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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.10224 and 10229 of 2022

Mamata Dutta .... ***Petitioner***
Mr.R.P.Kar, Advocate

-versus-

The Principal Commissioner of Income Tax, Bhubaneswar-1 and another .... ***Opposite Parties***
Mr.T.K.Satapathy, Sr.Standing Counsel for IT Department.

Girija Prasad Dutta .... ***Petitioner***
Mr.R.P.Kar, Advocate

-versus-

The Principal Commissioner of Income Tax, Bhubaneswar-1 and another .... ***Opposite Parties***
Mr.T.K.Satapathy, Sr.Standing Counsel for IT Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
21.07.2022

Order No.

Dr. S. Muralidhar, CJ.

03. 1. These two writ petitions arise out of a similar set of facts and are accordingly being disposed by this common order. Writ Petition (Civil) No. 10224 of 2022 is by Mamata Dutta and Writ Petition (Civil) No. 10229 of 2022 is by her husband Girija Prasad Dutta.

2. The background facts are that notices dated 11th March, 2022 under Section 148-A (b) of the Income Tax Act, 1961('Act') for the Assessment year (AY) 2018-19 were issued to each of the

Petitioners seeking to reopen the assessment made for concerned AY. In each of the notices it was stated that income chargeable to tax had escaped assessment. According to the Department, the Petitioners had purchased immovable property with a consideration of Rs.1,10,60,000/- during the relevant AY 2018-19 whereas in the Income Tax Returns (ITR) filed by each of them an income of Rs. 6,29,860/- only had been disclosed. Stating that a 'huge investment' has been made to the tune of Rs.1,10,60,000/- out of their 'undisclosed income' during the year, each of them was asked to show cause why said investment amount should not be treated as the escaped income from other sources and why notice under Section 148 of the Act should not be issued to each of them.

3. In response to the said notices under Section 148 A(b) of the Act each of the Petitioners filed a reply dated 18th March, 2022. In the reply it was specifically pointed out that the immovable property purchased jointly by both of them was for a consideration amount of Rs.90,00,000/- which had been paid from the joint account maintained by the two of them. Further, the said immovable property belonged to the ancestors of Girija Prasad Dutta. The property was an undivided property as though there was a partition suit and a decree had been passed but there was no final decree demarcating the shares for which the uncles of Girija Prasad Dutta out of the love and affection and also to maintain the ancestral property intact agreed to receive Rs. 90,00,000/-.

4. The source of investment in the said immovable property was the earlier years' fixed deposits which were encashed during the year. The details of the fixed deposits were disclosed in the replies filed.

A copy of the sale deed was enclosed with each of the replies. It was stated that for the purpose of stamp duty, the sale consideration was indicated as Rs. 1,10,60,000/- and on that basis a stamp duty had in fact been paid. The narration in the sale deed pointed out that the structure the land in question was the dilapidated one. This explained the difference in the actual sale consideration paid and in that indicated in the sale deed.

5. It may be mentioned here that reply in the same lines were filed by both Petitioners in response to the notice under Section 148 A(b) of the Act.

6. Thereafter, the impugned order was passed on 28th March, 2022 under Section 148 A (d) of the Act by the ITO Ward 1 (1), Cuttack noting the fact of joint purchase of the property for a consideration of Rs.90,00,000/- against a stamp duty value of Rs.1,10,60,000/- and making the inference that 'stamp duty value exceeds such consideration' but invoking Section 56 (2) (x) (b) of the Act which pertains to 'income from other sources'. The difference being Rs.20,60,000/- the sum proposed to be added as escaped income was of Rs. 10,30,000 against each of the Petitioners. An identical line in both the orders in respect of each of the Petitioners is that 'the Assessee could not furnish any explanation regarding such escapement of income' for AY 2018-19.

7. Mr. R.P.Kar, learned counsel appearing for the Petitioners points out that in passing the above order, the Authority has failed to notice the exception in Section 56 itself read with the Sixth proviso to Section 56 (2) (x) of the Act which exempts the applicability of

the provision to 'any sum of money or any property received one from any relative'. The expression 'relative' has been defined under Section 56 (2) (vii) (e) of the Act to mean :(i) in case of an individual, "(e) Any lineal ascendant or descendant of the individual and (f) Any lineal ascendant or descendant of the spouse of the individual". Inasmuch as the vendor of immovable property were the uncles of Shri Girija Prasad Dutta and they fit the definition of 'relative' and since the property has been received from such relative, the provisions of Section 56 (2) (x) read with the Sixth proviso thereto would be attracted and the income would be exempt from tax.

8. Mr. T.K. Satpathy, learned Senior Standing Counsel for the Department, on the other hand refers to reply filed in the present petition where what is stated in the impugned order is simple reiterated namely that stamp duty value exceeded the sale consideration thereby attracting Section 56(2)(x)(b) and repeating the prays that the Assessee could not furnish any explanation.

9. The above submissions have been considered. The Court finds that under Section 148 A (d) the Assessing Officer is obliged to decide, 'on the basis of material available on record including reply of the Assessee whether or not it is a fit case to issue a notice under Section 148 by passing an order ....'. Clearly, therefore, it was essential for the authority to have not only considered the material available on record but also the reply of the Assessee.

10. In the present case the replies of both the Assessees made a specific reference to the fact that the property in question has been

purchased jointly for a consideration of Rs. 90,00,000/- from the uncles of Shri Girija Prasad Dutta. They also disclosed the sources of their income. A copy of sale deed was also enclosed with the replies. If the Assessing Officer was going to refer to Section 56 (2) (x) (b) of the Act, then obviously it could not have escaped his attention that in terms of the Sixth proviso to Section 56 (2) (x) of the Act, an exception is provided where the property in question is received from a relative.

11. There is no reference in the impugned orders dated 28th May, 2022, in each of the matters, to any of the pleas of the Assessees in their replies. On the other hand, quite inexplicably the, ITO says that 'the Assessee could not furnish any explanation regarding such escapement of income.'

12. Mr. Satpathy, learned counsel for the Department, pleaded before the Court that the matter should be sent back to the ITO for a fresh decision to be made after considering the reply of the Assessees and in particular the above exception in Section 56 (2) (x) of the Act.

13. The Court is of the view that remanding the matter to the ITO will needlessly multiply proceedings when the facts are clear, as is the law. The ITO in this case is overlooked the legal position and with the facts being admitted no purpose would be served in sending the matters back to him for a fresh decision.

14.In that view of the matter, the impugned orders dated 28th March, 2022 of the ITO under Section 148 A(d) of the Act and the consequential notices dated 30^{th} March, 2022 under Section 148 of the Act are hereby quashed.

15. The writ petitions are allowed in the above terms.

16. An urgent certified copy be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

Kabita