IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 86 of 2015 (O&M)

Date of Decision: 29.10.2015

Sh. Pavittar Singh

....Appellant.

Versus

Commissioner of Income Tax-III, Ludhiana

...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 SHEKHER DHAWAN.

PRESENT: Mr. Ravish Sood, Advocate for the appellant.

Mr. Rajesh Katoch, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. The assessee has approached this Court by way of instant appeal under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 31.10.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as “the Tribunal”) in ITA No. 224(ASR)/2013, for the assessment year 2009-10, claiming the following substantial questions of law:-

1) Whether the Tribunal is right in law and facts of the case in rejecting the explanation of the appellant as regards the source of the deficit

investment made towards the purchase of new agricultural lands?

2) Whether the Tribunal is right in law and facts of the case in sustaining the addition of Rs.5,87,500/- in the hands of the appellant?

3) Whether the Tribunal has erred in law and facts of the case by failing to appreciate that in light of inextricable facts regarding the 'Sole source' of income of the appellant, i.e. 'Salary income' as a 'Machine operator' with M/s Nestle India Ltd. r.w. the fact that the deficit as regards investment in purchase of new agricultural lands had emerged during the period when ancestral agricultural lands were sold, the source of the said investment thus safely, logically and rather inescapably could only be related to the sale of the agricultural lands, pursuant whereto the said amount could only be considered under the head 'Capital gains'?

4) Whether the Tribunal had erred in law and facts of the case by failing to appreciate that the lower authorities while making an addition w.r.t. the source of the deficit investment in the hands of the appellant had gravely erred by failing to exercise the discretion, specifically in light of the explanation of the appellant?

2. A few facts necessary for adjudication of the instant appeal

as narrated therein may be noticed. The assessee is employed as a Machine Operator with M/s Nestle India Ltd., Moga and filed his return of income on 20.7.2009 for the assessment year 2009-10 declaring income at ₹ 1,48,510/-. The said return was processed under Section 143(1) of the Act. The case of the assessee was taken up for scrutiny and notices under Sections 143(2)/142(1) of the Act were issued. The Assessing Officer vide order dated 16.11.2011 (Annexure A-1) assessed the income of the assessee at ₹ 43,86,580/-. During the course of assessment proceedings, the Assessing Officer, *inter alia,* made addition of ₹ 42,00,000/- which was deposited in S/B A/c No. 114848 with Allahabad Bank, Moga branch as 'unexplained cash credit' under Section 68 of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 28.2.2013 (Annexure A-2) partly allowed the appeal and sustained the addition of ₹ 11,75,000/- towards unexplained investment with respect to purchase of the new agricultural land. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 31.10.2014 (Annexure A-3) partly allowed the appeal and restricted the addition of deficit of ₹ 11,75,000/- sustained by the CIT(A) to ₹ 5,87,500/-. Hence, the present appeal by the assessee.

3. Learned counsel for the assessee submitted that the findings recorded by the authorities below are perverse, bad and against the record. It was further submitted that if the ratio of 50% each was accepted then it should have been assessed as capital gain and not income from other sources. Reliance was placed upon the judgment of the Supreme Court in **Commissioner of Income Tax v. Smt. P.K. Noorjahan (1999) 237 ITR 570**.

4. On the other hand, learned counsel for the revenue has strongly opposed the prayer by submitting that there was deficit in the cash flow statement produced by the assessee and moreover, the sale proceeds cannot exceed the sale consideration in the registered sale deed.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal.

6. The assessee was issued a notice under Section 142(1) of the Act on 10.6.2010 along with a detailed questionnaire. In response thereto, the assessee furnished necessary information/details. The assessee also furnished a copy of his saving Bank A/c No. 4668000100000740 of Punjab National Bank, Moga along with details of each entry of cash deposited and withdrawals made. From the said account, the assessee earned interest income of ₹ 38,066/- (₹ 24,485/- + ₹ 13,58,1/-). The said interest income was not shown in the computation of income. The Assessing Officer made addition of ₹ 38,066/- and added in the returned income of the assessee on account of non showing of interest income earned from saving bank account and also initiated penalty proceedings under Section 271(1)(c) of the Act separately for concealment of income. On being asked to furnish the copy of account maintained with Allahabad Bank, Kolkata Main Branch, the assessee failed to produce the statement of account of the said bank. As per the AIR information, a total transaction made with the said bank account during the period 1.4.2008 to 31.3.2009 was at ₹ 42,00,000/- and the said amount was added to the returned income of the assessee under Section 68 of the Act on account of unexplained cash credits. Accordingly, the Assessing Officer assessed the total

