

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

D.B. Income Tax Appeal No. 26 / 2018

Pr. Commissioner of Income Tax, Udaipur.

----Appellant

Versus

Shri Shanti Lal Jain, Prop. M/s Meenakshi Property Dealer, Udaipur.

----Respondent



D.B. Income Tax Appeal No. 28 / 2018

Pr. Commissioner of Income Tax, Udaipur.

----Appellant

Versus

Shri Shanti Lal Jain, Prop. M/s Meenakshi Property Dealer, Udaipur.

----Respondent

For Appellant(s) : Mr. K.K.Bissa.

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

(Per Hon'ble Mr. Justice Vinit Kumar Mathur)

02/02/2018

The present appeals have been preferred to challenge the order dated 22.05.2017 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur (Hereinafter referred to as 'ITAT') in Income Tax Appeal Nos.454/Jodh/2015 & 455/Jodh/2015 whereby the appeals preferred by the revenue against the orders dated 03.07.2015 & 06.07.2015 passed by the Commissioner of Income Tax (Appeals) have been dismissed.

Both these appeals are being decided by this common order as both the appeals arise out of a common order passed by the ITAT. The only difference being of assessment years i.e. 2006-07 in appeal No.26/2018 and 2007-2008 in Appeal No.28/2018.

Brief facts necessary to be narrated for adjudication of these appeals are that the respondent- assessee is a property dealer

who is engaged in the business of Real Estate. The assessee is doing the business in the name of M/s Meenakshi Property Dealers and also earned income from the partnership firm and bank interest during the assessment year 2005-06. Return of income tax was filed by the assessee on 31.10.2006 declaring the total

income of Rs.50,96,699/- and agricultural income of Rs.1,26,378/-. A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried at the residence and business premise of the assessee on 14.11.2006. Thereafter, the respondent- assessee filed his income tax returns in response to the notice served upon him under section 153 (A) of the Income Tax Act, 1961 for the assessment year 2006-07 on 21.10.2008 declaring total income of Rs.1,19,78,419/- and agriculture income of Rs.1,26,378/-. The Assessing Officer accepted the returns filed by the assessee but at the same time, initiated the penalty proceedings under section 271 (1) (c) of the Income Tax Act, 1961 for concealment of income on the amount offered in the returns filed under section 153 (A) of the Income Tax Act. After giving opportunity of hearing to the assessee, the Assessing Officer imposed the penalty of Rs.23,21,400/- for the assessment year 2006-07 and penalty of Rs.76,84,910/- for the assessment year



2007-08 respectively vide its order dated 17.06.2009. The assessing officer further held that the income which was surrendered by the assessee was not disclosed in the original returns and the same was done only after the search was conducted at his premise and in pursuance of the notice served under section 153 (A) of the Income Tax Act, 1961. It was further held that since the disclosure was not voluntary and bonafide, besides the case of the assessee is not covered by Clause 2 of explanation 5 to section 271 (1) (c) of the Income Tax Act, 1961, therefore, the penalty levied is just and proper and the same is in accordance with law.



The respondent- assessee aggrieved of this order dated 17.06.2009 passed by the assessing officer preferred two separate appeals Nos.144/2009-10 & 145/2009-10 before learned Commissioner of Income Tax. In appeals, learned Commissioner of Income Tax vide its orders dated 03.07.2015 and 06.07.2015 while deleting the amount of penalty allowed the appeals in the light of decision of Hon'ble Supreme Court in the case of **ACIT vs. Gebilal Kanhaialal HUF, reported in [2012] 25 Taxmann.com 214 (SC)** holding therein that the case of the respondent- assessee is fully covered by Clause 2 of Explanation 5 to Section 271 (1) (c) of the Income Tax Act and following three conditions have been satisfied by the assessee:-

Firstly, the assessee must make a statement under section 132 (4) of the Income Tax Act in course of search stating that unaccounted assets and incriminating documents found from his possession during the search have been acquired out of his

income. Secondly, the assessee should specify, in his statement under section 132 (4), manner in which such income stood derived. Thirdly, the assessee has to pay tax together with interest, if any, in respect of such undisclosed income.

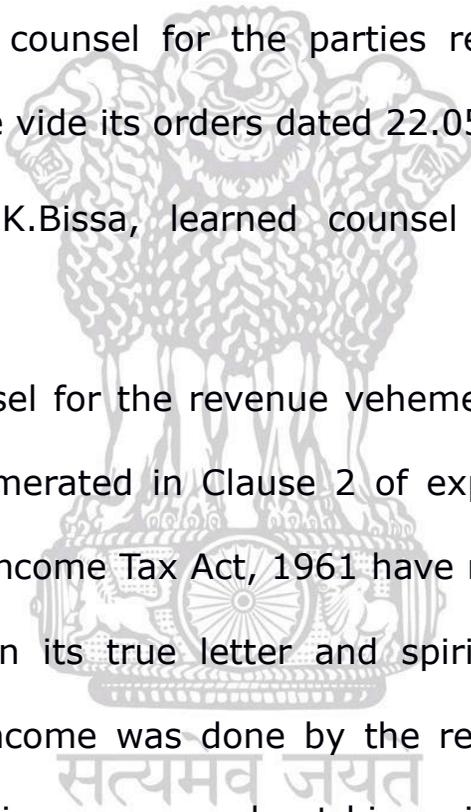
Since, all these conditions were being fulfilled by the assessee in the present case, the Commissioner of Income Tax

(Appeals) allowed the appeals filed by the respondent- assessee relying upon various judgments cited before him including the judgment of Hon'ble Supreme Court in the case of Gebilal Kanhaiah HUF (supra). The revenue assailed validity of orders dated 03.07.2015 and 06.07.2015 before learned ITAT but learned

ITAT after hearing counsel for the parties rejected the appeals filed by the revenue vide its orders dated 22.05.2017.

Heard Mr. K.K.Bissa, learned counsel appearing for the revenue.

Learned counsel for the revenue vehemently submitted that the conditions enumerated in Clause 2 of explanation to section 271 (1) (c) of the Income Tax Act, 1961 have not been followed in the present case in its true letter and spirit. He submits that disclosure of the income was done by the respondent- assessee after search and seizure was made at his residence and business premise, therefore, disclosure is not bonafide and the assessee has not disclosed his true and correct income in the returns filed by him under section 139 (1) of the Income Tax Act. Had there been no search and seizure on the premise of the assessee, the income which is disclosed after the notice under section 153 (A) of the Income Tax Act would have remained concealed and the

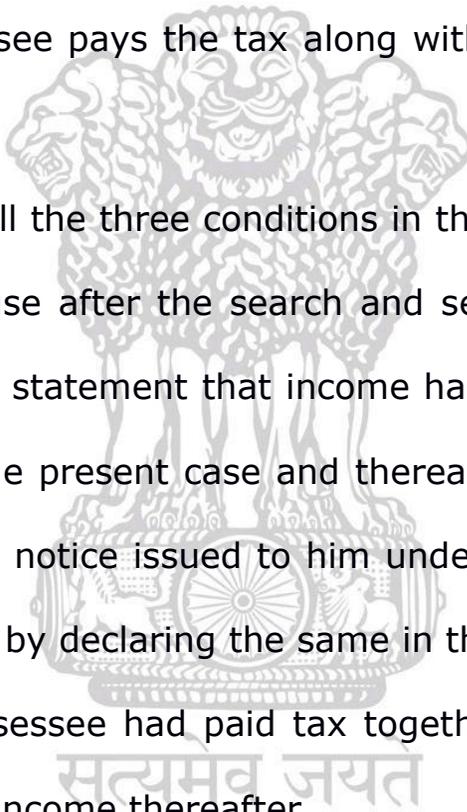


revenue would have been put to loss of tax on the same. Therefore, learned counsel prays that substantial question of law arises in the present case for consideration by this court.

We have scanned through the orders passed by the authorities below. It is an admitted position that for the purpose of getting immunity from the penalty imposed under Clause 2 of explanation 5 to Section 271 (1) (c) of the Income Tax Act, 1961, three conditions are required to be satisfied by the assessee. Firstly, if the assessee makes a statement under section 132 (4) during the course of search admitting his income. Secondly, if he satisfies the manner in which such income has been derived and thirdly, if the assessee pays the tax along with interest in respect of such income.

We find that all the three conditions in the present case have been fulfilled because after the search and seizure, the assessee had admitted in his statement that income has been derived from the land deals in the present case and thereafter, he filed returns in pursuance of the notice issued to him under section 153 (A) of the Income Tax Act by declaring the same in the returns of income and further, the assessee had paid tax together with the interest on the undisclosed income thereafter.

We further find that assessee had already paid tax along with interest, although belatedly, but there is no limitation prescribed for the same under Clause 2 of Explanation 5 to Section 271 (1) (c) as held by the Hon'ble Supreme Court in the case of Gebilal Kanhaialal HUF (supra).



Therefore, in view of the concurrent findings of the two appellate authorities and in the light of judgment rendered by Hon'ble Supreme Court in the case of **Gebilal Kanhaialal HUF** (supra), we are of the opinion that the view taken by the Commissioner of Income Tax (Appeals) and confirmed by learned ITAT is not required to be interfered. As such, there is no force in the instant appeals and no substantial question of law emerges in these appeals for consideration by this court. In result, both the appeals fail and are hereby dismissed.



(VINIT KUMAR MATHUR) J. (GOPAL KRISHAN VYAS) J.

Anil Singh/24 & 26



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