IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 113 of 2015 (O&M)
Date of decision: 31.8.2015

Ajay Pal Singh

……Appellant.

Commissioner of Income Tax II, SCO 45-47, Bassi Building, Sector 17A, Chandigarh

…..Respondent

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

Present: Mr. Jagmohan Bansal, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. 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 29.10.2014, Annexure A.8 passed by the Income Tax Appellate Tribunal, Chandigarh in ITA No.472/CHD/2014, for the assessment year 2009-10, claiming following substantial questions of law:-

> "i) Whether declared agriculture income of appellant can be treated as income from other sources when there is no evidence of income from other sources?
>
> ii) Whether learned Tribunal is justified in rejecting evidence of agriculture land owned by father of the appellant?
>
> Iii) Whether the impugned order is perverse and contrary to record?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is an

individual. He is residing with his brother and parents at Mohali. The only source of income of the family is agriculture income. The appellant is earning his livelihood from agriculture proceeds. In the year 2008-09, the appellant planned to go abroad for some Young Farmers programme. He approached immigration consultants in Chandigarh. They asked him about the income tax return. He had not filed the same because of exemption of agriculture income. The consultants asked him to file income tax return with agriculture income of at least ₹ 30 lacs. The appellant is having agriculture land measuring 8 acres in his name, 18 acres in the name of his mother, 57 acres in the name of his father and 8 acres in the name of his brother. The whole land has been leased out at the rent of ₹ 32,000/- per acre. The appellant, to show his income, filed income tax return for the assessment year 2009-10 disclosing agriculture income of ₹ 32 lacs apart from income from business and profession amounting to ₹ 1,17,500/-, on 29.9.2009. The return was processed on 30.3.2010 under section 143(1) of the Act. Notice under Section 143(2) of the Act was issued to the appellant. The appellant was asked to furnish evidence with respect to agriculture income shown by him. He was also asked to furnish detail of land holdings and copies of Form 'J' alongwith documentary evidence. The appellant alongwith his counsel appeared before the Assessing Officer and submitted that he had planned to go abroad and as per immigration consultants, he had filed his return showing agriculture income of ₹ 32 lacs. He also disclosed land owned by him, his mother and brother. The Assessing officer vide order dated 28.11.2011, Annexure A.1 concluded that agriculture income of the appellant was ₹ 8,96,000/- on the basis of land holdings of his and his family members. The rest of amount reported as agriculture income i.e. ₹

23,04,000/- was assessed under the head 'income from other sources'. It was further held that the appellant had failed to furnish evidence to prove that he filed return on the advice of immigration consultants. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee contended before the CIT(A) that the Assessing Officer had failed to appreciate the provisions of section 5(1) of the Act. There was no evidence of investment of said income and during the period in question, the appellant had made deposit of only ₹ 3.17 lacs out of agriculture income. Vide order dated 3.9.2013, Annexure A.4, the CIT(A) dismissed the appeal holding that no evidence had been produced to the effect that the appellant had declared agriculture income to get immigration/visa. The assessee went in appeal before the Tribunal. Vide order dated 29.10.2014, Annexure A.8, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the appellant-assessee.

4. Learned counsel for the appellant submitted that additional evidence should have been allowed to show that the amount added was the agricultural income of the assessee.

5. Concurrent findings have been recorded by all the three authorities below to the effect that whatever agricultural income was established in the return of income was not earned out of agricultural operation but was income from other sources. The earning of agricultural income was not substantiated through any evidence on record before any of the authorities. Further, no evidence was also produced to the effect that the appellant had declared agriculture income to get immigration/Visa. The relevant findings recorded by the Tribunal read thus:-

"On consideration of the rival submissions, we do not find any merit in the appeal of the assessee. The assessee has declared agricultural income of ₹ 32 lacs and admitted before Assessing Officer that assessee and his brother and mother are also having agricultural land and their total income is around ₹ .10 lacs to ₹ 12 lacs approximately and the share of the assessee comes to ₹ 3 lacs p.a. It would,therefore, show that whatever agricultural income was established in the return of income, was not earned out of agricultural operation and was thus rightly considered by the authorities below to be income from other sources. The onus upon assessee to prove earning of the agricultural income was thus not substantiated through any evidence on record. Even before learned CIT(Appeals), the assessee failed to substantiate regarding earning of the agricultural income. Therefore, authorities below were justified in rejecting the claim of assessee of earning agricultural income. The assessee never pleaded before authorities below earning of any agricultural income by his father. The assessee on one hand pleaded before the authorities below earning of the lesser agricultural income and has now taken a contrary stand to accept the agricultural income declared in the return of income by claiming that father of the assessee also earned agricultural income. This fact is pleaded for the first time before the Tribunal and thus cannot be taken into consideration. The assessee never made any such claim before the authorities below and further no proper steps have been taken for admission of any additional evidence before the Tribunal. Therefore, whatever photo copies of some land holding have been filed in the paper book, cannot be taken into consideration. Considering the totality of the facts and circumstances and in the absence of any evidence on record in favour of the assessee, we do not find any justification to interfere with the orders of the authorities below. The appeal of the assessee is accordingly dismissed."

6. Learned counsel for the appellant has not been able to show

any illegality or perversity in the concurrent findings recorded by the authorities below. No explanation much less satisfactory explanation had been furnished by learned counsel for the assessee as to the nature/relevancy of additional evidence sought to be produced and reasons for not producing the same earlier before the authorities. No substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

August 31, 2015
'gs'

(Ramendra Jain)
Judge