IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.222 of 2011

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Satyendra Kumar @ Satyendra Kumar Singh S/o Brij Nandan Singh, R/o B.N. Apartment, P.O.-Lohi Nagar, P.S. Kankarbagh, District-Patna.

... ... Appellant/s

Versus

1. The Commissioner of Income Tax, Central, Central Revenue Building, Birchand Patel Path, Patna.
2. The Deputy Commissioner of Income Tax, Annexy Building, Bir Chand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan Mishra, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax Deptt.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-10-2023

The questions of law framed in the appeal are as follows:-

(i) Whether in the fact and in the circumstances of the case the fact regarding investment in share capital for Rs.50,000/- is not the part of seized material as such can not be made addition under block assessment in view of the judgment delivered by Hon'ble Madras High Court in 308 ITR 124?

(ii) Whether in the fact and in the circumstances of the case the investment made for Rs.50,000/- in the name of two sons of the assessee without verifying the fact that the said certificate of investment was not part of seized material as such can not be assessed under block assessment rather could be assessed under regular assessment by charging 30% tax not 60% tax?

(iii) Whether in the facts and circumstances of the case the addition made in the account of educational expenses and upheld by the CIT (Appeal) and Tribunal for Rs.1,30,000/- is just and reasonable or is perverse in view of the fact that the evidence regarding educational expenses to the extent of TNA Rs.60,000/- was shown in the return filed by the assessee for the assessment year 1998-99 prior to the search and seizure in the balance sheet filed along with the said return and thus it could not be said that the evidence has been disclosed during course of search?

2. The assessee is the appellant, who is concerned with the block assessment made for the years 1989-90 to 1998-1999 pursuant to a search conducted in the residential premises of the appellant; which belonged to his father. The search resulted in seizure of cash, FDRs and other documents of investments, gold jewelry and a number of incriminating documents which also revealed the assessee having floated a construction company in the name of M/s Lalit Construction Private Ltd. along with his wife and mother as its Directors. A notice under Section 158 BC under the Income Tax Act, 1961

was issued and since there was no response it was repeated. The assessee, then filed return for the block period in Form 2B on 31.03.2000 admitting no undisclosed income. A questionnaire was issued to the assessee along with notice under Section 142(1) and 143(2), which was replied on 07.08.2000, based on which additions were made from which three aspects, which are dealt with in the questions of law, have been challenged in the appeal. The additions made were challenged in first appeal before the first Appellate Authority, who modified some, from which order both the revenue and the assessee filed appeals before the Tribunal. The common order from which the present appeal arise rejected both the appeals of the assesee and the revenue. The present appeal raises questions of law from the rejection of the grounds raised by the appellant before the Tribunal, touching upon the factual aspects of the three additions made.

3. In the reply filed on 07.08.2000, there was no categoric statement of business income derived from supply of building materials but the assessee admitted to the floating of a construction company, which was incorporated in the year 1992-93 and also claimed that regular returns of income were filed in respect of the company, since the assessment year 1993-94. The assessee though undertook to file the balance-sheet of the company, no such statement of accounts were filed to establish

the cash-flow and accumulation of savings for explaining the investment made in the assets in different years. The assessee was found to have attempted to show generation of funds in the year 1989-90 to 1995-96 by the business of supplying of building materials. No such business existed was the finding.

4. The initial investment made in the share capital of the company and various investments made as fixed deposits and with the UTI and NSC as also shares purchased were added on in the block assessment.

5. As we noticed, we are only concerned with the investment made of Rs. 50,000/- in the construction company, investment of Rs. 50,000/- each in the name of his sons again in the company and the expenditure for education of the assessee's son having been added on to the income in the block period; which are the factual aspects on which the questions of law are raised in the present case.

