IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-81-2015 (O&M)
Date of decision:- 09.07.2015

Ram Kanwar

...Appellant

Versus

Commissioner of Income Tax, Gurgaon.

...Respondent

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

Present: Mr. S.K. Yadav, Advocate,
for Mr. Sachin Bhardwaj, Advocate,
for the appellant.

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

This is an appeal against the order of the Tribunal dated 08.08.2014 upholding the assessment in part.

The matter pertains to the block period 01.04.1987 to 18.02.1997.

2. The appellant/assessee contends that the following three issues raise substantial questions of law:-

> *"(i) Whether under the facts & circumstances of the case, additional ground of appeal qua the issuance & service of mandatory notice u/s 143(2) is sustainable and (or) validly declined to be raised for the first instance before the Tribunal in pursuance to ACIT & another V Hotel Blue (2010) 3 SCC 259?*
>
> *(ii) Whether the 'chargeability of exempt income' to the share of coparcener as falling in pursuance bank deposits (Rs. 50 lacs) qua the sale of ancestral HUF property & admitted by AO is required to be considered while determining undisclosed income u/s 158B(b) of the Act?*
>
> *(iii) Whether under the facts & circumstances of the case, while arriving at the chargeable income u/s 5 read with Sections 29, 57, 158 BC of the Act, there is a requirement under the 'authority of law' for granting the allowance for the deducting of expenses relatable to the 'income charged'?"*

Re: Question (i)

4. The first question sought to be raised is purely one of fact. The appellant contended that the notice under Section 143(2) of the Income Tax Act, 1961 (in short the Act) had not been served upon him. However, as rightly noted by the Tribunal, the original assessment order mentions the service of the notice under Section 143(2) of the Act. It is important to note that the assessee filed an appeal before the CIT (Appeals), but did not dispute the service of the notice under Section 143(2) of the Act upon him. It is even more important to note that the CIT (Appeals) set aside the assessment order and directed the Assessing Officer to pass a fresh order. Even at that stage, the assessee did not raise any grievance about not having been served with the notice. Furthermore, the fresh assessment order also mentions the service of the notice under Section 143(2) of the Act upon the assessee. The assessee filed an appeal against this order before the CIT (Appeals), but even at that stage did not dispute the service of the notice under Section 143(2) of the Act. Even in the appeal before the Tribunal, this grievance was not raised. Instead, it was sought to be raised for the first time only in the year 2009 by way of an additional ground. In these circumstances, it would have been surprising if the Tribunal had accepted the contention of the assessee that he had not been served with the notice.

5. In these circumstances, it is only a pure question of fact and raises no question of law.

Re: Question (ii)

6. The assessee has filed a rectification application before the Tribunal which is pending.

The appellant will be at liberty to file a fresh appeal against the impugned order of the Tribunal and the order on the application that may be passed, if he so desires.

Re: Question (iii)

6. Question (iii) also does not raise a question of law. The assessee claimed a deduction of ₹ 19,83,350/- on account of commission and expenditure incurred by him while brokering/arranging transactions regarding the sale of various properties. The Tribunal observed that the assessee had not maintained complete details of the expenditure incurred in this respect. The Tribunal has in fact taken a liberal view and allowed a deduction of ₹ 10 lacs while observing that the assessee would have incurred some expenditure towards brokerage, commission, conveyance, documentation etc. There is nothing perverse or irrational in the order of the Tribunal in this regard.

7. The appeal in respect of questions (i) and (iii) is, therefore, dismissed. The appellant, however, is at liberty to file a fresh appeal against the order that may be passed by the Tribunal upon the rectification application.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

09.07.2015
Amodh