IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.364 of 2011

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Mahesh Kr. Agarwal @ Mahesh Agarwal

... ... Appellant/s

Versus

DCIT, Central Circle 4, Patna

... ... Respondent/s

==

with

Miscellaneous Appeal No. 365 of 2011

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Mahesh Kr. Agarwal @ Mahesh Agarwal

... ... Appellant/s

Versus

DCIT, Central Circle 4, Patna

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 364 of 2011)
For the Appellant/s : Mr. Sriramkrishna, Advocate
For the Respondent/s : Mr. Harshwardhan Prasad, Advocate
(In Miscellaneous Appeal No. 365 of 2011)
For the Appellant/s : Mr. Sriramkrishna, Advocate
For the Respondent/s : Mr. Harshwardhan Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-07-2023

The appeals arise from an order of the Tribunal which reversed the order of the First Appellate Authority and restored that of the Original Authority imposing penalty.

2. The question of law arising in the above case is re-framed as follows:

Whether in the facts and circumstances of the case, the Tribunal was right in upholding the order of penalty issued by the Original Authority; which was beyond the limitation period prescribed under the proviso to Section 275(1)(a) of the Income Tax Act?

3. The brief facts to be noticed are that in the Assessment Years 1995-1996 and 1996-1997, on allegations of scam with respect to transactions in Bitumen, lifted from oil companies, the carriage contractors were proceeded against for showing cause as to why the non-delivery of Bitumen should not result in assessment of income on the transporters, of the value of the entire quantity of Bitumen lifted from oil companies, but not delivered to the consignee and misappropriated by the transporters. The appellant herein was one such transporter who was proceeded against. The appellant submitted that he had not lifted the Bitumen from the oil companies despite he being the contractor. The oil company asserted that the Bitumen was lifted by one other entity which was the sister concern of the assessee herein; on the specific authorisation made by the assessee.

This resulted in assessment of income of the assessee making additions, on which appeals were filed unsuccessfully till the Hon'ble Supreme Court. We are not concerned with the quantum of assessment which stands settled and we are only concerned with the penalty proceedings taken later in both the assessment years.

4. The quantum appeal before the First Appellate Authority, the Commissioner of Income Tax (Appeals)-1 was disposed of by order dated 18.09.2006 finding that the short supply having been proved, the value of short supply of Bitumen would be assessable in the hands of the appellant who had lifted the goods through a sister concern. The issue raised is as to whether the penalty order under Section 271(1)(c) of the Act has been passed within the limitation period. There was a proviso introduced under Section 275(1)(a) by the Finance Act, 2003 which alters the limitation is the short ground of the appellant.

5. Section 275(1)(a) provides that when an order passed in an assessment year is appealed before the First Appellate Authority or the Appellate Tribunal, no order of penalty shall be imposed after the expiry of the financial

year in which the proceedings in the course of which action for imposition of penalty has been initiated are completed or six months from the end of the month in which the order of the Appellate Authority is received by the Principal Chief Commissioner or Chief Commissioner, whichever period expires later. Hence, when an appeal is filed from an order in an assessment year, which could also lead to imposition of penalty, then the Officer imposing the penalty should wait till the appeal before the First Appellate Authority or the Appellate Tribunal is over, provided it is instituted within the period of one year from the end of the financial year, and then impose the penalty within six months from the end of the month of communication of the appellate order or the end of the financial year in which the original proceeding is completed, whichever is later.

6. By the proviso introduced in 2003, there was a different limitation provided for all orders issued on or after the first day of June, 2003. As per the proviso, it was required that such order of penalty shall be imposed before the expiry of the financial year in which the proceedings in the course of which action for imposition of penalty had been initiated is completed or within one year from the end

of the financial year in which the order of the First Appellate Authority is received by the Principal Chief Commissioner or Chief Commissioner. Hence, the further limitation provided to impose penalty within six months of receipt of the order of the second Appellate Authority, the Appellate Tribunal was taken away and a different period provided from the First Appellate Authorities order.

7. In the present case, admittedly the quantum appeal was rejected by the CIT (Appeals) on 18.09.2006. Hence, the order of penalty should have been passed either by the end of the financial year on which the original assessment was completed or within one year from the end of the financial year in which the order of the Commissioner is received by the Principal Chief Commissioner or Chief Commissioner; whichever is later. The order of the Original Authority was passed on 31.03.2009, the First Appellate Authorities order on 24.03.2010 and that of the ITA Tribunal on 16.12.2010. As is evident from Annexure-5 order of the second Appellate Authority, in the penalty proceedings, the CIT (Appeals) order was dispatched to the CIT (Central) on 11.10.2006,

which would have been received in the same financial year. Hence, the penalty should have been imposed within one year from the end of the financial year in which the order of the Commissioner was received by the Principal Chief Commissioner or the Chief Commissioner. When the first appellate order was received in the Financial Year 2006-2007, the penalty should have been imposed within 31.03.2008 as per the proviso, especially when the order is one passed after 01.06.2003. The instant orders were passed on 31.03.2009 far after the limitation period.

8. We answer the question in favour of the assesse and against the revenue. We set aside the order of the Appellate Tribunal and restore that of the First Appellate Authority.

9. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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