

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 13th DAY OF FEBRUARY, 2017

PRESENT

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

AND

THE HON'BLE MR.JUSTICE B.A.PATIL

I.T.A.NO. 6001/2013

BETWEEN:

THE DEPUTY COMMISSIONER OF
INCOME TAX
CENTRAL CIRCLE-1
BELGAUM
THROUGH THE COMMISSIONER
OF INCOME TAX
GULBARGA
AYKAR BHAVAN, SEDAM ROAD
GULBARGA

...APPELLANT

(BY SRI, AMEET KUMAR DESHPANDE, ADV)

AND:

SRI R CHARUCHANDRA
PROPRIETOR
SRI SRINIDHI MINES
DR.NANGANGOUDA GARDEN

STATION ROAD, HOSPET 583 201 ...RESPONDENT

(BY SRI MALLIKARJUN SAHUKAR, ADV - ABSENT)

THIS APPEAL IS FILED UNDER SECTION 260A OF INCOME TAX ACT PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 24.08.2012 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI IN ITA NO.181/PNJ/2011 CONFIRMING THE JUDGMENT AND ORDER DATED 10.08.2011 PASSED IN ITA NO.19/DCIT/CCI/BELGAUM/CIT(A)-VI/B'LORE/2010-11 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-VI, BANGALORE AND PASS SUCH OTHER APPROPRIATE ORDER IN THE INTEREST OF JUSTICE.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, ARAVIND KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

Revenue is in appeal calling in question correctness and legality of the order passed by Income Tax Appellate Tribunal, Panaji Bench in ITA No.181/PNJ/2011 dated 24.08.2012 whereunder appeal filed by the revenue came to be dismissed and disallowance which had been made by the Assessing

Officer and allowed by Commissioner of Income Tax (Appeals) came to be confirmed.

2. Assessee is an individual and search operation was carried out under Section 132 of Income Tax Act, 1961 (for short 'Act') on 25.03.2008. By treating the said proceedings as one under Section 153A of the Act, assessee was given an opportunity to file revised return of income and pursuant to same, return of income was filed by assessee on 13.04.2009 declaring a total income of ₹ 3,79,27,720/- and said return of income came to be processed under Section 141 of the Act by issuing notice under Section 143(2) of the Act. After hearing the representative of the assessee, assessment order dated 21.12.2009 came to be passed by the Assessing Officer (for short 'AO') whereunder AO disallowed certain claims made by the assessee or in other words, added the following:

“Add:

- (i) Undisclosed investment in Money lending as discussed in Para 4 above. - ₹ 35,50,00
- (ii) Unexplained cash being UDI as discussed in para 6 above. - ₹ 2,89,000
- (iii) Unexplained investment in Jewellery as discussed in para 7 above. - ₹ 10,13,626
- (iv) Investment made in Agricultural land and Advances as discussed in para 8 above, being UDI - ₹ 13,45,200
- (v) Deforestation charges Disallowed being UDI as discussed in para 12 above.” - ₹2,75,75,742

3. Being aggrieved by the same, assessee filed an appeal before Commissioner of Income Tax (Appeals)-VI, Bangalore (for short ‘CIT (Appeals)’) in Appeal No. 19/ DCIT/ CCI / BELGAUM / CIT(A)-VI, B’LORE/2010-11. Appellate Authority by a detailed order as discussed in paragraphs 10.1 to 10.6 of its

order allowed the claim of the assessee and rejected the grounds urged by the revenue. Being aggrieved by the same, revenue filed an appeal before Income Tax Appellate Tribunal, Panaji Bench, Panaji (for short 'ITAT') in ITA No.181/PNJ/2011 contending that a sum of ₹ 35,50,000/- which was added by the Assessing Officer as undisclosed income of the assessee was not required to be interfered by 'CIT (Appeals)' since assessee had not enclosed cash flow statement for the year 2008-09; non-production of the accounts relating to HUF status before the Assessing Officer was not considered by CIT (Appeals) and as such, sum of ₹ 2,89,000/- found and seized at the time of search had remained unexplained; afforestation charges of Rs.2,75,75,742/- accepted as revenue expenditure is erroneous and it ought to have been treated as capital expenditure and it ought to have dismissed the appeal filed by the revenue.

4. We have heard Sri Ameet Kumar Deshpande, learned Advocate appearing for revenue. Statement of objections have been filed by respondent which is flawed because of objections raised by the Registry and rightly so. Though respondent is served and represented, none appears.

5. Reiterating the grounds urged before the Tribunal, it is contended by Mr.Ameet Kumar Deshpande, learned Advocate appearing for the revenue that both the appellate authorities have erred in not appreciating the material which was available before Assessing Officer who had disallowed the claim of the assessee and deletion made by CIT (Appeals) is based on assumptions and presumptions. Hence, contending that orders of CIT (Appeals) as well as Tribunal being erroneous and contrary to factual aspects, substantial questions of law as formulated in the appeal

memorandum would arise for consideration and he prays for framing said questions of law and answering the same in favour of the revenue.