income of assessee at ₹ 43,86,580/-. In appeal before the CIT(A), the assessee filed an application for admission of additional evidence, inter alia, on the grounds that he has been filing his return of income reflecting his salary income in a routine manner; during the year in question, he had carried out sale transactions of 28 kanals of ancestral agricultural land at village Moga Mehal Singh, pursuant thereto, the substantial amounts were deposited by him in his bank accounts and the same were utilized towards purchase of further agricultural land. The CIT (A) forwarded the said application to the Assessing Officer for remand report. After receiving the remand report and considering the submissions of the assessee, the CIT(A) admitted the said application holding that the cash deposits in the Allahabad bank account stand explained on the basis of amounts received by the assessee as per the registered sale deeds. However, the CIT(A) on finding a negative cash balance on 23.10.2008 amounting to ₹ 11,05,000/- and ₹ 70,000/- on 31.10.2008 (totalling ₹ 11,75,000/-) confirmed the said addition made by the Assessing Officer holding that the investment had been made by the assessee without having availability of explained cash in terms of receipt of sale consideration. The relevant findings recorded by the CIT(A) in paras 8 and 9 read thus:-

> "8. I have considered the facts of the case, the observations of the Assessing Officer in the remand proceedings, the submissions of the AR during the appellate proceedings and the rejoinder on the Assessing Officer's remand report. The first question to be considered here is whether the appellant's request for admission of additional evidence is to be

allowed or not. The important thing is to be seen here is that the assessee had not provided the copy of bank account maintained with Allahabad bank during appellate proceedings, even though the information regarding the same has been in department's possession at the time of selection of case for scrutiny, it is also a matter of fact that the specific bank account maintained by the assessee with Allahabad bank had been confronted to him at the fag end of appellate proceedings i.e. 14.11.2011 and the order had been passed on 16.11.2011. The apparent limited time available with the assessee to come up with the entire explanation with regard to the cash deposits cannot be said to be sufficient under the circumstances. It is also important to appreciate that the assessee is an operator working on salary with Nestle India Ltd. at Moga and his main source of income for all the years had been the said salary income. Further, the amounts deposited in the Allahabad bank account are clearly receipts from the sale proceeds of ancestral agricultural land belonging to the appellant and his brother and therefore it is possible that the assessee could not comprehend that he was liable to explain the entries pertaining to him/ his brother of sale of agricultural land. It is also seen that the evidence filed by the appellant has not been constructed afresh and in fact is documented in the form of registered deed which are clear evidence of sale of agricultural land and the proceeds thereof. The entirety of circumstances and the facts detailed above make it clear that the same could not be filed at the time of assessment because of limited time available and apparent lack of appreciation of the legal requirement on the part of the assessee in this regard. It could be easily termed as a technical flaw on the part of the appellant especially when no amount is being claimed to be pertaining to be belonging to third party at all. The Hon'ble Jurisdictional High Court in the case of CIT Patiala vs. Chitosho Motors in Income Tax Appeal No. 741 of 2010 vide order dated 5.1.2011 has clearly held that the department is not expected to take technical plea of additional evidence when such evidence may advance the interest of justice. The additional evidence was allowed to be admitted by the Hon'ble High Court especially when the evidence was in the shape of sale deeds, certificates from banks and copies of bank accounts. Therefore, the additional evidence is allowed to be admitted.

9. The recasted cash flow statement and the objections to the same by the Assessing Officer during the remand proceedings have been considered and it is seen that the cash deposits in the Allahabad bank account stand explained on the basis of

amounts received by the assessee as per the registered sale deeds. However, there is a negative cash balance on 23.10.2008 to the tune of Rs.11,05,000/- and Rs.70,000/- on 31.10.2008 which means that the investment has been made by the assessee without having availability of explained cash in terms of receipt of sale consideration. The addition made by the Assessing Officer is therefore confirmed to the tune of Rs.11,75,000/- being the amount that had been invested in the purchase of agricultural land for which no corresponding availability of cash has been explained."

