IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 349 of 2014 (O&M)
Date of decision: 4.9.2015

Sharma &Gangahar Builders and Colonizers Pvt. Limited
……Appellant.

Commissioner of Income Tax, Amritsar

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Avneesh Jhingan, Advocate for the appellant-assessee.
Mr. Denesh Goyal, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

CM No.22030 CII of 2014

1. For the reasons stated in the application and after hearing learned counsel for the parties, the delay in filing the appeal is condoned. CM stands disposed of.

ITA No.349 of 2014

2. This appeal has been preferred by the assessee-appellant under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 11.2.2013, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar dismissing its appeal, for the assessment year 2005-06 in ITA No.474 (Asr)/2011, claiming following substantial questions of law:-

> "i) Whether in the facts and circumstances of the case, the addition made with regard to the income which has already been

taxed in other assessment years is sustainable in law?

ii) Whether in the facts and circumstances of the case, the additions of the income already surrendered and assessed can be sustained in law?

iii) Whether in the facts and circumstances of the case, assessing the income in the present year which has already been surrendered or submitted to taxation in other years amounts to double taxation?

iv) Whether in the facts and circumstances of the case, the authorities allowing only the parcel advance made by Shri Gurcharan Singh is sustainable in law?

v) Whether in the facts and circumstances of the case, orders Annexures A.1 A.2 and A.3 are sustainable in law?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a private limited company registered under the Companies Act, 1956. It is engaged in the business of builder and colonizer. It filed its income tax returns for the assessment year 2005-06 which were processed under Section 143(1) of the Act on 29.3.2006. Notice under section 143(2) of the Act was issued to the appellant who appeared before the Assessing Officer and produced books of account etc. The Assessing officer vide order dated 28.12.2007, Annexure A.1 finalized the assessment, making addition of ₹ 25,07,660/-. Certain advances received and amounts forfeited in various years were added. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 22.7.2011, Annexure A.2, the appeal was partly allowed. The CIT(A) upheld the additions but deleted the addition of ₹ 25,000/- and granted relief with regard to charging of interest. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 11.2.2013, Annexure A.3, the

appeal was dismissed. Since the Tribunal while dismissing the appeal did not deal with the explanation rendered in written submissions by the appellant, it filed application under section 254(2) of the Act on 20.5.2013, Annexure A.4 before the Tribunal. Vide order dated 3.9.2013, Annexure A.5, the application was dismissed by the Tribunal. Hence the instant appeal by the assessee.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the appellant assessee had surrendered an amount of ₹ 50 lacs during the assessment year 2007-08 and the various additions which were sought to be made in the current assessment year were included in the said amount.

6. On the other hand, learned counsel for the revenue besides supporting the order passed by the Tribunal submitted that the findings recorded by the Tribunal being pure findings of fact, no substantial question of law arises.

7. After hearing learned counsel for the parties, we do not find any merit in the appeal. The details of additions made by the Assessing Officer are as under:-

(A) Unexplained cash credits under Section 68 of the Act in the name of:-

(a) Shri Gurcharan Singh	3,26,000/-
(b) shri Balkar Singh	25,000/-
(c) Shri Harjeet Singh	4,00,000/-
(d) Smt. Gurdarshan Kaur	5,26,660/-

(B) Unexplained amount shown as forfeiture of deposit in the following names:-

(a) Shri Jatinderpal Singh	30,000/-

(b) Shri Jasbir Singh		7,00,000/-
(c) Smt. Ritu		3,00,000/-
(d) Shri Parshotam Lal		2,00,000/-

	Total	25,07,660/-

The CIT(A) upheld the said additions except deleting the cash credit of ₹ 25,000/- shown in the name of Shri Balkar Singh. While upholding the additions, the CIT(A) has elaborately dealt with the same. It has been categorically recorded by the Tribunal that the assessee had not submitted any explanation in respect of cash creditors before any of the authorities below that the said amounts had actually been invested by them. In respect of unexplained amount shown as forfeiture of deposits made by various persons also remained unsubstantiated. The assessee had claimed before the Tribunal that amount added to its income on this account was relatable to surrender of ₹ 50,00,000/- made during the assessment year 2007-08. The said plea was not established and was repelled by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

> "13. As regards ground Nos.5,6,7, and 8 of the assessee are concerned, the AO made an addition of ₹ 30,000/-, ₹7,00,000/-, ₹ 3,00,000/- and ₹2,00,000/- in respect of cash creditors namely Shri Jatinder Pal Singh, Shri Jasbir Singh, Smt.Ritu and Shri Parshotam Lal respectively by observing in his order at page 3 which is reproduced for the sake of clarity as under:-
>
> 'Shri Jatinder Pal Singh Gali No.4, Kot Baba Deep Singh, Amritsar = ₹ 6,00,000/-.
>
> The assessee stated that the above person has given advance for the purchase of plot of ₹ 6,00,000/-. He has not purchased the plot and ₹ 5,70,000/- returned to him on 3.5.2005 and 5.5.2005 by two cheques of ₹ 2,85,000/- each and the balance amount of ₹ 30,000/- was forfeited during the year and the same may be added

to the taxable income. Therefore, the addition of ₹ 30,000/- is made to the taxable income on this account.

