

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.450 of 2006

1. Commissioner of Income Tax (Central), Patna.
2. Asstt. Commissioner of Income Tax, Central Circle- 3, Patna.
... .. Appellant/s

Versus

- 1.1. Smt. Madhuri Sharma wife of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
1.2. Rohit Raj son of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
1.3. Rahul Raj son of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
... .. Respondent/s

with

Miscellaneous Appeal No. 453 of 2006

1. Commissioner of Income Tax (Central), Patna.
2. Asstt. Commissioner of Income Tax, Central Circle- 3, Patna.
... .. Appellant/s

Versus

- 1.1. Smt. Madhuri Sharma wife of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
1.2. Rohit Raj son of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
1.3. Rahul Raj son of Late Tribhuvan Roy resident of 510, Ashok Puri Colony, Khajpura P.S. B.V. College Rukunpura, District Patna
... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 450 of 2006)

For the Appellant/s : Mrs. Archana Sinha, Advocate
Mr. S.K.Sharan, Advocate
For the Respondent/s : Mr.Md. Nadim Seraj, Advocate
Mr. D.V. Pathy, Advocate

(In Miscellaneous Appeal No. 453 of 2006)

For the Appellant/s : Mrs. Archana Sinha, Advocate
Mr. S.K.Sharan, Advocate
For the Respondent/s : Mr.Md. Nadim Seraj, Advocate
Mr. D.V. Pathy, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-12-2023



The appeals arise from a common order of the Income Tax Appellate Tribunal, Patna Bench, Patna (henceforth for short 'the Tribunal') dated 21.07.2006 (Page-84) in an appeal filed by the Revenue and a cross objection filed by the assessee. The assessee is no more and his legal heirs are impleaded herein. There are two appeals filed since the contentions raised by the Revenue in their appeal regarding the modifications and deletions made by the First Appellate Authority were not considered by 'the Tribunal', since it held against the Revenue on the question of limitation. The objection regarding limitation was raised by the assessee in its cross-objection.

2. In addition to the ground of limitation, on facts also 'the Tribunal' found that there is no reason why the assessee respondent should be proceeded against since already the wife of the assessee has accepted the ownership of assets and she is assessed to tax.

3. Before us, learned Senior Standing Counsel for the Revenue, Smt. Archana Sinha sought for an answer to the question of law regarding limitation raised in the appeal and a remand, if it is held in favour of the Department.

4. Shri D.V. Pathy, learned counsel appearing for the respondents, however, argued that since the assessee's wife has



already been assessed, there is no question of a further assessment on the deceased assessee in the present case.

5. The question of limitation is based on the period within which the proceedings had to be completed when a search is initiated. The time limit for completion of block assessment is prescribed in Section 158BE of the Income Tax Act, 1961 (for brevity "IT Act") and it has to be within two years from the end of the month in which the last of the authorization for search under Section 132 of the 'IT Act' or for requisition under Section 132A as the case may be, was executed; in the relevant year.

6. The Panchnamas are produced as Annexure-1 and Annexure-1/1. Annexure-1 speaks of an authorization on 29.03.2001 as against the residential premises of the assessee, who is now deceased. The search commenced and concluded on 30.03.2001. 'The Tribunal' found that the Panchnama itself indicated that the proceedings were finally concluded on 30.03.2001 at 5.45 P.M. Hence, the order passed on 30.04.2003 (Annexure-2) was time barred.

7. The Revenue contends that there was a subsequent Panchnama (Annexure-1/1) prepared based on an authorization against the assessee and his wife for search of the locker in a



bank. This is produced as Annexure 1/1 in which the authorization is said to be 17.04.2001. The search was completed on 18.04.2001.

8. Learned counsel for the assessee submits that the second annexure cannot be said to be a continuance of the first annexure. Obviously, both these Panchnamas led to the order being passed on 30.04.2003 (Annexure-2).

9. Despite the question of limitation being answered against the Revenue; on facts 'the Tribunal' has found that there was acceptance of ownership of assets made by the wife of the assessee, who was present at the time of search. The Department had not even examined the assessee in the course of search or inspection. Statements were taken only from the wife of the assessee and not from the assessee. The assets were also said to have been accepted as owned by the assessee's wife.

10. Learned counsel for the Revenue then pointed out that in fact the specific ground raised by the Department was that the wife of the assessee had no ostensible source of income and that the assets obviously belonged to the assessee, who was the husband of the lady who asserted ownership. However, 'the Tribunal' has found that there was no examination of the assessee at all, during the search conducted or later to that.



11. We do not see any contention regarding summons for recording statement having been issued on the assessee. In the above circumstances, we find no reason to interfere with the order of ‘the Tribunal’. We refuse to answer the question of law on limitation since the assessee on facts was found to be not liable for the income leading to the assets discovered on inspection. The legal question can be left to be answered in an appropriate case.

12. Both the appeals stand closed refusing to answer the question of law raised, which can be considered in an appropriate case, where the answer would have some ramification on the subject matter.

13. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	12.12.2023
Uploading Date	15.12.2023
Transmission Date	

