

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 156 of 2013 (O&M)
Date of Decision: 09.08.2016

Umesh Trehan

..Appellant

Versus

Commissioner of Income Tax-I, Chandigarh.

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE.
HON'BLE MR. JUSTICE DEEPAK SIBAL.

Present : Mr. Deepak Aggarwal, Advocate, for the appellant.
Ms. Urvashi Dugga, Advocate, for the respondent.

S.J.VAZIFDAR, CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant/assessee's appeal against the order of the Commissioner of Income Tax (Appeals) which in turn dismissed the appellant's appeal against the order of the Assessing Officer. The matter pertains to the assessment year 2007-08.

2. The assessee contends that the following substantial questions of law arise in this appeal:-

- "1) Whether in the present facts and circumstances of the case the order of Ld. ITAT is perverse in estimating the addition for capital investment to the tune of Rs.1,50,00,000/- for achieving the alleged turnover outside the books of accounts?
- 2) Whether in the present facts and circumstances of the case the order passed by the Ld. ITAT is perverse in partly holding the addition for capital investment to the tune of Rs.1,50,00,000/- for achieving the alleged turnover outside the books of accounts wherein the specific details of investment for achieving the turnover is provided itemwise?
- 3) Whether in the present facts and circumstances of the case the order passed by the Ld. ITAT is perverse in partly holding the addition for capital investment to the tune of Rs.1,50,00,000/- for achieving the alleged turnover outside the books of accounts wherein the addition of capital investment was based on the sources of investment rather than application of investment?

- 4) Whether the Ld. ITAT was justified in upholding the addition of Rs.18,26,036/- on account of excess cash and Rs.1,96,992/- on account of excess stock found during the course of survey when the addition on account of capital investment has already been estimated?
- 5) Whether the Ld. ITAT is right in upholding the disallowance of interest under section 36(1)(iii) of the Act on the amount advanced to the employees of the Appellant by terming the said advancement of money as not for business purposes?
- 6) Whether the Ld. ITAT is right in upholding the disallowance of interest under section 36(1)(iii) of the Act on the amount invested in share application money of the sister concern on the basis that the said investment could have been done from the proprietary concern of the Appellant, without examining the basic conditions for disallowance under section 36(1)(iii) of the Act?"

3. The appellant filed a return of income of about ₹ 2.07 crores.

The case was selected for scrutiny. On 16.03.2007, a survey was conducted under section 133-A of the Income Tax Act, 1961 (for short 'the Act').

During survey, the assessee offered an additional income of ₹ 2.05 crores for taxation. The survey report indicated that disclosure had been made to cover up the discrepancies on account of unaccounted purchases and sales as also against unaccounted cash. The Assessing Officer noted that the assessee had made unaccounted sales worth ₹ 10,00,70,135/- and unaccounted purchases amounting to ₹ 5,05,56,490/- which were discovered during the course of survey. The Assessing Officer took the figure of unaccounted sales amounting to ₹ 10 crores as a base to calculate the unaccounted profits and unexplained investment. The trading results of the assessee as contained in the profit and loss account and balance sheet were utilized.

4. The assessee had for the assessment year in question shown a GP rate of 5.51%. Accordingly, the unaccounted income earned from unrecorded cash sale of about ₹ 10 crores at the GP rate of 5.51% was worked out to be ₹ 55,13,865/-.

5. The investment required for achieving the turnover of about ₹ 10 crores was calculated by referring to the assessee's balance sheet as on 31.03.2007. The assessee's capital account excluding the profit earned during the year was ₹ 49,05,880/-. The amount of secured loans as on 31.03.2007 was ₹ 1,79,71,135/- and unsecured loans was ₹ 16,25,285/-. The aggregate of these three amounts was ₹ 2,45,02,300/-. The total turnover for that year in the trading account was ₹ 13,27,91,312/-. The total turnover thus required an investment of about ₹ 2.45 crores. Proportionately to carry on a business having a turnover of about ₹ 10 crores required an investment of about ₹ 1.85 crores. Accordingly, the Assessing Officer computed the undisclosed income on unaccounted sales worth ₹ 10 crores as ₹ 2.45 crores.

6. The assessee, however, contended that various amounts ought to be deducted from the figure of ₹ 2.45 crores. For instance, he contends that an amount of ₹ 65.80 lacs worth of fixed assets ought to be deducted as no investment is required in fixed assets for the unaccounted cash sale. He further contends that ₹ 55.38 lacs ought to be deducted as no investment is required for the investment in M/s Gian Residency Pvt. Ltd. and that ₹ 34.40 lacs ought to be deducted as no investment is required on account of debtors since the sales are cash sales. Ultimately the balance amount according to the assessee works out to only ₹ 42.63 lacs.

7. Whether these amounts formed part of ₹ 2.45 crores or not is a question of fact. The assessee has not adduced any evidence to establish the same. The manner in which the Assessing Officer has come to the figure of ₹ 2.45 crores cannot be held to be perverse or irrational. His refusal to deduct the amounts as claimed by the assessee from this amount cannot be

said to be perverse or irrational either. The Tribunal indeed speculated by reducing the undisclosed investment at ₹ 1.50 crores and the addition of ₹ 55.01 lacs to about ₹ 34.65 lacs. However, the Tribunal speculated in favour of the assessee. The assessee can hardly be aggrieved by the speculation in his favour.

8. The appeal as regards question Nos. 1 to 4 is dismissed as they do not raise a substantial question of law.

9. Question Nos. 5 and 6 also do not raise a substantial question of law. The assessee advanced amounts without interest to his sister concern and to the employees. It was found that there were no business transactions with the sister concern. Commercial expediency was not established. As far as the employees are concerned, a sum of ₹ 10 lacs is alleged to have been advanced to him. Only a credit entry in his account was found. The amount was advanced for the purpose of constructing a house. There was no evidence that the money was infact given for construction of a house. Relief as regards supply of goods to one of the sister concern was partly granted. Relief as regards other transactions warrants no interference. It was found as a matter of fact that there was no commercial expediency.

The appeal as regards question Nos. 5 and 6 is also, therefore, dismissed.

10. In the result, the appeal is dismissed.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

09.08.2016
'ravinder'

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√