IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-238-2014
Date of decision:- 10.04.2015

Raj Kumar Wadhwa (D) through L.R ....Appellant(s)

Versus

Commissioner of Income Tax, Patiala ...Respondent(s)

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

Present: Ms. Ranjana Shahi, Advocate,
for the appellant.

Ms. Savita Saxena, Advocate,
for the respondent.

* * * *

S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Tribunal dated 30.09.2013 in respect of the assessment year 2007-08. One of the main issues that arose before the Tribunal was an issue of fact. The appellant claimed a deduction in respect of amounts allegedly paid to sub-brokers/sub-agents. This was disbelieved by the Assessing Officer and by the Commissioner of Income Tax (Appeals).

2. The question of fact, therefore, is whether the assessee had in fact made payment to these sub-agents/sub-brokers. If so, whether the said payments were genuine or not. If they were, the assessee would be entitled to deduction.

3. The appeal is admitted on the following substantial question of law:-

Whether the order of the ITAT is perverse and unreasonable?

4. Assessment orders had been passed also in respect of other assessment years. The assessee died on 21.07.2013 i.e. during the pendency of the appeal before the Tribunal. The impugned order is dated 30.09.2013. The appeal, is, therefore, filed by his legal representative.

5. These issues had also arisen in respect of other assessment years. However, for each assessment year, it would be a question of fact. Even assuming that it has been rightly found in respect of other assessment years that the payments to the

SHIVANI GUPTA
2015.04.11 16:22
I attest to the accuracy and
integrity of this document
Chandigarh

alleged sub-agents were not genuine and, therefore, deductions could not be allowed, the finding would not necessarily apply to the other assessment years. By the impugned order, the Tribunal has merely quoted in extenso its order passed in the appeals in respect of the assessment years 2006-07. This approach is totally incorrect. The Tribunal would also have to consider the facts pertaining to the assessment year in question namely 2007-08. Having failed to consider the vital issues, the order is liable to be set aside as being perverse.

6. In the circumstances, the appeal is allowed. The impugned order dated 30.09.2013 is set aside and the matter is remanded to the Tribunal for a fresh decision in accordance with law.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

10.04.2015
shivani

SHIVANI GUPTA
2015.04.11 16:22
I attest to the accuracy and
integrity of this document
Chandigarh