6. As could be seen from the order of the Tribunal, it is found that Tribunal has succinctly discussed with reference to each of the disallowance made by the Assessing Officer and particularly with reference to the undisclosed investment in money lending which had been added as income of the assessee by the Assessing Officer and it has been noticed by the Tribunal that Assessee had withdrawn a sum of ₹ 16 lakhs on 07.09.2007, ₹10 lakhs on 08.10.2007 from State Bank of Mysore and for the assessment year 2002-03 on every long term capital gain of ₹ 18.2 lakhs received from sale consideration of ₹ 20.15 lakhs and as such, upheld the contention of the assessee that he had the benefit of cash available with

him. Tribunal also noticed that assessee had submitted cash flow statement before CIT (Appeals) to substantiate that entire sale consideration as well as long term capital gains offered for the taxation for assessment year 2002-03 disclosed that cash was available with the assessee for lending since same had been withdrawn from the Bank and as such, it has been concluded that sufficient cash was available with the assessee for lending. In that view of the matter, grounds urged by the revenue came to be rejected by the appellate authority and affirmed by the Tribunal.

7. Insofar as cash of ₹ 2,89,000/- seized during the course of search having been added as unexplained cash by the Assessing Officer also received the attention of both the appellate authorities. It is not in dispute that at the time of search, a sum of ₹ 2,89,000/- cash was in possession of the assessee, out

of which ₹ 2,50,000/- was seized. Assessee is owning 4½ acres of agricultural land in HUF capacity and in the said account, book cash of ₹ 4,16,092/- has been reflected and this was also with the assessee. It was also noticed by CIT (Appeals) that an agreement to sell had been entered into by assessee and had received back ₹ 1,80,000/- as refund since said deal did not materialise or sale did not take place. Hence, CIT (Appeals) concluded that as on 25.03.2008 assessee possessed cash balance as per book a sum of ₹ 2,96,092/- and in that background, addition of ₹ 2,89,000/- came to be deleted. Since it was noticed after verification of books of account maintained by assessee that assessee had sufficient cash on hand, deletion made by CIT (Appeals) came to be affirmed by ITAT.

8. A sum of ₹ 2,75,75,742/- had been incurred by assessee towards afforestation charges and balance amount out of ₹ 5 Crores which was agreed to be offered as income for the assessment year 2008-09 came to be offered for taxation. However, Assessing Officer found that agreement dated 29.01.2007 between the assessee and Sri Goutam Chand Lonavat entered into on behalf of M/s.Rajashree Minerals stipulated only fixed royalty of ₹ 465/- per metric tonne on the basis of selling price of MMTC of Fe-65% ore, a refundable deposit of ₹ 5 Crores was paid to the assessee at the time of agreement which was repayable at the end of 4th year or at the end of contract period and all the expenses incurred for renewal of mining licence had to be borne by the second party i.e., M/s.Rajashree Mineral and in view of the same, payment of ₹ 2.75 Crores made by the assessee during the month of February, 2007 to the Forest Department was inadmissible. CIT (Appeals)

noticed that assessee had paid a sum of ₹ 2,75,75,742/- to the Forest Department towards afforestation charges and it was never the case of revenue that said expenditure is a capital expenditure. As the lease was only for a period of four years, amount spent towards afforestation charges was rightly held as an expenditure not being enduring in nature and as such, it was treated as revenue expenditure. Though amount was paid by the assessee on 01.02.2007, it was booked as expenditure for the assessment year 2008-09 since Forest Department has informed that demand draft furnished by assessee would be encashed by the Department only in case of approval is granted and in the event of non-approval of licence or non-renewal of licence, demand draft would be returned back and as such, liability having crystallised during financial year 2007-08, same was claimed by the assessee in the assessment year 2008-09. CIT (Appeals) noticed that as

per clauses (vi) and (vii) in the agreement, second party namely, M/s.Rajashree Mineral had to pursue renewal of the mining lease application and it had agreed to provide money on behalf of first party. As per clause (viii) second party M/s.Rajashree Mineral had also agreed to invest but the same was to be adjusted over a period of time. It was found by CIT (Appeals) that as per clause (xi), “**all amounts**” that are to be paid to various Government Department officially are to be treated as advance and are to be debited to Mine Owner’s account. Representative or signatory to the agreement - Sri Goutam Chand in his statement made before the Assessing Officer when summoned by AO, has confirmed that expenditure incurred towards fee paid on account of afforestation was borne by the assessee. At the same time, statement furnished by the assessee before Assessing Officer also disclosed that M/s.Rajashree Mineral either as a firm or Sri Goutam

Chand as its proprietor had not claimed the expenses in their respective accounts. Thus, it came to be held by both the appellate authorities that though expenditure is financed by Sri Goutam Chand of M/s.Rajashree Minerals who had taken a mine on lease from assessee, they were recoverable from the assessee and their accounts also disclosed the same. In view of the fact that none of the parties other than the assessee has claimed said amount as expenditure and this aspect having not been questioned by the revenue, appeal of the revenue rightly came to be dismissed by the Tribunal. On appreciation of entire material on record, as noticed herein above, Tribunal has rejected the claim of the revenue and has affirmed the order passed by CIT (Appeals). Findings recorded by both the appellate authorities are all questions of fact and there is no question of law involved in this appeal for being adjudicated by admitting the same and answering it.

Hence, we are of the considered view that it is not a fit case for being admitted.

Hence, we proceed to pass the following:

ORDER

- (i) Appeal is hereby dismissed.
- (ii) Order dated 24.08.2012 passed by Income Tax Appellate Tribunal, Panaji Bench in ITA No.181/PNJ/2011 confirming the order passed by Commissioner of Income Tax (Appeals)-VI, Bangalore in Appeal No. 19/DCIT/CCI/BELGAUM/CIT(A)-VI, B'LORE/ 2010-11 dated 10.08.2011 is hereby affirmed.

Ordered accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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