7. On further appeal by the assessee, the Tribunal restricted the addition of ₹ 11,75,000/- confirmed by the CIT(A) to ₹ 5,87,500/- by observing that the deficit of ₹ 11,75,000/- belonged equally to the assessee and his brother Shri Amarjit Singh and the assessee alone could not be said to be liable for the entire deficit. Further, the Tribunal held that in the absence of any cogent explanation or any evidence or arguments, the plea of the assessee that he was having only source of income as salary income or agricultural income and the deficit so arise be treated as sale proceeds of the agricultural land could not be accepted on the ground that the assessee had never treated the said deficit as agricultural income in his cash flow statement or re-cast cash flow statement before any of the authorities. The relevant findings recorded by the Tribunal are as under:-

"7. We have heard the rival contentions and perused the facts of the case. There is no dispute to the admission of additional evidence by the Revenue in the present case. In para 8, there is clear finding of the Ld. CIT(A), which is not subject matter of challenge by the Revenue and that the amounts deposited in the Allahabad Bank are clearly receipts from the sale proceeds of ancestral agricultural land belonging to the assessee and his brother. Therefore, it is possible that the assessee could not comprehend that he was liable to explain the entries pertaining to him/his brother of sale of agricultural land. Further, the evidence filed by the assessee has not been constructed afresh and in fact is documented in the form of registered deed which are clear evidence of sale of agricultural land and the proceeds thereof. The cash flow statement furnished by the assessee had rightly been admitted by the ld. CIT(A), which is not in dispute. As mentioned hereinabove, the ancestral agricultural land had been sold, which was held jointly by the assessee along with his brother Sh. Amarjit Singh and agricultural land, which has been purchased by the assessee along with his brother Sh. Amarjit Singh in equal share is also not in dispute. Therefore, the deficit of Rs.11,75,000/- belongs equally to the assessee and his brother Sh. Amarjit Singh and assessee alone cannot be said to be liable for the entire deposit of Rs.11,75,000/-. The argument of the Ld. DR that Power of Attorney by Sh.

Amarjit Singh brother of the assessee had been given to the assessee, does not mean the deficit or levy of tax in toto shall fall on the assessee. Accordingly, the deficit of Rs.5,87,500/- is on account of the assessee and the other deficit of Rs.5,87,500/- is on account of brother of the assessee, Sh. Amarjit Singh. Accordingly, the addition confirmed by the Ld. CIT(A) is restricted to Rs.5,87,500/- in view of our findings hereinabove.

8. As regards the arguments by the Ld. Counsel for the assessee that the assessee is having only source of income as salary income or agricultural income and the deficit so arisen should be treated as sale proceeds of the agricultural land and not to be accepted for the reason that the assessee had never treated the said deficit as agricultural income in his cash flow statement or recasted cash flow statement before any of the authorities below or even before us. Also in the absence of any cogent explanation or any evidence or arguments made by the Ld. Counsel for the assessee, the decision of Hon'ble Supreme Court in the case of Smt. P.K. Noorjahan vs. CIT (supra) cannot help the assessee. Accordingly, the AO is directed to sustain the addition of Rs.5,87,500/- and is directed to delete the rest of the addition amounting to ₹ 5,87,500/-. Thus, the appeal of the assessee is partly allowed."

8. The findings of fact recorded by the Tribunal are based on material on record and after appreciating the cash flow statement or recast cash flow statement furnished by the assessee. The view of the Tribunal is a plausible one which does not call for interference by this Court.

9. Adverting to the judgment in **Smt. P.K. Noorjahan's case (supra)**, relied upon by the learned counsel for the assessee, the Tribunal had held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal had found that the source of investment could not be treated as income of the assessee in the light of facts of that case. The High Court and the Supreme Court had agreed with the conclusion of the Tribunal. The factual situation is the present case is different and, therefore, no advantage can be derived by the assessee therefrom.

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

(AJAY KUMAR MITTAL)
JUDGE

October 29, 2015 **(SHEKHER DHAWAN)**
gbs **JUDGE**