
(2014) 08 RAJ CK 0080
In the Rajasthan High Court
Case No : Income Tax Appeal No. 58/2014

Commissioner of Income

APPELLANT

Vs

Gopi Ram Choudhary

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Income Tax Act, 1961 — Section 139, 148, 260-A, 54B, 54F

Citation : (2014) 369 ITR 355

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Praveen Verma, A.C.I.T, Advocate for the Appellant

Judgement

J.K. Ranka, J.—The instant appeal filed by the appellant U/Sec. 260-A of the Income Tax Act, 1961 (for short the Act) is directed against order of Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short ITAT) dt. 27th January, 2014 passed in its No. 720 relating to Assessment Year 2007-08.

2. Brief facts as emerging on the face of record, necessary for disposal of the present appeal, are that the assessee-respondent though had income through long term capital gains, interest income and agricultural income, but did not choose to file income tax return u/s 139 of the Act. Consequent to the information available with the revenue, a notice u/s 148 of the Act was issued on 15.1.2010. However, it was observed by the Assessing Officer that despite of several notices, neither income tax return nor any other details were furnished in response to notice u/s 148 of the Act. However, a letter was filed by the assessee containing inter alia that the assessee has no taxable income and, therefore, no return is required to be filed. However, on the basis of information available with the Assessing Officer and the fact that the assessee did not cooperate in either filing income tax return nor providing any material. The Assessing Officer proceeded to make an assessment and it was observed by the Assessing Officer that the assessee had sold 2.548 Hectare undivided land situated at village Narsinghpura, Patwar-Mahapura, Tehsil, Sanganer, Jaipur jointly with Shri

Chetram and Shri Roshan Kumar for a sum of Rs. 9,45,00,000/- on 27.7.2006 which fell for consideration during the previous year relevant to the year under appeal. The assessee got Rs. 3,62,32,310/- as his share of sale value out of the total sale proceeds. On the basis of the information available with the Assessing Officer, cost of acquisition was adopted as on 1.4.1981 and after considering other deductions u/s 54B and other available deductions, the Assessing Officer computed income at Rs. 3,04,24,409/- as income chargeable under the head long term capital gains. It was further noticed by the Assessing Officer that as per the bank details of Central Bank of India, Bad Ke Balaji, Jaipur as well as Jaipur Thar Gramin Bank, there was deposit to the tune of Rs. 46,99,000/- on different dates and since source of receipt of the said cash deposits in the Bank Account was not shown/proved to the Assessing Officer, therefore, an addition of the said amount was also made. The Assessing Officer, thus assessed income at Rs. 3,52,29,339/-.

3. Dis-satisfied with the said assessment, an appeal came to be filed by the assessee before the Commissioner of Income Tax (Appeal) (for short CIT(A) before whom on behalf of the assessee certain additional evidence under Rule 46a of the Income Tax Rules, 1962 namely copies of sale deeds of the land, valuation report and bank statements etc. were filed as also claim u/s 54F and explanation with regard to deposit in the bank accounts were submitted. It has been observed by the CIT (a) that the additional evidence, which were placed by the assessee under Rule 46a was sent to the Assessing Officer and a remand report was sought from the Assessing Officer with reference to the additional evidence filed. It appears that the Assessing Officer did consider the additional evidence and sent the report to the CIT(A) though objected to placing additional evidence on record. However, the CIT(A) did consider the additional evidence placed on record so also the other material and passed order dated 22.5.2012 dismissing the appeal of the respondent-assessee.

4. Aggrieved with the dismissal of the appeal, an appeal was preferred before the ITAT. Before the Tribunal on behalf of the assessee, it was pleaded that the material, which was placed on record before the CIT(A), though the CIT(A) admitted these documents, however, the same was not properly considered by the CIT(A) and that the sustenance of the addition was contrary to the material on record. It was further pleaded that the addition was sustained in arbitrary manner. The Tribunal after considering the submissions has chosen to set aside the assessment order directing the Assessing Officer to pass an order afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. This order of setting aside or allowing a fresh inning to the assessee is assailed before us by the Revenue.,

5. Mr. Praveen Verma, ACIT appearing on behalf of the revenue contended that the assessee though had enjoyed taxable income and had huge unaccounted deposits in Bank Account, but had not chosen to file return of income so also did not place on record any material before the Assessing Officer despite of several

opportunities having been granted. He further contended that the assessee ought to have furnished return of income U/Sec. 139 even if the claim of the assessee had been that there was no taxable income but at least in pursuance to notice u/s 148 of the Act, he was duty bound to file income tax return as also to place on record the other material desired by the Assessing Officer consequent to initiation of proceedings u/s 148 of the Act. He further contended that the assessee played hide and seek game with the department as on one hand even till the last date he did not file any details, sought continuous adjournments and the Assessing Officer finding no alternative had to pass assessment order in accordance with law on the material available. He further contended that abruptly all the material surfaced and were placed before the CIT(A). The CIT(a) after adequate opportunity forwarded the material to the Assessing Officer and the Assessing Officer examined the details and after appreciation of evidence and after detailed analysis the CIT(A) dismissed the appeal. However, the Tribunal was not justified in remitting the matter back to the Assessing Officer granting the assessee one more inning. He submitted that substantial questions of law arise out of the order of the Tribunal and need consideration by this Court.

6. We have considered the submissions of the Officer appearing on behalf of the revenue and have perused the impugned order so also the orders of the lower authorities.

7. In our view, on the basis of assessment order as well as the order passed by the CIT(A), we do find that the approach of the assessee is callous, non-cooperative and even basic documents in pursuance of notice under Sec. 148 i.e. filing of income return was not filed and the Assessing Officer despite of adequate opportunity had granted several opportunities and passed the order to the best of information available at his command. Even the CIT (a) did admit the additional evidence under Rule 46a, granted adequate opportunity to the assessee and on the basis of his finding dismissed the appeal. The Tribunal while setting aside the order of the Assessing Officer has chosen not to decide any issue. It may be a different aspect that on the material available with the CIT(A) whether Tribunal ought to have restored the matter back to Assessing Officer to grant an opportunity afresh; nevertheless the Tribunal in its view in the interest of justice has restored the matter back to the Assessing Officer and we need not comment on the finding of the Tribunal but in our view no substantial question of law can be said to arise out of the order of the Tribunal as the final fact finding authority has not decided any issue.

8. In our view, the assessee may have chosen not to file return/details before the Assessing Officer earlier, but nevertheless gets a chance again to place all material on which he wishes to rely upon consequent to the order passed by the Tribunal. Both the sides get another opportunity and if the assessee fails again after adequate opportunity is being granted by the Assessing Officer then the Assessing Officer has again an opportunity to pass an order in accordance with law, which he deems appropriate.

9. Thus, in our view, no question of law much less substantial question of law arise for consideration of this Court, accordingly, the appeal being devoid of merit stands dismissed in limine.