IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21295 of 2014
Date of decision: 29.10.2015

Charanjit Singh

……Petitioner

Cental Board of Direct Taxes and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Pankaj Jain,Sr. Advocate with Mr. Divya Suri, Mr. Sachin Bhardwaj and Mr. Deepanshu Jain,Advocate for the petitioners.

Mr. Rajesh Katoch, Advocate for the revenue (respondent Nos.3 to 5)

Mr. Manpreet S.Sawhney, Advocate for respondent No.6.

Mr. Umang K.Khosla, Advocate for respondent No.7.

Ms. Pridhi Jaswinder Sandhu, Advocate for Mr. Rajesh Sethi, Advocate for respondent No.9.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 31.3.2010, Annexure P.6 passed by respondent No.3 – Commissioner of Income Tax (Central), Ludhiana [CIT(C)] whereby the revision petition filed by him under section 264 of the Income Tax Act, 1961 (in short, "the Act") has been dismissed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a resident of Village Issapur, Tehsil Derabassi, Mohali. An agreement was entered amongst West Point Properties Pvt. Limited, New Delhi dated 27.2.2006, Annexure P.1 through Harish Bhasin, Director and second party namely S.S.Empires Pvt. Limited, Pritam Singh and Harjinder Kaur etc. for the purchase of 50 acres agricultural land at Village Rampur Kalan Tehsil Derabassi, District Mohali at the rate of ₹ 15.25 lacs per acre. An amount of ₹ 75 lacs was transferred by West Point Properties Pvt. Limited on 19.4.2006, Annexure P.2 through Cheque No.4263 favouring Pritam Singh son of Dalbir Singh, r/o Village Jhuharkhera Tehsil Abohar, District Ferozepur from UTI Bank Limited, Delhi having Permanent Account No.AAACW8797M and received by Pritam Singh in Axis Bank Limited, Madhya Marg Branch, Chandigarh having Account No.302010100011112. Thereafter, Pritam Singh entered into a mutual agreement on 9.4.2006 with the petitioner for a consideration of ₹ 1 lac in lieu of the services qua the help in arranging as mutually agreed the said purchase of 50 acres of land. The payment for consideration was received on 3.8.2006 from Rajwant Singh son of Joginder Singh, Mohali through cheque No.4226 and credited

in petitioner's saving account No.30201010009591. Out of the amount of ₹ 75 lacs, the said Pritam Singh transferred the same amount from his Axis Bank Account number to the petitioner's account in Axis Bank bearing No.30201010009591. The petitioner having received the aforesaid amount duly accounted, recorded, disclosed and declared bank to bank transfer amount from Pritam Singh, withdrew the same on 21.4.2006 from the saving bank account for the purpose of starting the mutually agreed purchase of the land as agreed with Pritam Singh which was ₹ 75 lacs. Similarly with the aforesaid agreed terms, an additional amount of ₹ 45 lacs was transferred by the said West Point Properties Pvt. Limited to Pritam Singh through cheque No.4262 dated 22.4.2006 from the same UTI Bank account. Subsequently, the petitioner had withdrawn on 22.4.2006 an amount of ₹ 44.90 lacs for the same object as was received from Pritam Singh being bank to bank transfer. Action of search under section 132 of the Act was undertaken on 10.8.2006 on various companies and individuals whereby the petitioner was covered under Section 132A of the Act. The Axis Bank account of the petitioner was closed on 12.8.2006 since the same was containing none other transactions except the aforesaid duly explained through source to source and there being disputes amongst the purchasing party namely West Point Properties Pvt. Limited and Pritam Singh. It was mutually decided and agreed in accordance with the compromise deed on 7.10.2006 Annexure P.3 to refund an amount of ₹ 3.65 crores out of which ₹ 1.20 crores was in the hands of the petitioner and the said amount was returned by the petitioner in cash. Thereafter, the jurisdiction of the petitioner's case was transferred to Deputy Commissioner of Income Tax

