

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM Nos. 20803 to 05-CII of 2015
ITA No. 368 of 2015

Date of Decision: 17.11.2015

Neena Aggarwal

....Appellant.

Versus

Commissioner of Income Tax, Panchkula

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

CM No. 20803-CII of 2015

Application is allowed and the delay of 277 days in refiling the appeal is condoned.

CM No. 20804-CII of 2015

Learned counsel for the appellant submitted that the deficiency in court fee has been made good, the delay, if any, be condoned.

Application is allowed and the delay, if any, in making good the deficiency in court fee, is condoned.

ITA No. 368 of 2015

1. This appeal has been preferred by the assessee under

Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 6.3.2014 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 520/CHD/2012, for the assessment year 2008-09, claiming the following substantial questions of law:-

- i. Whether the impugned order is perverse and contrary to record?
- ii. Whether the Ld. Tribunal has passed the impugned order on assumption and surmises?
- lii. Whether the appellant is liable to pay income tax when undisputedly appellant has sold a piece of land?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is running a boutique and regularly filing her income tax returns. She sold a piece of land situated in Sector-9, Ambala for a sum of ₹ 10,00,000/- in September, 2007. As per the sale deed dated 14.9.2007, she received the said amount by way of cheque dated 14.9.2007. She did not deposit the said cheque in her SBI account and as per mutual understanding with the buyer, the said cheque was cancelled and two bearer cheques No. 684557 dated 14.9.2007 amounting to ₹ 5 lacs and No. 684558 dated 14.9.2007 for ₹ 4 lacs, respectively were drawn from saving bank account No. 1002619886 with SBI, Model Town, Ambala City. The appellant withdrew a sum of ₹ 9 lacs. She deposited the said amount in installments in her bank account. The assessee was getting sale receipts from her boutique and was regularly depositing her saving in

her bank account. During the year 2007-08, she got receipts from sale of plot as well as business operation of boutique and during September, 2007 to March, 2008, she deposited a sum of ₹ 12,12,000/- in her bank account. The assessee filed her income tax return on 31.3.2009 for the assessment year 2008-09 declaring income at ₹ 1,65,990/-. The said return was processed under Section 143(1)(a) of the Act at the returned income and was selected for scrutiny through CASS. A notice under Section 143(2) of the Act was issued to the assessee. The assessment under Section 143(3) of the Act was completed by the Assessing Officer vide order dated 31.12.2010 (Annexure A-3) at a total income of ₹ 13,77,990/-. Feeling aggrieved, the assessee filed an appeal, Annexure A-4, before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. Along with the appeal, the assessee also attached a certificate (Annexure A-5) received from State Bank of India under RTI information that the cheque mentioned in the sale deed was never encashed. She also filed statement of account dated 17.4.2012 (Annexure A-6) showing the details of deposit and available cash with her during the assessment year 2008-09. The CIT(A) vide order dated 25.4.2012 (Annexure A-7) dismissed the appeal holding that the assessee had failed to prove that the cheque was deposited by her in SBI account to get cash and no cash deposit of ₹ 10 lacs was made by the assessee on 14.9.2007. Further, it was held that the dates of deposit and availability of cash do not tally either for sale of plot or receipts of boutique. Still dissatisfied, the assessee approached the Tribunal by way of an appeal. The Tribunal vide order dated 6.3.2014 (Annexure A-1) dismissed the appeal which gave rise to the assessee to approach this Court by way of instant appeal.

3. Learned counsel for the appellant submitted that the order of the Tribunal dated 6.3.2014 (Annexure A-1) dismissing her appeal is not legally sustainable in the eyes of law, being based on surmises and conjectures. It was further submitted that the Tribunal has acted in an arbitrary manner in holding that the assessee had not been able to satisfactorily explain the deposit of cash on various dates.

4. After hearing learned counsel for the appellant-assessee, we do not find any merit in the appeal.

5. The assessee had derived income from running a boutique. She filed return under Section 44AF of the Act and no books of account were maintained. The Assessing Officer asked the appellant to explain the source of cash deposits of ₹ 12,12,000/- to which she submitted that the said amount was out of the sale proceeds as she had sold a piece of land in Sector 9, Ambala for a sum of ₹ 10 lacs in September, 2007 and also from the business of boutique where sales amounting to ₹ 14.50 lacs were made resulting in profit of ₹ 1,54,690/-. The explanation of the assessee was not accepted by the Assessing Officer who held ₹ 12,12,000/- as unexplained deposits/investment in the bank. The relevant findings of the Assessing Officer are as under:-

“3.2. This explanation on behalf of the assessee is not acceptable. As per the copy of the sale deed, the assessee received the entire sale proceeds of Rs.10,00,000/- through cheque no. 684555 dated 14.09.2007. This amount is no where reflected in the above mentioned bank account. Further, the copy of sale account has also been filed during the assessment proceedings as per which the total sales

during the year were Rs.14,49,820/- from which profit is shown to be Rs.1,54,960/-. Thus, remaining amount has been claimed as expenditure. Further, the quantum of sales is also not of such a level which could provide the money for deposit in the said bank account. Thus, neither from the sale proceeds of the plot nor from the sale proceeds of boutique profession, the assessee was having surplus funds to deposit in the bank as per the detail given above. Therefore, I hold the assessee as to have not been able to explain the aforesaid deposits and accordingly make an addition of Rs.12,12,000/- to the assessee's total income as unexplained investment/deposit.”

