

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.450 of 2003

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1. Commissioner of Income Tax, Central Patna
 2. Deputy Commissioner of Income Tax, Central Circle – I, Patna

Assessing Officer / Appellants

Versus

Sagar Construction Pvt. Ltd., Surya Vihar, Exhibition Road, Patna

Assessee / Respondents

Appearance :

For the Appellants : M/s Archana Sinha, Sr. S.C.

Suman Kr. Mishra, Jr. S.C.

For the Respondent : None

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT


(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 15-12-2014

Heard learned counsel for the appellant Income Tax Department. No one appears for the respondent.

The appeal was admitted on the following substantial question of law :

“Whether the order of CIT (A) confirmed by the Tribunal is in violation of the principles of natural justice inasmuch as that before taking into consideration the additional evidence no opportunity whatsoever was given to the Assessing Officer?”



The facts of the case lie in a narrow compass. The Assessing Officer in the order of assessment dated 31.3.2000 made an addition of Rs. eight lacs as income after noting that the assessee has made a fresh investment of Rs. eight lacs in M/s. Rajesh Corporation Ltd. whereas the source of the fresh investment has not been explained and therefore assessed the same as unexplained investment for the previous year relevant to the assessment year 1997-98.

Aggrieved by the same the respondent assessee filed an appeal before the Commissioner of Income Tax Appeals which was allowed by order dated 7.6.2001 holding that firstly, the Assessing Officer had by notice under Section 142(1) dated 26.11.1999 called for details of source of investment made during the previous year relevant to assessment year 1997-98 but no specific enquiry was made regarding investment of Rs. 8,00,000/- in M/s Rajesh Corporation Limited. It was further held by the CIT Appeals that he had gone through the copy of the balance sheet filed during the course of assessment proceeding and found that balance of Rs. 8,00,000/- was due from M/s Sagar Sahkari Grih Nirman Samiti Limited in the immediate preceding year and the balance has been reduced to NIL during the assessment year and, thus, the said balance sheet, the explanation furnished by the appellant and the copy of bank account placed before him made


him satisfied regarding the source of investment of Rs. 8,00,000/- in M/s. Rajesh Corporation Limited.

Aggrieved by the order of the CIT (Appeal) the departmental appeal was filed before the Income Tax Appellate Tribunal, Patna Bench which has been dismissed by order dated 17.07.2003. The Tribunal after quoting Rule 46A of the Income Tax Rules has held as follows: -

“8. A plain reading of this Rule makes it clear that sub-rule(1) (2) and (3) of Rule 46A relate to new evidence produced by the appellant and sub-rule (4) deals with the powers of the Id. C.I.T.(A) to direct production of any document before disposing of the matter by him. It is clear from the correspondence between the assessee and the Id. C.I.T. (A), which are available from pages 1 to 4 of the Paper Book filed by the assessee, that it was on the query raised by Id. C.I.T. (A) that the assessee had filed some documents before the 1st Appellate Authority. Thus we are of the considered view that the matter is covered under clause (4) of Rule 46A and, therefore, there is no violation of Rule 46A of the Income tax Rules by the Id. C.I.T. (A) while deleting this addition. Therefore, we have no hesitation in upholding the order of the Id. C.I.T.(A) on this count.

9. In the result, the appeal filed by the Department, is dismissed.”

Learned counsel for the appellant has sought to assail the order of the Tribunal holding that once new evidence has been



considered by the CIT (Appeals) then it was incumbent upon him to have given opportunity to the Assessing Officer to meet the same which is the principle behind 46A (1), (2) and (3) of the Income Tax Rules. It is, thus, submitted that even if the CIT (Appeals) is entitled to look into the documents it was incumbent upon him to have given an opportunity to the Assessing Officer to meet the same.

In our view the said submissions are not based upon a correct reading of Rule 46A of the Income Tax Rules as Sub-Rule (4) contained therein is an overriding power since it is a non obstante clause beginning with “nothing contained in this Rule”. Thus, the power of the appellate authority clearly overrides the provisions of Sub-Rules (1), (2) and (3) of Rule 46 A and it is open to the said authority to look into any additional document if it considers the same as required to dispose of the appeal or for any other substantial cause. As a matter of fact, the principal reason for the CIT (Appeals) in allowing the appeal was the fact that the Assessing Officer had failed to issue specific notice with regard to the investment of Rs. 8 lacs made in M/s Rajesh Corporation Limited and further, he has come to the conclusion that Rs. 8 lacs was fully explained on the basis of balance sheet filed during assessment proceeding itself. It was only to further verify the statements in the balance sheet that he had additionally called for the bank statements to verify the said

transaction of Rs. 8 lacs which had resulted in the balance sheet showing NIL in the account of M/s Sagar Sahkari Grih Nirman Samiti Limited in the assessment year in question. Thus, it was a clear cut case of exercise of the overriding power under Rule 46A(4) of the Rules and not really a case of permitting an assessee to file fresh document on the prayer of the assessee.

The substantial question of law is, therefore, answered in favour of the assessee and against the appellant revenue in view of the provision of Sub Rule (4) of Rule 46 A. Thus, we are inclined to agree with the conclusion arrived at by the Appellate Tribunal.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Dr. Ravi Ranjan, J)

N.H./- Spd/-

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