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*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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+ I.T.T.A.Nos.120, 132 & 229 of 2003
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%Date: 16.09.2014

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#The Commissioner of Income Tax – IV, Hyderabad.

...appellant.

and

\$Tilak Raj Kumar and others.

...Respondents

! Counsel for appellant: Sri J.V.Prasad

^ Counsel for Respondents : Sri Y.Ratnakar

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> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

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I.T.T.A.Nos.120, 132 & 229 of 2003

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COMMON JUDGMENT: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

These three appeals arise under similar circumstances, and the respondents are from the same family. Hence, they are disposed of through a common order.

The respondent in I.T.T.A.No.132 of 2003 is the Hindu Undivided Family (HUF). The respondent in I.T.T.A.No.229 of 2003 is the Karta of the family, who, in turn, is an independent assessee. Similarly, the respondent in I.T.T.A.No.120 of 2003 is a member of the HUF, and he is also an independent assessee. All the three assesses have availed the benefit under "Voluntary Disclosure of Income Scheme (VDIS)" and declared items, which are mostly of jewellery, namely gold and diamonds. For example, the value of gold declared by the Kartha of the Family, by name Harish Kumar, was Rs.2,64,040/-, and that of diamonds - Rs.16,38,700/-. Similarly, the value of the gold disclosed by the other assessee, Tilak Raj Kumar, was Rs.1,57,028/- and that of diamonds - Rs.1,16,000/-. Certificates of disclosure were also furnished to them.

All the three assesses are said to have sold away the jewellery declared by them under the VDIS. While the gold is said to have sold at Hyderabad, the diamonds are said to have been separated from the ornaments and sold at Surat. The sale proceeds of the jewellery were shown in the respective returns, as 'capital gains', for the assessment year 1998-99. The Assessing Officer believed the transaction of sale of gold at Hyderabad, but doubted the genuinity of sale of diamonds at Surat. After conducting a

detailed enquiry, he disbelieved that, and treated the amount shown as sale proceeds of diamonds in all the three assessments, as 'unexplained cash credit', in the respective orders of assessment, passed by him. The respondents carried the matter in appeal to the Commissioner of Income Tax (Appeals)-V, Hyderabad. The appeals were dismissed through separate orders passed in the year 2002. Thereupon, the respondents filed I.T.A.Nos.212, 271 and 272/Hyd/2002, respectively, before the Hyderabad Bench 'B' of the Income Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal allowed I.T.A.No.212 of 2002 through order, dated 31.05.2002, and I.T.A.Nos.271 and 272 through separate orders, dated 07.06.2002. Hence, these three appeals under Section 260A of the Income Tax Act, 1961 (for short 'the Act'), by the Revenue.

The following questions of law are urged:

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I.T.T.A.No.120 of 2003

1. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in holding that the alleged sale transaction of diamonds worth Rs.12,73,028/- as claimed by the assessee is a genuine transaction?
2. Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the amount of Rs.12,73,028/- cannot be added u/s.68 of I.T.Act?
3. Whether on the facts and in the circumstances of the case the Tribunal is correct in directing the Assessing Officer not aggregate the sum of Rs.2,10,000/- being the assessee's share from M/s. Basant Farms for rate purposes?"

I.T.T.A.Nos.132 and 229 of 2003

1. Whether on the facts and in the circumstances of the case the Tribunal is correct in law in holding that the alleged sale transaction of diamonds worth Rs.51,92,750/- as claimed by the assessees, is a

genuine transaction?

2. Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the amount of Rs.51,92,750/- cannot be added u/s.68 of I.T.Act?
3. Whether on the facts and in the circumstances of the case the Tribunal is correct in directing the Assessing Officer not to add aggregate the sum of Rs.3,75,000/-, each, being the assessee's share from M/s. Basant Farms for rate purposes?"

Heard the learned counsel for the appellant and learned counsel for the respondents.

It is a matter of record that all the three assesses made separate voluntary disclosures of their income, in response to a scheme and they were also issued the certificates. Most of the items mentioned in the disclosures are jewellery of gold and diamonds. For one reason or the other, the family thought of selling away the jewellery. In the process, the diamonds were separated from gold and while the gold was sold at Hyderabad, diamonds were sold at Surat. The resultant sale proceeds were shown as 'capital gains' in the respective returns for the assessment year 1998-99. The Assessing Officer was satisfied as regards the proceeds from the sale of gold. The controversy is only about the sale of diamonds.

The starting point for the doubt of the Assessing Officer was as to the very separation of diamonds from jewellery. The next was about the actual sale at Surat. It may be true that the respondents did not declare the diamonds in their unused and unembedded form. When jewellery of such a huge value is declared, it is axiomatic that the items of jewellery are studded with diamonds and other precious stones. No effort was made to have a detailed account of the nature of jewellery that was declared. There is no dispute that what was declared by the respondents was in the form of ornaments. It is just unthinkable that the ornaments of such huge

value and quantity would be in the form of pure gold.

There is ample evidence to show that all the three assesses have sold the diamonds, that are separated from the jewellery, at Surat. It is a place known for voluminous business in diamonds. Not only the particulars of the persons, who purchased the diamonds was furnished, but also the manner of payment was disclosed. The entire payments were through demand drafts. The cross verification undertaken by the Assessing Officer, did not result in noticing of any discrepancy. The bank accounts of the purchasers were verified and the demand drafts issued to the respondents, towards consideration, corresponded to the entries in the bank accounts.

Unable to find any discrepancy in such important aspects, the Assessing Officer started the verification of travel particulars of the respondents. The record discloses that the sale of diamonds did not take at a time and it was in a phased manner. The purchaser was undoubtedly a dealer in diamond. Even assuming that on certain occasions, the corresponding assessee did not proceed to Surat, it cannot be a factor to disbelieve the transaction. When not only the respondents have disclosed the wealth in VDIS, but also have shown sale proceeds as 'capital gains', it was far fetched, if not unreasonable, on the part of the Assessing Officer, to doubt their honesty in this behalf. For all practical purposes, the Assessing Officer subjected the respondents herein to a verification equivalent to the one which is made by the police officials vis-à-vis a person, who committed the crime. Though it is prerogative of the State to levy tax, referable to its sovereign power, it cannot be extended to the level of regulating the conduct of a citizen to such minute extents.

At any rate, the relief granted by the Tribunal is based its findings on pure question of fact. Even before us, no question of law

is argued. Except that the Assessing Officer intended to treat the sale proceeds of jewellery under Section 68 of the Act, no other provision of law is invoked, nor any principle is projected.

We, therefore, dismiss the appeals. There shall be no order as to costs.

The miscellaneous petitions filed in these appeals shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:16.09.2014
L.R. copy to be marked.
GJ