6. The said findings of the Assessing Officer were affirmed by the CIT(A) in appeal. The CIT(A) held that although as per the sale deed, the assessee had received ₹ 10 lacs vide cheque dated 14.9.2007 but she had failed to prove that the cheque was deposited by her in SBI to get the cash. Further, it was observed that the dates of deposit and the availability of cash do not tally either for sale of plot or gross receipts of boutique and the assessee had failed to explain the entries of cash deposits in her bank account. The findings recorded by the CIT(A) read thus:-

“4.1 The appellant has filed a copy of sale deed of the plot (supra) dated 14.09.2007. As per this deed the appellant received Rs.10 lacs vide cheque No. 684555 dated 14.09.2007 of State Bank of India, Ambala City. The appellant has failed to prove that

the cheque was deposited by her in SBI to get the cash. Moreover, there is no cash deposit of Rs.10 lacs in Centurion Bank of Punjab on 14.09.2007. The dates of deposit and the availability of cash do not tally either for sale of plot or gross receipts of boutique. The appellant has failed to explain the entries of cash deposits in her bank account. Therefore, the appellant has failed to provide NEXUS between the cash availability and Bank deposits. As a result, the addition of Rs.12,12,000/- is confirmed on account of unexplained deposits/investments in the bank.”

7. The Tribunal has affirmed the aforesaid findings of the CIT (A) by observing that even if it is assumed that certificate is correct and bearer of this property Shri Rajiv Kalra issued two bearer cheques No. 684557 and 684558, then also it was not possible for the assessee to encash the cheque on 14.9.2007 itself whereas the sale deed was executed on 14.9.2007 which must have taken some time. Further, it was held that if the assessee had cash of ₹ 10 lacs on 14.9.2007, i.e. ₹ 9 lacs from encashment of two cheques and ₹ 1 lac as cash payment, then why ₹ 4.05 lacs was deposited and the remaining amount has been deposited in various installments. According to the Tribunal, the assessee had failed to satisfactorily explain the deposits of cash. The Tribunal has noticed as under:-

“8. We have considered the rival submission carefully, we do not find any force in the submission of Ld. counsel for the assessee. Even if it is assumed

that certificate is correct and bearer of this property Shri Rajiv Kalra issued two bearer cheques No. 684557 and 684558, then how it is possible that assessee has been able to encash the cheque on 14.07.2007 itself. The sale deed is also executed on 14.09.2007 which must have taken sometime. Thereafter assessee got time to exchange the cheques. Assuming for argument sake that this is possible. Still the problem is that on 15.09.2007 the assessee has deposited Rs.4,05,000/- only. The details of cash deposited by the assessee are as under:-

14.09.2007	4,05,000
23.10.2007	60000
27.02.2008	25000
12.3.2008	1,00,000
17.03.2008	1,20,000
17.03.2008	1,47,000
18.03.2008	1,45,000
24.03.2008	2,10,000
Total	12,12,000

9. So, if the assessee has cash of Rs.10 lacs on 14.09.2007 i.e. Rs.9 lacs from encashment of two cheques and Rs.1 lakh as cash payment, then why only Rs.4.05 lacs was deposited and then money has been deposited in various installments as stated above. No explanation was given for this discrepancy. Therefore, in our opinion, the assessee has not been able to satisfactorily explain the deposits of cash and

accordingly we confirm the order of CIT(A).”

8. The authorities below on appreciation of material on record have concurrently recorded that ₹ 12,12,000/- was unexplained deposits/ investment in the bank of the assessee. Nothing could be shown that the approach of the Assessing Officer, the CIT(A) and the Tribunal was erroneous or perverse except only an effort was made to reappraise the evidence so as to record a finding different from the one arrived at by the authorities below. The view of the Assessing Officer, the CIT(A) and the Tribunal is a plausible view based on material on record which warrant no interference by this Court.

9. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

10. There is a delay of 33 days in filing the appeal. CM No. 20805-CII of 2015 has been filed for condonation of 33 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

November 17, 2015
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(RAMENDRA JAIN)
JUDGE