IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.635 of 2011

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Bishwajit Pandey S/O Sri Ramashish Pandey R/O Pathak House, Brahmapura, Muzaffarpur

... ... Appellant/s

Versus

Acit Central Circle Muzaffarpur

... ... Respondent/s

==

with

Miscellaneous Appeal No. 711 of 2011

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Bishwajit Pandey

... ... Appellant/s

Versus

Acit, Central Circle

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 635 of 2011)
For the Appellant/s : Mr. Sriram Krishna, Advocate
Mr. Tushar Vaibhav, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax Deptt.
Ms. Shilpi Keshi, Advocate
(In Miscellaneous Appeal No. 711 of 2011)
For the Appellant/s : Mr. Sriram Krishna, Advocate
Mr. Tushar Vaibhav, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax Deptt.
Ms. Shilpi Keshi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-12-2023

The appeals are filed by an assessee from a common order of the Income Tax Appellate Tribunal (for brevity, the Tribunal) disposing of the appeals of the assessee and the revenue for the block period 1996-97 to 2002-03 assessment years. There were two technical objections raised by the assesee insofar as the jurisdiction and limitation which were found against the assessee, against which order, there is no grievance raised in the present appeals. The grievance raised is with respect to the specific grounds on which the assessee's appeal was filed. The first grievance is with respect to imposition of penalty on the addition of an income of Rs.1,79,019/-; the difference in the opening capital of the appellant which was alleged to be a concealment of income on the part of the appellant and the addition of income of Rs. 50,567/- and Rs. 2,19,975/- on account of gifts received by the assessee.

2. The revenue before the Appellate Authority raised a question of modification of the addition of Rs. 7,00,000/- which was claimed to have been received by the assessee towards advance for sale of the land from the prospective purchasers. The Tribunal had accepted the finding of the First Appellate Authority which modified the addition and sustained only Rs. 3.45 lakhs for the purpose of penalty as was done in the quantum appeal.

3. The questions of law raised are following as available from the order dated 15.09.2015:-

(i) Whether on the facts and in the circumstances of this case, the Tribunal has erred in not appreciating that based on disclosures in the Block Return every addition or disallowance does not straight away amount to concealment of income attracting penalty and that rejection of a claim made bona fide does not in every case entail penalty particularly when tax is levied at higher (penal) rate more so in the absence of any Explanation as appended to S. 271 (1) (c) which also is specifically excluded by S. 158 BFA?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal has erred in not appreciating that when two views on any issue arising from facts disclosed in the Block Return are possible, particularly when the assessee has furnished all details asked for, but same have been ignored by the Tribunal in quantum appeal on the pretext that it had not formally been admitted as evidence, then penalty was not leviable on entire addition in such cases and the view favourable to the assessee ought to have been taken at least in the matter of imposing penalty?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal has erred in adopting a pick and choose method as it considered the matter of HRA, which had earlier been considered in regular assessment, in favour of the Revenue but chose to disallow capital gains exemption on the plea that capital gains had been declared in return for regular assessment in juxtaposition to the settled law that incomes dealt with in regular assessment ought not to be considered in Block Assessment under Chapter XIV B?

(iv) Whether on the facts and in the

circumstances of the case, the Tribunal has erred in sustaining the penalty on the addition of income of Rs.50,567/- and Rs.2,19,975/- on account of disallowances of gifts received from brother, an NRI, admittedly being remittances through Bank?

4. We heard Shri. Shriram Krishna learned counsel for the appellant and Smt. Archana Sinha, Senior Standing Counsel for the revenue. The learned counsel for the appellant referred to the decision of this Court in the quantum appeal filed by the assessee against the assessment of the block period.

5. Insofar as the addition of Rs. 7,00,000/- on account of unexplained amount, stated to be advance received from prospective buyers, the First Appellant Authority had deleted the addition to the extent of Rs. 3.55 lakhs. On second appeal before the Tribunal, the entire addition was upheld, reversing the modification. It is seen from the judgment of this Court in M.A. Nos. 535 and 555 of 2007, the quantum appeals filed by the assessee that the addition of Rs. 7,00,000/- was confirmed by this Court. It is to be noticed that the Assessing Officer had specifically stated that the sale deeds as proffered by the assessee for the purpose of substantiating the advance received from prospective buyers was only to the extent of Rs. 5,74,000/-. The sale deeds proffered also did not show any advances having been received by the assessee prior to the

execution of the sale deed. The assessee also had a claim that the balances of the advances received were refunded. There was absolutely no evidence proffered to show such refunds. It was in such circumstances that the Assessing Officer made the addition, which though modified by the First Appellate Authority was restored by the Tribunal and which restoration was upheld by this Court. However, in the penalty proceedings the Tribunal relied on the First Appellate Authority's order and confirmed the penalty only with respect to the addition of Rs. 3.45 lakhs, which was disallowed to be treated as advance for sale of land received from prospective buyers.

6. We find no appeal having been filed by the Revenue against the order of the Tribunal. Hence, the penalty can be only to the extent of that confirmed by the Tribunal, though the entire addition is confirmed in the quantum appeal.

7. Insofar as the addition of Rs. 1,79,019/- on account of difference of opening balance of capital as per the revised capital account submitted; this court in the quantum appeal has found that this was reflected in the original returns filed before the block assessment and since there was no reopening of the assessment there can be no addition made in the block assessment. The penalty imposed hence has to be

deleted.

8. The next ground of addition on which penalty was imposed is on Rs. 50,567/- arising for disallowance of claim under Section 54B and Rs. 43,928/- under Section 54. The aforesaid disallowances were of the capital gains from the sale of three lands held by the assessee totaling Rs. 1,00,934/- one at Motihari and two at Muzaffarpur against which purchase of DDA residential flats were made at New Delhi. In the assessment order it was found that capital gains were disclosed in the original return filed but no deduction claimed under Section 54B and 54. The additions were sustained in the assessment order which was interfered with by the First Appellate Authority on the ground that they were declared in the regular return. The Tribunal reversed the order of the First Appellate Authority in the quantum appeal and restored the additions made, since they were never claimed in the original return filed. The quantum appeal before this Court also has not dealt with the issue and Tribunal's order stands confirmed.

9. The Tribunal in the above circumstances found that the penalty is justified on this count also. However, we are of the opinion that if no deduction was claimed in the original return then definitely the capital gains would have been assessed

to tax. If such assessment has already been made and deduction is now claimed under Section 54B and 54F in the block return and rejected there is no ground of imposition of penalty. We hence delete the penalty imposed on the ground of a wrong claim of Section 54B and 54F of the Act.

10. The last ground is with respect to the penalty imposed on the receipt of gift from the assessee's brother. The Assessing Officer, the First Appellate Authority, the Tribunal and this Court in the appeal from the assessment order found that there is no evidence produced by the assessee to prove the amounts received as gift from his brother. Hence, the penalty imposed is justified and is upheld.

11. The first and second questions of law framed are hypothetical and not based on the facts and circumstances of the case and we refuse to answer the same. Insofar as the third question of law, we have found that the penalty on the disallowance of the exemption claimed on capital gains cannot be sustained. As far as the fourth question of law is concerned this Court had accepted the orders of the lower authorities which sustained the quantum addition made on the claims of gifts received from the brother. In the above circumstances, the penalty on that count is justified and upheld. The third question

of law answered by us, is in favour of the assessee and against the revenue. The fourth question of law is in favour of the revenue and against the assesee.

12. The appeals are partly allowed on the above terms.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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