IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 94 of 2009
Decided on : 14.01.2016

Sham Sunder

. . . Appellant

Versus

Commissioner of Income Tax-II, Jalandhar

. . . Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

PRESENT: Mr. Sanjay Bansal, Sr. Advocate with
Mr. B.M. Monga, Advocate
for the appellant.

Mr.Vivek Sethi, Advocate
for the respondent.

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AJAY KUMAR MITTAL, J. (Oral)

The appellant-assessee has preferred the present appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') against the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short 'the Tribunal') dated 12th September, 2008, passed in ITA No. 373 (ASR)/2007 (The Dy. Commissioner of Income Tax, Range-II, Jalandhar Vs. Sh. Sham Sunder, Jalandhar).

2. The aforesaid appeal was admitted on February 16, 2010 for determination of the following substantial questions of law:-

"1. Whether the Tribunal mis-directed itself in law as well as on facts in upholding the addition of Rs.15,91,672/- made by the Assessing Officer only on the basis of the statement of the appellant-assessee recorded during the survey under Section 133A of the Income Tax Act, 1961 having no evidentiary value in law?

2. Whether on the facts and in the circumstances of the *case, the Tribunal acted illegally and perversely in upholding the addition of Rs. 9 lacs made by the Assessing Officer, received by the appellant by way of gifts, representing income from undisclosed sources liable to assessed under Section 68 of the Income Tax Act?"*

3. In view of the consensus between the parties, it is not necessary to delve into the detailed facts of the case. Learned counsel for the appellant-assessee submitted that so far as question No.1 is concerned, since the assessee had made surrender of ₹15.00 lacs at the time of survey under Section 133A of the Act on 14th August, 2003, the said addition is not being challenged. However, the addition of ₹ 91,672/- sustained by the Tribunal on account of stock of unaccounted gold and diamond being an afterthought was uncalled for. According to the learned counsel, the amount of ₹91,672/- was entered in the regular Books of Account and in such a situation, the addition of ₹91,672/- was unsustainable.

4. Mr. Vivek Sethi, Advocate appearing for the respondent-revenue had sought time on an earlier date to verify whether the amount was part of the regular Books of account or not? Learned counsel for the respondent-revenue candidly admitted that a communication dated 14.01.2016 has been received from the Department confirming that ₹91,672/- was part of the impounded material of the assessee and was depicted in the regular Books of Account and therefore, the addition to that extent may be set aside. Copy of the aforesaid communication produced by the learned counsel for the respondent-revenue is taken on record, subject to all just exceptions.

5. After hearing learned counsel for the parties and in view of the

above, the addition of ₹91,672/-, on account of stock of unaccounted gold and diamond sustained by the Tribunal is hereby deleted and the question No.1 is answered accordingly by holding that out of the addition of ₹15,91,672/-, addition of ₹91,672/- stands deleted.

6. Learned counsel for the appellant-assessee did not address any arguments on account of gifts of ₹9.00 lacs as sustained by the Assessing Officer as well as by the Commissioner of Income Tax (Appeals) and the Tribunal on the ground that the said gifts were received from Sh. Bhupinder Singh and Smt. Harbhajan Kaur, who were not the blood relation and therefore had been rightly disallowed by the authorities below.

7. In view of the above, question No.2 is answered against the assessee and the present appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

January 14, 2016
J.Ram