IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.145 of 2014
Date of decision:10.03.2015

Jorawar Singh
....Appellant

Versus

Commissioner of Income Tax, Karnal
......Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.S.K.Mukhi, Advocate, for the appellant.

Mr.Yogesh Putney, Advocate, for the respondent.

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S.J.Vazifdar, Acting Chief Justice (Oral):

This is an appeal against the order of the Income Tax Appellate Tribunal (for short, the 'ITAT') dated 13.09.2013, dismissing the appeal against the order of the Commissioner of Income Tax (Appeals) (for short, the 'CIT), which in turn, confirmed the order of the Assessing Officer (for short, the 'AO'), disallowing the deduction claimed by the appellant/assessee in a sum of ₹6,42,870/-, under Section 37 of the Income Tax Act, 1961 (for short, the 'Act').

The proceedings pertain to the assessment year 2008-09. The appellant is a LIC agent, working and procuring the business under the insurance policies. The appellant received a commission from LIC of ₹24,80,612/-. The appellant has claimed to have paid the said commission and claimed the deduction of ₹6,42,870/-, contending that the same was paid in cash by him to the consumers. Initially, it was contended that the commission had been paid to the new policy holders. The names of 40 such persons was mentioned. The aggregate amount of the amount paid had come only to ₹1,42,045. The details in respect of the balance payment were not produced. It appears that the payment of such incentives to new customers was contrary to Section 41 of the Insurance

Act, 1938. That is a different matter altogether. The appellant, thereafter, contended that the commission was, thus, only a business promotion incentive. In further variance, however, made by the appellant, it was submitted that the amount of commission was paid not to the new customers directly but through the agents who introduced the appellant to the new customers.

The AO, CIT and the ITAT went into the question as to whether the payment of commission has been made at all or not. This was essentially only a question of fact. After appreciating the evidence on record, they came to the conclusion that the appellant was unable to establish that the commission had been paid to the agents/sub-agents, as alleged subsequently. The affidavits of the said persons purporting to have received the alleged payments were dated 24.02.2012, i.e., after the assessment year.

The finding is one purely of fact. No question of law, thus, arises in respect thereon.

Faced with this, it was contended that the findings are perverse.

We are unable to agree. It is not as if there was no material to come to that finding. The effect of the change in stand is also a question of appreciation of the facts and the findings. The ITAT has, after noticing all these facts, come to the conclusion that the payment of commission had not been proved. We are unable to term this finding as perverse.

The expenses for telephone, conveyance, depreciation of cars and entertainment was disallowed only to the extent of 20% by the AO. It has been further reduced by the ITAT to 10%. The same does not warrant any interference.

The appeal is, therefore, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

10.03.2015

(G.S.Sandhawalia)
Judge

sailesh