ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT No. 158 of 2014
G.A. No. 3271 of 2014

COMMISSIONER OF I.TAX,CENTRAL-III,KOL

Versus

SHRI PRASANNA DUGAR

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 7th January, 2015.

Mr.P.Dudhoria, Adv.
Mr.J.P.Khaitan, Sr.Adv. Mrs.Manju Agarwal, Adv.

The Court : The appeal is directed against an order dated 30th April, 2014 by which the Learned Tribunal allowed an appeal preferred by the assessee challenging an order passed by the Commissioner of Income Tax (Appeal) affirming the order of penalty passed under section 271(1)(c) of the Income Tax Act. Aggrieved by the order of the Tribunal, the Revenue has come up in appeal.

After hearing the learned counsel for both the parties, it appears that the undisputed facts are as follows :

A search was conducted on 3rd February, 2009. During the search, the assessee made a disclosure. Further and fuller facts have been recorded in the order of the Appellate Authority, which reads as follows:

> “The facts of the case are that a search u/s.132 was conducted at the premises of the assessee on 3.2.2009. In course of search the assessee made voluntary disclosure U/s. 132(4) disclosing a sum of Rs.6 crores even though no incriminating document suggesting any such undisclosed income was found. The said disclosure, as per the said deposition of the assessee recorded U/s.131 was bifurcated into 3 persons i.e. of Rs.3,50,00,000/- was disclosed in the name of the assessee, Rs.2,25,00,000/- was disclosed in the name of assessee’s wife Smt. Rajshree Dugor and Rs.25,00,000/- was disclosed in the name of the Limited Company viz. Indian Gem and Jewellery (Imperial) Pvt. Ltd. in which the assessee had substantial interest. It may be repeated that no concealed income was established from any of the papers and documents found in the course of search in the panchnama of the assessee or in other panchnamas. The entire disclosure was made voluntarily and in good faith which is apparent from question and answer no 22 in the statement recorded u/s.131 wherein the assessee categorically states that he is voluntarily disclosing the income even though no incriminating documents have been found and all the purchases and

> sales are correctly recorded and the disclosure was made just to cover the papers and documents which he may not be able to explain. The assessee bifurcated his own disclosure of Rs.3.50 lakhs in two parts i.e. Rs.70,00,000/- for the assessment year 2008-09 and Rs.2.80 lacs for the assessment year 2009-10."

On the basis of the disclosure, the assessee filled a return on 31st March, 2010 offering a sum of Rs.70,00,000/- for taxation earned during the assessment year 2008-09. It is not in dispute that for the assessment year 2008-09, the assessee had earlier filed his return in which the aforesaid sum of Rs.70,00,000/- was not disclosed. The case of the assessee, as such, came squarely within the provision of section 271(1)(c) of the Income Tax Act.

The Assessment Officer passed an order of penalty, as indicated earlier, which was affirmed by the Appellate Authority. The Tribunal interfered with the order of the Appellate Authority on the basis of a judgment of the Appellate Tribunal, Mumbai in the case of ITA –vs- Gope M Rochalani. The aforesaid judgment, Mr.

Khaitan submitted, has to be read in conjunction with Clause-(b) of Explanation 5A to Section 271(1), which provides as follows:

> “(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return;”

The aforesaid clause, we are inclined to think, is not applicable to the case of the assessee for the simple reason that it is not the case of the assessee that he had not previously filed return for the assessment year 2008-09. Clause-(b) quoted above, according to us, shall not apply to those cases where the assessee had already filed a return, but did not disclose the income, as in this case. His case shall be covered by Clause-(a), which provides as follows:

> (a) Where the return of income for such previous year has been furnished before the said date but such income has not been declared therein;”

The Tribunal, as such, fell into an error in proceeding on the basis that the assessee is entitled to get the benefit/immunity under Clause-(b) quoted above. The Tribunal also appears to have, for the purpose of interfering with the order of the Appellate Authority relied upon its own judgment in the case of Ajit Kumar Surana –vs- KCIT which, even Mr. Khaitan did not dispute, has no manner of application to the facts and circumstances of the instant case. In the case of Ajit Kumar Surana, there was no search and seizure. In the case before us there was, in fact, a search and seizure on 3rd February, 2009. During the search and seizure, the disclosure was made on 3rd February, 2009. During the search and seizure, the assessee made a statement which was recorded by the officers of the revenue. Stress was laid by the Tribunal on the expression ‘voluntary’, but the Tribunal failed to understand that the meaning of the expression ‘voluntary’ in the context is that the statement made by him was not extorted from him by applying force. It is in that sense it was a voluntary disclosure which has also been clarified by the assessee himself by stating in answer to Q.No. 23 that he had not given any statement under pressure and he did not want to rectify or modify the statement made by him.

For the aforesaid reasons, we are of the opinion that the order of the Tribunal is unsustainable in law and, therefore, is set aside. The order of the Appellate Authority is, therefore, restored.

The appeal and the applications are thus disposed of.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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