

Case :- INCOME TAX APPEAL No. - 200 of 2010

Appellant :- Sri Jaswant Singh

Respondent :- Assistant Commissioner Income Tax

Counsel for Appellant :- S.D. Singh, Abhijit Banerjee

Counsel for Respondent :- Csc (It Dept), R.K. Upadhyay

**Hon'ble Bharati Sapru, J.**

**Hon'ble Vinod Kumar Misra, J.**

Heard Shri S.D. Singh, learned Senior Counsel assisted by Shri Archi Agrawal, learned counsel for the appellant and Shri Shubham Agrawal, learned counsel for the department.

This appeal has been filed by the assessee under Section 260-A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 30.10.2009 for the blocked period ending 4th of June 2002.

The questions of law sought to be answered by the order of this Court dated 5.5.2014 reads as hereunder:

*"(i) Whether, the finding in respect of on-money alleged to have been paid by the appellant and Sri Kamal Raheja is based on any cogent material and evidence on record?"*

The facts of the case are that a search and seizure operation was conducted at the residence of the assessee on 4.6.2002 and some documents were seized from the premises which included some loose sheets.

While examining these loose sheets which was marked as LP-10 the department sought to correlate the same documents to a property purchased by the assessee at Tilak Nagar, Kanpur between him and one Shri Kamal Raheja. The registration of which was done on 17.5.2002. The assessing authority sought to correlate these loose sheets to the transaction between him and Shri Kamal Raheja on the basis of scribbling on the loose sheets marked as LP-10 and came to the conclusion that some undisclosed income and undisclosed investments were there which had not been shown by the assessee.

The assessing authority records in his assessment order dated 18.6.2004 which reads as hereunder:

*"9.8. Reply was subsequently filed on 15.06.2004. It was argued that the notings in annexure LP-10 were rough estimates, which were incorrect. It was further argued that the cut figures have to be taken as cut. It was stated that the property was finally registered in May 2001 and thus the calculation which seem to be of 2002 could not relate to any amount paid on account of purchase of property. It was further routinely argued that details of property/ on money were nowhere recorded in the entire LP and entire presumption is based on conjectures and surmises and not on any evidence found during search. This paper was stated to be dump. Regarding amount of surplus of Rs.39,500/- it was stated that it seemed to be rough working and assessee was estimating what he would earned or saved."*

The Commissioner of Income Tax also came to the conclusion that the loose papers related to the Tilak Nagar, Kanpur property and made an addition against the assessee.

The Tribunal too has recorded a finding which is contained in paragraph 17 of the Tribunal's order which reads as hereunder:

*"17. After careful consideration of rival submissions, we are of the opinion that so far as details in the alleged papers under reference which have been reproduced by the CIT (A) in para 31 of her order are concerned, the assessee has not disputed that the same did not relate to transactions carried by him or with respect to transactions in which the assessee was involved and having not disputed this fact it was incumbent upon him to explain the nature of various entries. Simply submitting that the details were of May, 2002 whereas the property had been registered in 2001, in our opinion, was not sufficient to discard the revenue's case. It is quite possible that extra money may have been paid after the registration or if it was not for that property, it may have been against some other transaction/property. The onus put on the assessee, in our opinion, was not discharged and therefore, we are unable to interfere with the order of the CIT (A), which is confirmed."*

Upon reading of the three orders passed by the authorities below it becomes abundantly clear that the assessee had infact denied the loose sheets and had nothing to do with the transaction that was completed on 17.5.2001

The search had been made after one year. Apart from one figure which the authorities had tried to relate to the transaction by saying that it has two zeroes less of an amount of Rs. 2,64,73,000/-. No other figure seems to be matched with the cost of registration which was rupees 23 lacs and odd. The authorities below have tried to say that it related to the property because it could be presumed to reach an amount of Rs.26 lacs.

The Tribunal opines that simply submitting the details were of May, 2002 whereas the property had been registered in 2001

was not sufficient to discard the revenue case.

On the contrary we are of the opinion that once the assessee had rebutted the presumption which had been drawn against the assessee and also in view of the fact that the assessing officer records that the assessee denied that loose sheets related to the previous transactions, such a finding could have been made by the Tribunal. The Tribunal has not examined this aspect of the matter at all.

The matter is, therefore, remanded to the Tribunal to reconsider this aspect of the matter i.e. whether or not the assessee had in fact denied LP-10 as relating to the property purchased at Tilak Nagar, Kanpur Nagar?

The matter on remand may be decided within a period of three months from the date of a production of a certified copy of the order before it. A certified copy of the order may be produced before the authority concerned within next three weeks.

The question is, therefore, decided in the above terms.

The appeal stands disposed of.

Order Date :- 21.12.2016

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