IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.280 of 2014 (O&M)
Date of decision:- 4.5.2015

Varinder Kumar Sood

...Appellant

Versus

Commissioner of Income Tax-II, Jalandhar

...Respondent

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

Present: Mr. J.S.Bhasin, Advocate for the appellant.

Mr. Vivek Sethi, Advocate for the respondents.

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

1. This is an appeal against the order of the Income Tax Appellate Tribunal partly allowing the respondent's appeal against the order of the Commissioner of Income Tax (Appeals) as regards the deletion of an addition of ₹8.75 lacs made by the Commissioner of Income Tax in respect of the assessment year 2009-10.

2. The appellant has filed this appeal contending that the following substantial questions of law arise for determination of this Court.

(i) Whether on facts and on law, the Tribunal was justified to deny the assessee's claim of having utilised the amount drawn on earlier occasion, to explain deposit on a later date, for want of books of account, when the AO had disallowed it on an erroneous assumption that it was not a cash withdrawal from bank but a debit by `clearing', which however, was accepted to be cash withdrawal by CIT(A) ?

(ii) Whether the Tribunal was justified in holding that the onus was on assessee to establish the availability of funds drawn in earlier year, to explain deposits in a later year, contrary to the decisions of this Hon'ble Court in the cases of Shiv Charan Dass vs. CIT(1980) 126 ITR 263 (P&H) and CIT v Prem Chand Jain (1991) 189 ITR 320 (P&H) laying down that sans any evidence of amount utilised elsewhere, department could not reject a good explanation into no explanation?

(iii)Whether the ITAT was justified in ignoring its own earlier decision on identical issue without distinguishing the same on facts?

(iv)Whether the impugned order of the ITAT is legally sustainable when it is perverse on facts?

3. We find that there is no question of law much less a substantial question of law that arises in this case. It is purely a matter of appreciation of facts. We are concerned here only with the addition of the sum of ₹8.75 lacs. The appeals have been filed by both the parties before Income Tax Appellate Tribunal regarding other additions also.

4. As regards the addition of the said amount of ₹8.75 lacs, the Assessing Officer held that it had not been clarified by the assessee as to why he chose to open an account with Axis Bank, Kapurthala alongwith one Lakhbir Singh by giving his own PAN number. Lakhbir Singh was a joint account holder. Lakhbir Singh is stated to be an agriculturist and the assessee is a Ayurvedic doctor by profession. No business connection between the two has been established. It is only stated that they knew each other and that the account was opened as Lakhbir Singh himself did not have PAN number. We will assume that a sum of ₹8.75 lacs was found to have been deposited in the Axis Bank account on 21.4.2008. When asked for source of income, the assessee contended that he had another account in

the HDFC Bank alongwith his wife and that he had withdrawn an amount of ₹10 lacs from that account on 14.1.2008. Part of the said sum of ₹10 lacs was then deposited on 21.4.2008 in the Axis Bank account. The appellant's contention is that the source of ₹8.75 lacs is therefore, established, namely, the amount withdrawn from HDFC Bank. The amount of ₹8.75 lacs deposited in Axis Bank was from out of the amount of ₹10 lacs withdrawn from HDFC Bank. The Tribunal did not accept the assessee's case regarding the source of sum of ₹8.75 lacs.

5. This is a pure question of fact. It was a question of appreciation of evidence to be decided on a balance of probabilities. We are unable to hold that findings of the Tribunal are perverse or absurd. It is important to note that the HDFC Bank account was in the joint names of the assessee/appellant and his wife. There is no explanation as to why that amount was deposited in the joint account of Lakhbir Singh. This assumes even greater significance in view of the fact that there is no business relationship even claimed between Lakhbir Singh and appellant/assessee. The appellant claims to have added his name only to accommodate Lakhbir Singh because he did not have PAN card number. Even according to the appellant, Lakhbir Singh was entitled to operate the account. There is no explanation as to why Lakhbir Singh would have been entitled/permitted to operate the account although the amount of ₹10 lacs withdrawn from HDFC Bank and alleged to have been deposited with Axis Bank belonged only to the appellant and his wife and in respect whereof Lakhbir Singh had no interest whatsoever.

6. Therefore, it is a pure question of fact. The authorities relied upon on behalf of the assessee are of no assistance for here the Tribunal had

good reason not to accept the appellant's case regarding the source of the funds.

7. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

4.5.2015
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