6. The assessing officer dealt with the share capital in the construction company. First, two investments made in the share capital of the construction company of Rs. 15,000/- on 04.03.1992 and Rs. 10,000/- on 24.08.1992 were referred to of which Rs.15,000/- alone was made addition of in the assessment year 1991-92. Then, there were two other investments made in the name of his sons of Rs. 25,000/- each and in the name of the

HUF a further mount of Rs.50,000/-; which were added as undisclosed income in the block period. Likewise, the son of the assessee was found to be studying in Scindia School, Gwalior and as per the documents seized from the residence, expenses were detected, which along with the documents requisitioned from the school, were related to the payment towards school fees. Actual payment of fees requisitioned from the school related to the tuition fees and hostel charges. The source of expenditure pointed out by the petitioner was from the HUF, Rs. 75,000/- in 1996-97, a gift received of Rs. 55,000/- in the year 1997-98 and the income of his wife and himself in the years 1998-99 and 1999-2000. A total addition of Rs. 2,50,000/- was made.

7. On appeal before the first Appellate Authority, the additions made insofar the investment made on the share capital purchased in the name of the assessee's sons were found to be not explained and the same was confirmed while deleting the addition made Rs. 15,000/- in the assessment year 1993-94. The addition of the investment made in the name of HUF was found to be supported by the disclosure of agricultural income of the assessee; from the particulars of expenses furnished by the assessee itself in the course of assessment, the correctness of which was not examined by the Assessing Officer, leading to its deletion.

8. In the balance-sheet of the assessee for the year 1998-99, the withdrawal of Rs. 60,000/- for expenses of his son's studies were shown, which stood deleted. Likewise, the return of the assessee's wife for the year 1999-2000 disclosed the withdrawal of Rs. 65,000/- from her capital account, which was stated to be the expenditure incurred in that year; which also stood deleted. The source put forth of an income or Rs. 75,000/- from the HUF 1996-97 was rejected, since the HUF had not filed any return for the said assessment year. The gift of Rs. 50,000/- for the assessment year 1997-98, also was not explained, hence, while deleting the addition of Rs. 1,25,000/- the addition of Rs. 1,30,000/- for the years 1996-97 and 1997-98 were upheld.

9. The Tribunal upheld the additions made in the appeal of the assessee. It was found that with respect to the investment made in the company, in the name of the sons of the assessee there was no satisfactory explanation nor a source pointed out. It was claimed before the Tribunal that the said expenditure was disclosed in the balance-sheet of the company and that it was in the knowledge of the Assessing Officer even prior to the search. The argument put forth was that the addition under block assessment can only be made on the basis of the seized material. The Tribunal found that the assessee failed to establish any source of income, for both the children.

10. The Tribunal failed to consider the question of law specifically raised but however what falls for interpretation is Section 158 BB. Section 158 BB speaks of computation of undisclosed income of block period; *"in accordance with the provisions of the act on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such materials or information as are available with the Assessing Officer and related to such evidences" (sic).* The investment made on behalf of the sons in the company was not disclosed in the returns of the assessee. Only on the return filed pursuant to the search, the disclosure was made regarding the floating of the company with the assessee, his wife and mother as partners. This led to the discovery of the investment made in the name of his sons, hence, the assessee having accepted this in the reply submitted to the assessing officer pursuant to the notice issued under Section 132, it is relatable to the search and the addition is proper. The investment of Rs. 50,000/- in the name of HUF was deleted by the first appellate authority.

11. The education expenses also stood confirmed by the assessee. The Tribunal found that the information regarding assessee's son pursuing his education in Scindia School was discovered as a result of search. It is pursuant to that a requisition was made from the school and the entire expenses were detected

for the four assessment years; of which two stood explained. The assessee was not able to substantiate the source of income as put forth detected in the other two years; allegedly by way of income from a HUF, the returns of which were not filed in the relevant assessment year and a gift, which was just a bland statement without any substantiation.

12. We find that the additions made were as a result of the material recovered and the admissions made pursuant to the search directly relatable to the search. On the above finding it has to be found that no question of law arises from the impugned order of the Tribunal and the finding on facts of the Assessing Officer, affirmed by the first Appellate Authority and the Tribunal are unassailable in the present appeal.

13. The appeal would stand rejected.

(K. Vinod Chandran, CJ)

Partha Sarthy: I agree.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	06.10.2023.
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