Shri Jasbir Singh, 2671, Chowk Moni, Amritsar =₹ 7,00,000/-.

The assessee stated that the above person has given advance for the purchase of plot of ₹ 7,00,000/- during the year. He has not purchased the plot and amount of ₹ 7,00,000/- was forfeited during the year and the same may be added to the taxable income. Therefore, the addition of ₹ 7,00,000/- is made to the taxable income on this account.

Smt.Ritu, Vilalge Bhuttar, Amritsar = Rs.12,00,000/-.

The assessee stated that the above person has given advance for the purchase of plot of ₹ 12,00,000/- during the financial year 2004-05 and out of which ₹ 9,00,000/- was repaid in the year 2007 and the balance of ₹ 3,00,000/- has been forfeited and the same may be added to the taxable income. Therefore, the addition of ₹ 3,00,000/- is made to the taxable income on this account.

Shri Parshotam Lal son of Shri Madho Ram, Village Mohan Bhandarian Ajanala = ₹ 9,00,000/-.

The assessee stated that the above person has given advance for the purchase of plot of ₹ 9,00,000/- during the year and out of which ₹ 7,00,000/- was repaid in the year 2007 and the balance of ₹ 2,00,000/- has been forfeited and the same may be added to the taxable income. Therefore, the addition of ₹ 2,00,000/- is made to the taxable income on this account."

13.1 The learned CIT(A) confirmed the action of the Assessing Officer with respect to all the four creditors after considering the submissions of the learned counsel for the assessee before him.

13.2 The learned counsel for the assesssee, Mr. Padam Bahl, CA made the similar arguments as in the preceding grounds that the assessee has credited the amount of the said cash creditors in the assessment years 2007-08 or 2008-09 i.e. ₹ 30,000/- in respect of Shri Jatinderpal Singh during the assessment year 2008-09, ₹ 7 lacs relating to Shri Jasbir Singh during the assessment year 2007-08, ₹ 3 lacs in respect of Smt.Ritu during the assessment year 2008-09 and ₹ 2 lacs relating to Shri Parshotam Lal during the assessment year 2008-09. Therefore, there cannot be a double taxation of the same amount, one in the impugned year and the other in the said assessment years as mentioned hereinabove. Therefore, the income should be treated as explained during the impugned year to avoid double taxation. He further argued in case of Shri Jasbir Singh that the assessee surrendered ₹ 50,00,000/- which has been credited as forfeited with respect to various amounts which include ₹ 7,00,000/- during the survey under section 133A of the Act. He pointed out the advance of ₹ 50 lacs credited in the profit and loss account as forfeited at PB-28 in the profit and loss account for the year ending 31st March 2007 includes ₹ 7,00,000/- in the case of Jasbir Singh. He accordingly prayed to direct deletion of addition in respect of all the four amounts in view of the arguments made before the learned CIT(A) and before us.

13.3The learned DR, on the other hand, relied upon the orders of the authorities below.

14. We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the assessee had not submitted any explanation of ₹ 30,000/-, ₹ 7,00,000/-, ₹ 3,00,000/- and ₹ 2,00,000/- in case of the cash creditors, namely Shri Jatinderpal Singh, Jasbir Singh, Smt.Ritu and Shri Parshotam Lal respectively before any of the authorities below that the said amounts have actually been invested by such cash creditors. The assessee has not brought on record before any of the authorities below or in the paper book before us that the said amount of ₹ 50,00,000/- surrendered includes ₹ 7,00,000/- in case of Shri Jasbir Singh. In any case, as per our decision in grounds No.2 and 3 hereinabove, in the absence of any explanation with regard to cash credits mentioned in these grounds No.5,6,7 and 8 of the assessee are dismissed."

8. The concurrent findings of fact recorded by the authorities below are based on material on record. It could not be demonstrated by learned counsel for the appellant that the findings recorded by the Tribunal are erroneous or perverse in any manner. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 4, 2015
'gs'

(Ramendra Jain)
Judge