Andhra High Court
Principal Commissioner Of Income ... vs M/S G.K. Properties Private ... on 17 June, 2015

THE HONBLE SRI JUSTICE G. CHANDRAIAH AND THE HONBLE SRI JUSTICE CHALLA CHALLA KODANDA RAM

I.T.T.A. No. 42 of 2015

17-06-2015

Principal Commissioner of Income Tax-II Appellant

M/s G.K. Properties Private Limited... Respondent

Counsel for the Appellant: Mr. B. Narasimha Sarma Counsel for the Respondent: -

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? CITATIONS: 169 ITR 174 (2010) 322 ITR 158 322 ITR 82 THE HONBLE SRI JUSTICE G. CHANDRAIAH AND THE HONBLE SRI JUSTICE CHALLA KODANDA RAM I.T.T.A. No. 42 of 2015 ORDER:- (per Honble Sri Justice Challa Kodanda Ram, J) This appeal at the instance of Revenue, arises from the order of the Tribunal dated 16.09.2014 in ITA No.1803/Hyd/2013 for the assessment year 2007-08, raising the following substantial question of law: In the facts and circumstances of the case, whether the order of the Honble Tribunal (ITAT) is not erroneous and perverse in law in cancelling the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961, when the Respondent-assessee made a wrong claim of business profits on purchase and sale of land as adventure and income warranting the said penalty

2. The facts on record are not in dispute. The case of the appellant- Department, in brief, is that the assessee had purchased agricultural lands with a clear intention to trade in buying and selling of agricultural lands, construction of residential and commercial complexes, leasing and trading in shares and securities and also leasing agricultural land. In the process of completing assessment under Section 143(3) of the Income Tax Act,, the exemption claimed with respect to the capital gains of sale of agricultural lands was negatived by the Assessing Officer and the same came to be confirmed even after the stage of Tribunal. In other words, the sum and substance of the learned Standing Counsels argument is that the intention on the part of the assessee to trade in agricultural lands by way of an adventure is established and stands uncontroverted and confirmed. Inasmuch as the assessee made a false claim and claimed exemption from taxation, the penalty proceedings are a natural corollary and the Tribunal ought not to have interfered with the orders of the Assessing

Officer as well as the Commissioner confirming the penalties.

3. Having considered the arguments of the learned counsel and having perused the material on record, though the word perversity has been used in the question of law raised, there is no question of perversity in the point which is raised before us. It is one thing for someone to say that the order is perverse and it is another thing that a particular finding of fact is perverse, thereby establishing the aspect of perversity. Whichever order which may ultimately be set aside by the appellate forum or the higher authority, basing on certain well settled legal principles, merely because the same was erroneous, need not be perverse or cannot be called as perverse.

4. In the facts of the present case, the Tribunal had recorded a finding in the penalty proceedings that the assessee had purchased agricultural lands and for a good number of years had offered income as agricultural income on account of the assessee earning income on leasing of the agricultural lands. Tribunal found, as a matter of fact, that the land is outside Municipal limits i.e., beyond eight kilometres of Municipality. This finding is not challenged. The Tribunal also considered the judgment of this Court in Raghotham Reddy v. ITO , wherein this Court had held that the sale of agricultural lands would not attract income tax and exempt from tax. In other words, the claim made by the assessee cannot be said to be bona fide with the intention to evade the tax. Merely because the claim made by the assessee has not been accepted ipso facto, the said claim cannot be said to be a deliberate act of furnishing inaccurate particulars and it also cannot be said that the information furnished by the assessee is inaccurate inviting penalty. This issue of the matter is well settled by the judgment of the Supreme Court in CIT v. Reliance Petro Products , wherein the apex Court held as under: We have already seen the meaning of the word particulars in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add hear that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under s. 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

5. In fact, the Tribunal had also taken into consideration of the law laid down by the Punjab & Haryana High Court in Sidhartha Enterprises , wherein it was held as under:

The judgment of the Supreme Court in Union of India vs. Dharamendra Textile Processors & Ors. (2008) 219 CTR (SC) 617 : (2008) 306 ITR 277 (SC) cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability under s. 276C and penalty under s. 271(1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default and not a mere mistake. This being the position, the finding have been recorded on facts that t he furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax, the view taken by the Tribunal cannot be held to be perverse.

6. In the facts of the present case and in the light of the guidance as provided by the Supreme Court in the case of Reliance Petro (2 supra), merely because the assessee made a claim which is not acceptable ipso facto cannot be said to have made a wrong claim by furnishing inaccurate particulars attracting penalty under Section 271(1)(c) of the Income Tax Act, for the relevant assessment year.

7. In that view of the matter, we see no infirmity in the order of the Tribunal, and the substantial question of law is answered in favour of the assessee and against the Revenue.

8. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed. _____ G. CHANDRAIAH, J _____ CHALLA KODANDA RAM, J 17th June, 2015