NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 79 of 2018

{Arising out of Order dated 18.01.2018 passed in ITA No. 349/RPR/2014 by the Income Tax Appellate Tribunal, Raipur Bench, Raipur}

- Deputy Commissioner of Income Tax Raipur, District - Raipur (C.G.)

---- Appellant

Versus

- Shri Madan Lal Lodha, 109/110, Textile Market, Pandari, Raipur District - Raipur (C.G.)

---- Respondent

For Appellant : Ms. Naushina Afrin Ali, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

25.06.2019

1. The appeal is preferred at the instance of the Revenue. The following questions have been raised as substantial questions of law:

“1. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT was justified in confirming the deletion by the CIT(A) of the addition of Rs. 3,39,49,274/- by the AO on account disallowances of deduction u/s 54B of the Act.?

2. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT was justified in confirming the order of Ld. CIT(A), thereby ignoring the evidence brought on record by the AO that the no agricultural activity was done on impugned land prior to sale of the land?

3. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT was justified in confirming the order of

CIT(A), who having concurrent powers of the AO u/s 250(4) of the Act, has deleted the addition of Rs. 3,39,49,274/- made by the AO thereby relying on the submission of the assessee which has no evidentiary value and which was found not true on verification by the land revenue authority?

4. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT by confirming the finding of CIT(A) has erred in giving a finding which is contrary to the ratio of the decision of Hon'ble Supreme Court in the case of Sarifabibi Mohammed Ibrahim and others Vs CIT(SC) 204 ITR 631?

5. Whether on points of law and on facts & circumstances of the case, the ITAT was justified in confirming the order of Ld. CIT(A) thereby giving a decision in favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which conclusion is based?

6. Whether on points of law and on facts & circumstances of the case, the Hon'ble ITAT by upholding the order of CIT(A) has erred by giving a finding which is contrary to the evidence on record, as the Ld. CIT(A) has accepted the bills produced by the assessee towards the alleged agricultural activities, to be genuine and relied on other impugned documents produced before him by the assessee to be genuine, a finding which is factually incorrect thereby rendering the decision, which is perverse?"

2. Heard Ms. Naushina Ali, learned Standing counsel for the Department of Revenue.

3. The sequence of events reveals that the assessment in respect of the assessment year 2011-12 was finalized by the Assessing Officer as per order Annexure A/3, dated 27.03.2014. The stand taken by the Assessee with regard to the contents in the return was repelled and the Assessing Officer found that the Assessee was not entitled to have the benefit under Section 54B of the Income Tax Act insofar as there was no agricultural operation in the land

concerned which was subjected to sale within the prescribed period of two years prior to the date of sale.

4. According to the learned Standing Counsel, the factual aspect in this regard was substantiated by calling for a report from the Patwari who certified that there was no agricultural operation within the stipulated period. It was accordingly that a finding was rendered by the Assessing Officer that no exemption could be granted, which led to the assessment order. The Assessee being aggrieved with the said order, sought to have it challenged before the Commissioner of Income Tax (Appeals). After calling for the record and after evaluating the facts and figures, a finding was rendered with reference to the facts and figures that the stand of the Assessee was liable to be sustained in turn, leading to allowing the appeal.

5. The Revenue felt aggrieved who approached the Tribunal by filing an Appeal, but turned to be unsuccessful, whereby the appeal came to be dismissed by the Tribunal. This is sought to be challenged by filing the present appeal under Section 260A of the Income Tax Act, raising the questions of law as extracted already.

6. The learned Standing counsel submits that the finding rendered is not in conformity with the law declared by the Hon'ble Supreme Court in ***Sarifa bibi Mohmed Ibrahim (Smt) & Others. v. Commissioner of Income Tax, Gujarat***; {(1993) Supp (4) SCC 707}. We have analyzed the merit of the said submission with reference to the materials on record. There is no dispute with regard to the law laid down by the Apex Court, as applicable to the case on hand. On going through the materials as aforesaid, it is seen that the Appellant did not make any specific reference (in the manner in which the appeal has now been moulded before this Court) to be considered by the Commissioner of Income Tax (Appeals) or by the Tribunal. The submission before the

Commissioner as well as the Tribunal was all with reference to the factual aspect as to the necessity to have the agricultural operation in the property concerned which was subjected to sale within the span of two years in conformity with the mandate of Section 54B of the Income Tax Act. This was considered by the Commissioner as well as the Tribunal on the basis of the materials on record and a finding was rendered accordingly. This being the position, the finding rendered by the Commissioner, which was subjected to scrutiny and the finding given by the Tribunal is purely on a question of facts and no question of law is involved in this appeal; much less any substantial question of law.

7. Interference is declined. Appeal is dismissed.

Sd/- Sd/-

(P.R. Ramachandra Menon)
Chief Justice

(Sanjay K. Agrawal)
Judge

Hem