IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 125 of 2012

Date of Decision: 6.4.2016

Pawan Kumar

....Appellant.

Versus

Commissioner of Income Tax, Kurukshetra

...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 MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri, Advocate,
Mr. Sachin Bhardwaj, Advocate and
Mr. Madhur Sharma, Advocate for the appellant.

Mr. Yogesh Putney, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 30.11.2011 (Annexure A-13) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “A”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 763/CHD/2011, for the assessment year 2007-08. The appeal was admitted by this Court vide order dated 29.4.2014 for determination of the following substantial questions of law:-

(i) Whether under the facts and circumstances of the case, the Tribunal order is sustainable while making estimated additions, overlooking the provisions of Section 145, and returning unreasonable findings being dehors to the 'material facts' containing 'material particulars'?

(ii) Whether under the facts and circumstances of the case, the Tribunal conclusions are unreasonable, to the 'material on record', being even in apposite the assessment order and CIT (A) order?

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is a proprietor of Saraswati Gas Service, Pehowa and had been allotted distributorship for LPG by Hindustan Petroleum since the year 1986-87. Additionally, the assessee had been allotted distributorship for sale of Bharat Sanchar Nigam Limited (BSNL) products, i.e. Sim Card, Recharge Coupons vide agreement dated 9.9.2006 (Annexure A-1) on which 5% commission was paid to the assessee on sale and the assessee had to pay 4% (i.e., 80% commission of 5%) to the franchisee distributors on the sale of the products. The commission was not passed on in cash but was to be adjusted by reducing the value of the products. The BSNL allotted distributorship to the assessee for Ludhiana, Samana, Mohali, Kapurthala and Nilokheri. Separate stock register for each and every item was being maintained and had been produced before the Assessing Officer. All the purchase and sale bills were produced for examination for all the regions allotted which is discernible from the paper book of the Tribunal dated 29.11.2011 (Annexure A-3). The assessee was regularly

and consistently following the mercantile system of accounting and having resources of income being from house property, income from trucks and the financial statements as per audit report dated 25.8.2007 (Annexure A-4). The assessee filed his return of income on 2.11.2007 (Annexure A-5) declaring the total income at ₹ 4,74,000/-. The assessee also submitted written pleadings dated 3.9.3009 (Annexure A-6) before the Assessing Officer. The Assessing Officer vide assessment order dated 3.12.2009 (Annexure A-7) under Section 143(3) of the Act computed the income at ₹ 8,83,740/- after disallowing commission paid amounting to ₹ 2,00,000/- besides other disallowances. Feeling aggrieved by the order, Annexure A-7, the assessee filed an appeal dated 1.1.2010 (Annexure A-8) before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The assessee also submitted written pleadings dated 25.1.2011 (Annexure A-9). The CIT(A) vide order dated 18.3.2011 (Annexure A-10) partly allowed the appeal. However, the disallowance of ₹ 2,00,000/- on account of claim for commission paid was maintained. Still dissatisfied, the assessee filed an appeal before the Tribunal on 22.7.2011 (Annexure A-11). The Tribunal vide order dated 30.11.2011 (Annexure A-13) partly allowed the appeal reducing the aforesaid disallowance to ₹ 50,000/-. Hence, the present appeal by the assessee.

3. Learned counsel for the assessee submitted that the addition of ₹ 50,000/- was unsustainable being based on 'no material' and was conjectural.

4. On the other hand, learned counsel for the revenue supported the order passed by the Tribunal.

5. We have heard learned counsel for the parties.

6. The core issue that arises for consideration in this appeal is regarding the disallowance of ₹ 50,000/- from the commission received from the BSNL out of an amount of ₹ 1,57,64,756/- as commission paid.

7. The CIT(A) after perusing the material produced before him and examining certain bills noted that they do not bear the complete address of the retail customers/sub dealers. The addresses on the bills were incomplete and the parties could not be located in such big town/cities without complete addresses. The payments on the said bills had been shown to be received in cash. Accordingly, the disallowance of commission amounting to ₹ 2,00,000/- was rightly made by the Assessing Officer. The relevant findings recorded by the CIT(A) read thus:-

> "2.06. In the comments, the AO submitted that in reply filed on 13.5.2009, the assessee submitted that commission is given from 85% to 88% to sub-dealers on sub-franchise as per sale voucher attached. On perusal of some bills filed by the assessee during the assessment proceedings, it was noted that the same do not bear the complete address of the retail customers/sub dealers, for example bill no. 4877 dt. 19.01.2006 is in the name of Shri Raj Kumar Samna, B. No. 5018 dated Nil is in the name of Tanisk Singla, Sirhind, B. No. 4992 dt. 21.10.2006 is in the name of Aggarwal Enterprises, Patiala etc. The AO stated that address given in these bills are totally incomplete and parties cannot be located in such big town/cities without complete address. Moreover, the payments

on these bills have been shown as received in cash. In view of these discrepancies in all most all the bills, the AO submitted that disallowance of ₹ 2 lakh was rightly made.

2.07. The appellant in the rejoinder stated that these bills were given to the JCIT during assessment as a proof that the sale was vouched. Sale vouchers were issued in each and every transaction, which is accepted by the AO.

2.08. In view of the facts discussed above, it is noted that the appellant has not been able to rebutt the findings of the AO made in the assessment order for making this adhoc disallowance. No interference is, therefore, called for in the order of the AO in this regard and the adhoc disallowance made by him is, hereby, confirmed."

8. On further appeal, the Tribunal taking into account the totality of facts and circumstances of the case while affirming the findings of the CIT(A) had reduced the addition from ₹ 2,00,000/- to ₹ 50,000/-. The Tribunal had recorded as under:-

"6. From the perusal of the evidence placed by the assessee in the paper book filed, we find that the assessee had purchased sim cards/recharge coupon from the BSNL. The copies of the bills of BSNL are enclosed at pages 257 to 391 of the Paper Book. The assessee has further enclosed the bills issued by it date-wise at pages 392 to 568 of the Paper Book.

> The said sales are affected by the assessee in cash and the net amount of the recharge coupon/sim cards have been charged by the assessee. The assessee has not paid commission in cash but has reduced the sale value of the sim-card/invoice after deducting the commission. The assessee claims to have maintained stock register.
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> 7. We find merit in the claim of the assessee. In the entirety of the facts and circumstances of the present case before us, in order to pluck any leakage of the Revenue, we restrict the disallowance to ₹ 50,000/-. Ground No.1 raised by the assessee is, thus, partly allowed."

9. The examples were taken of certain bills bearing No. 4877 dated 19.1.2006 in the name of Shri Raj Kumar Samna, No. 5018 dated 'nil' in the name of Tanisk Singla, Sirhind, bill No. 4992 dated 21.10.2006 in the name of Aggarwal Enterprises, Patiala etc. where complete addresses of the retail customer/sub dealers had not been mentioned so that the same could be verified and it was also recorded that in view of the incomplete particulars, the parties were not locatable in such big cities. It was in the totality of facts and circumstances that the addition of ₹ 50,000/- was sustained by the Tribunal. The view taken by the Tribunal in the given facts and circumstances is plausible and also reasonable in upholding the addition of ₹ 50,000/- only.

10. The finding recorded by the Tribunal, which has not been demonstrated to be erroneous or perverse in any manner, therefore, we do not find any substance in the appeal warranting interference by this

Court. The substantial questions of law are answered accordingly. Finding no merit in this appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

April 6, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**