Central Circle I, Chandigarh through order dated 20.3.2007 passed under Section 127 of the Act being effective from 20.3.2007 and thereafter, notice under Section 142(1) of the Act was issued on 10.10.2007 to the petitioner asking the details qua the aforesaid transactions on 4.12.2008 of Pritam Singh. The petitioner is engaged in the business of property consultation and as a commission agent in and around the area of District Mohali. The return of income was filed on 14.10.2008 in consequence to notice under Section 142(1) of the Act for an amount of ₹ 1,62,653 containing commission income of ₹ 1,62,653/- and agricultural income of ₹ 1,80,900/-. Written pleadings were furnished on 24.12.2008 alongwith the supporting documents and evidence. Not satisfied with the pleadings, documents and material, addition was made amounting to ₹ 1.20 crores for the reason of non production of Pritam Singh vide order under section 143(3) of the Act read with section 153A of the Act dated 30.12.2008, Annexure P.4 and penalty proceedings under Section 271(1)(c) of the Act were also initiated. In pursuance to the order dated 30.12.2008, penalty amounting to ₹ 40,48,400/- was levied vide order dated 30.6.2009, Annexure P.5. The petitioner filed a revision petition dated 29.1.2009 before CIT(Central) against the order dated 30.12.2008 which was dismissed on 31.3.2010, Annexure P.6. The appeal dated 29.7.2009 filed by the petitioner against penalty was dismissed and the levy of penalty was upheld by the CIT (Appeals) vide order dated 2.6.2011, Annexure P.7. The said order was challenged before the Tribunal. Vide order dated 26.9.2013,Annexure P.8, the Tribunal dismissed the appeal. The petitioner approached this Court through ITA No.112 of 2014. On 31.7.2014, Annexure P.9, the petitioner filed RTI application praying for supply of records relatable for the assessment. The same was transferred to the ACIT, by letter dated 7.8.2014. The information was refused by DCIT on 12.8.2014. The petitioner filed appeal under the Right to Information Act, 2005 before the appellate authority on 26.8.2014. Having received no response, the instant writ petition has been filed by the petitioner.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner primarily submitted that to determine the bonafide and the real income of the assessee, the case be referred back to the revisional authority or the assessing authority to adjudicate afresh in the light of the material which the assessee may produce now.

5. In the assessment order, it has been recorded that the assessee had failed to give any satisfactory explanation for the sources and the nature of credit entries of ₹ 1.20 crores mentioned in the UTI Bank Account No.30201010009591 held in his name. He had not given any information or material evidence to the Assessing Officer by which the said entry could be verified. Thus, addition of ₹ 1.20 crores was made to the total income of the assessee for the period under consideration. The assessee filed revision petition before the CIT(C). It was inter alia recorded by the CIT(C) that the assessee was offered proper opportunity to give address of Pritam Singh and thereafter was also asked to produce Pritam Singh for recording his statement but the assessee failed to discharge his liability. He also did not disclose his bank account No.30210100009591. The money was received in the bank account of the assessee but was withdrawn in cash and thereafter

there was no trace of the said amount. In case the transaction was so transparent, the money should have been returned by cheque in the same manner as it was received but this was not so. The petitioner was also asked to provide the original MOU and compromise deeds and other such documents. He had expressed his inability to produce the originals.

6. The assessee had failed to produce sufficient material either before the Assessing Officer or CIT(C) in revisional proceedings on the basis thereof a finding of fact could have been returned in favour of the petitioner. The factual matrix was required to be established by producing material evidence in that regard before the assessing authority or the revisional authority. The learned counsel for the petitioner was unable to give any one good or sufficient reason which prevented him to produce material evidence in support of his version either before the Assessing Officer or CIT(C). The petitioner cannot be allowed *de novo* trial under the garb of this submission. In such a situation, in the absence of any material on record which could substantiate the claim of the petitioner, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India as there is no jurisdictional error in the order of the assessing authority or the CIT(C).

7. Still further, from the perusal of the narration of facts noticed above, it is evident that disputed questions of fact are involved herein. It would, thus, not be appropriate in writ jurisdiction to adjudicate the same. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in ***N.C.Mahendra v. Haryana State Electricity Board and others***, AIR 1984 Punjab 26 had laid down that

ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

> "12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit." (Emphasis supplied).

The Hon'ble Supreme Court in **State Cadre Authority and another v. K.S.Bajpal and others,** (1990) (Suppl.) SCC 713, **Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others,** (2007) 4 SCC 241 and **Mukesh Kumar Agrawal v. State of UP and others,** (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in ***Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others,*** AIR 2003 SC 2686, wherein it was observed as under:-

> "We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of

India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed."

8. In view of the above, we do not find any justification to entertain the writ petition. Consequently, the same is dismissed being devoid of any merit.

(Ajay Kumar Mittal)
Judge

October 29, 2015 **(Shekhar Dhawan)**
'gs' **Judge**