

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 14 of 2015 (O & M)

Date of decision: 03.08.2015

Subhash Chander

....Petitioner(s)

Versus

Commissioner of Income Tax, Rohtak

...Respondent(s)

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

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Divya Suri, Advocate,
for the appellant.

Mr. Tajender K. Joshi, Advocate,
for the respondent.

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

C.M. No. 1311-CII of 2015

Application for condonation of delay of 18 days in refiling the
appeal is allowed.

Delay condoned.

ITA No. 14 of 2015

1. This is an appeal against the order of the Tribunal dismissing the appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [for short 'CIT (Appeals)'] which, in turn, had upheld the assessment order. The matter pertains to the assessment year 1992-93.
2. The appellants contend that the following substantial questions of law arise:-

*“I. Whether, the Tribunal was justified in
holding that the assessment framed u/s 143(3) of the Act*

is valid in law, as admittedly appellant has not complied with the notices issued u/s 142(1)(a) and 142(1)(b) of the Act, as such assessment should have been framed u/s 144 as against section 143(3) of the Income Tax Act, 1961?

II. Whether the Tribunal was justified in law in upholding the order of assessment framed under section 143(3) of the Act by taking recourse of section 292B of the Act?

III. Whether, the Tribunal was justified in law in upholding the order of CIT(A) who has merely upheld the assessment order without independently recording its own finding qua various grounds of appeal raised?

IV. Whether, the Tribunal was justified in law in confirming the addition made of Rs.53,32,424/- without granting fair, proper & reasonable opportunity of being heard as without adhering to the principles of the natural justice?

V. Whether, the Tribunal was justified in law in upholding the addition made u/s 68 of the Act based on the credits which are admittedly not in the regular books of accounts of the assessee?

VI. Whether the Tribunal was justified in law in upholding the addition made of Rs.30,05,592/- u/s 68 of the Act by adopting the peak credit of the individual creditor as against the peak credit of the all the creditors together?

VII. Whether the Tribunal was justified in law in upholding the additions made in the assessment order which have been made purely on suspicion, surmises and conjectures & without bringing any corroborative material?

3. What was pressed before us essentially was that the assessment

order was made under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') whereas, it ought to have been made under Section 144 of the Act and not under Section 143(3). It is also contended that the appellants were not served with the necessary documents.

4. The Assessing Officer, CIT (Appeals) and the Tribunal have, in considerable detail, indicated how the appellants have managed to prolong these proceedings for several years. The contention that the documents were not given and that the appellants did not have the benefit of the documents on which the assessment order was made is unfounded. Firstly, there was a survey on 13.02.1992 under Section 133A of the Act. Photocopies of four documents were taken. The documents were not seized. The record remained with the appellants. Four documents were put to the appellants. The appellants had the benefit of the documents including the originals thereof which remained with the appellants. The appellants' books of accounts were also co-related with the returns filed. Discrepancies were found. The appellants were not prejudiced in any manner on the ground of the relevant record not having been brought to their notice. As noted in the impugned orders, the appellants were repeatedly given opportunities. For instance, by a letter dated 23.09.1997, the appellants were informed that the photocopies of the documents could be collected by them from the office on any working day from 10.00 a.m. to 5.00 p.m upto 30.10.1997. Even this letter could not be served through the process server. The Inspector of the Income Tax department was deputed to ascertain the whereabouts of the appellants. The appellants mostly remained in Sirsa (Haryana) and visited Delhi occasionally. Ultimately, the notice was sent through registered post to the appellants' Sirsa address and Delhi address. The appellants never

collected the photocopies. A further letter dated 06.11.1997 was, therefore, sent to the appellants and the appellants were granted further time upto 20.11.1997 to collect documents.

5. Notices were issued and questionnaires were served under Sections 142(1) and 143(2) of the Act on 07.02.1998. Even thereafter, an opportunity was granted to collect the photocopies but the appellants did not avail of the same. Notices under Section 142(1) and 143(2) were again served on 11.03.1998 and the hearing of the case was adjourned. The appellants were informed that if they did not attend, the case would be decided in their absence.

6. The respondents did contend that the appellants did not produce certain documents. In the circumstances, it may well have been open to the appellants to proceed on the basis of Section 144 in view of provisions of Section 144(1)(b). Under Section 144(1)(b), the Assessing Officer is entitled to make a best judgment assessment if the assessee fails to comply with all the terms of a notice issued under Section 142(1).

7. We will assume, therefore, that the Assessing Officer could have done so. However, despite the same, the Assessing Officer completed the assessment under Section 143(3) on the basis of the information provided by the assessee.

8. We see no infirmity in the action taken by the Assessing Officer. No substantial question of law arises. The appeal is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

03.08.2015

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