons in Misc. Appeal Nos. 535 of 2007, Misc. Appeal No. 555 of 2007 as also in Misc. Appeal No. 175 of 2015, this ground of appeal is also required to be allowed and we do so.

Accordingly, we allow the appeal and uphold the order passed by the Commissioner of Appeals on 17.05.2004 and quash the impugned order passed by the Appellate Tribunal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	NA
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