

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Income Tax Appeal No. 65 of 2014 (O&M)
Date of decision: 28.3.2016

Shri Rishi Sagar

.. Appellant

v.

Commissioner of Income Tax, Ludhiana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Alok Mittal, Advocate for the appellant.
Mr. Zora Singh Klar, Advocate for the respondents.

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Rajesh Bindal J.

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order 23.5.2013, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for short, 'the Tribunal') for the assessment year 2009-10 in ITA No. 10/Chd/2013, raising the following substantial questions of law:

- “(i) Whether in the facts and circumstances of the present case, the action of the Ld. