

An ignorant assessee surrendering a disclosed income can't be taxed

Summary – The High Court of Allahabad in a recent case of Smt. Malti Mishra., (the Assessee) held that where investment was already duly disclosed, surrender of same again by an ignorant assessee would be meaningless, and, thus, no addition could be made.

Facts

- The assessee initially purchase NABARD Bonds and disclosed same in the return. She sold same and received sale receipts through banking channel. The assessee claimed exemption from tax as she re-invested amount of capital gain in RBI capital bonds.
- Since the assessee's name did not appear in record of the broker, the Assessing Officer held that the transactions were not genuine.
- On appeal, the Commissioner confirmed the same.
- On second appeal, the Tribunal deleted additions on grounds that the assessee's surrender of income was on condition that no penalty proceedings be initiated against her. But same was not considered by the Assessing Officer.
- On appeal:

Held

- The HC after examining the matter held that it appears that the assessee had purchased the capital gain bond in NABARD worth Rs. 20.00 lakhs, the same was duly disclosed in the return. When the assessee has made purchases and shown the investment, the purchases are genuine and the same cannot be treated as bogus.
- The amount was reinvested in the RBI capital bond. The Assessing Officer was having an opportunity to examine both the bonds, but he has not examined the same. The sale proceedings were made through the bank channel as the agent/broker was duly registered in the Stock Exchange. The confirmatory letter dated 16-8-2004 received from the agent/broker, was produced before the Assessing Officer, where it was confirmed that they have sold the instruments.
- The only fault of the assessee is that the assessee's name did not appear in the record of the broker. For this act, the assessee cannot be held responsible as there is no fault on her part. Inquiry report was collected on the back of the assessee could not have been relied without producing the person for cross-examination.
- There is no concealment on the part of the assessee regarding the transactions. All the transactions were duly disclosed.
- The HC held that if the income as per law is exempted, then the offer of the assessee is meaningless as the law will prevail and will supersede the 'offer' made by the assessee. In the instant case,

surrender was to buy the peace as the assessee is not an expert in income tax matter. The department cannot take the advantage of the ignorance of the assessee as per CBDT [Circular No. 14 \(XL-35\)/1955 dated 1-4-1955](#) mentioned in *Parekh Bros. v. CIT* 19 [84] 150 ITR 105/[1983] 15 Taxman 539 (Ker.)

- In the instant case, the statement was recorded of the broker, who had confirmed the sale and purchase. No concealment was made by the assessee even then she has made an offer to treat the said income as income from 'other sources'.
- The only reason for making the addition is that it was not entered in the register of the company, for which, the assessee is not responsible specially when she has discharged the burden of proof by disclosing all the transactions in the return.
- Hence, the surrender letter will have to be ignored. Thus, there is no reason to interfere with the impugned order passed by the Tribunal.