

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 395 of 2014 (O & M)
Date of Decision:- 21.07.2015

Surjit Singh

.....Appellant(s)

vs.

Commissioner of Income Tax, Amritsar

.....Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Avneesh Jhingan, Advocate,
for the appellant.

Mr. Rohit Kaul, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

The present appeal is directed against the judgment of the Income Tax Appellate Tribunal, Amritsar whereby, the appeal of the assessee was only partly allowed and the disallowance of ₹7,23,000/- was upheld in place of the addition made by the Assessing Officer of ₹9,02,215/-. The matter pertains to the assessment year 2004-05.

The question of law which arises for consideration is:-

“Whether the order of the Tribunal suffers from any perversity and whether it is sustainable in view of the peculiar facts and circumstances keeping in view the ownership of the agricultural land in the hands of the appellant.”

The appellant-assessee filed his return of income on 07.05.2004 wherein, a sum of ₹40,670/- was declared as income apart from agricultural income to the tune of ₹7,00,000/-. The returned income was accepted on 13.02.2006. Subsequently, on account of the cash deposits of ₹7,23,000/- in the savings account of the assessee, the source of the said cash deposit was sought to be explained by the revenue. The

explanation of the assessee was that he was owner of 20 acres and 7 kanals of agricultural land in his own name and out of which, there was an orchard of 8 acres, which was being cultivated. The sale proceeds of fruit of ₹9,02,215/- had been deposited and one M/s. Gurdaspurian Di Hatti Food, an Commission Agent of Batala had made the payments. The concerned assessing authority at Abohar accordingly wrote to his counter part at Batala regarding the payment made in cash by the said commission agent. The original receipts forwarded by the assessee were also sent to the said income tax officer at Batala for taking suitable action against the said commission agent. A report was also received that the said transactions were not recorded in the account books of the said commission agent.

However, on the non-confirmation of the sales from the commission agent, the liability was fastened upon the assessee by issuing notice under Section 148 of the Income Tax Act, 1961 (in short 'the Act') by rejecting the plea of the assessee that the department should have proceeded against the commission agent. The challenge to the reopening of the case and that the fact that even subsequently the assessee was showing agricultural income from the land which he owned was accordingly rejected on account of the fact that the amount had been deposited in the month of February, 2004 and it was held to be undisclosed income. The factum of the assessee having retired 16 years earlier was also to be held against him by holding that he had tried to include his past savings and unaccounted money in agricultural income apart from levying penalty proceedings separately vide order dated 26.10.2011.

The appeal of the assessee was also dismissed by the Commissioner of Income Tax on 22.05.2013 on the ground that he had not been able to furnish any concrete evidence regarding the transactions noted on the letter pad of the commission agent and whether the same were true and correct since the said firm had denied having purchased any fruit from the appellant. The addition was thus, upheld by holding that the source of cash deposits had not been discharged by producing any positive evidence.

In the appeal before the Tribunal, challenge was raised to the notice dated 10.02.2011 under Section 148 of the Act and the addition made on this basis. It was pleaded that no opportunity had been given to the assessee to cross examine the statement of the partner of the commission agent. The Tribunal held that the initial assessment on 13.02.2006 was in a summary manner and once the Assessing Officer had come to know that the deposits were ingenuine, the agricultural income was treated as non-agricultural income and added to the income of the assessee. The Tribunal came to the conclusion that the revenue record did not depict that the assessee was the exclusive

owner of the agricultural land and rejected the submission that for subsequent 3 years in the returns filed, agricultural income had been shown and which had been accepted ranging from ₹1,00,000/- to ₹12,50,000/- by holding that each year is an independent year.

The facts have been noticed in detail above. It is a matter of record that initially, the returns were accepted and an inquiry was initiated against the commission agent for making cash payments. The original receipts had also been furnished by the assessee who was situated at Abohar and the commission agent was based in district Gurdaspur. The reopening thus, on the strength of the denial by the commission agent, was without giving any proper opportunity and a proper inquiry should have been made as to how original receipts and letter pads of the said commission agent had found their way in the hands of the assessee who was situated at the other end of the State from where the commission agent was located. The factum of the assessee owning 20 acres and 7 kanals of agricultural land was never in doubt and a specific plea right from day one was that out of the said land, 8 acres was dedicated to an orchard.

In such circumstances, the onus of proof was wrongly put upon the assessee mainly because of cash deposits of ₹7,23,000/-, which have been now added to his income as income from undisclosed sources. The assessee was never given a proper opportunity to cross examine or rebut the stand of the commission agent who was at that point of time was on the receiving end of the department since an inquiry was being made against him as to how he had made cash payments of such huge amount which had not been reflected in the account books. The order of the Tribunal thus suffers from patent perversity by not taking into account the cumulative factors which are in favour of the assessee and by confirming the additions made against the assessee and accepting the statement of the commission agent as gospel truth. Merely because the appellant was a retired employee and filed his return showing agricultural income admittedly being a owner of agricultural land, the assessing officer was not justified in making the additions on the assumption that the assessee had tried to include his past savings and unaccounted money in the agricultural income. The said finding was totally conjectural and without any basis which further was wrongly upheld by the Commissioner of Income Tax and only partial relief was granted by the Tribunal.

Accordingly, keeping in view the above discussion, the question of law framed above is answered in favour of the appellant. The appeal is allowed and the

addition of ₹7,23,000/- sustained by the Tribunal on account of income from undisclosed sources is set aside.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

21.07.2015
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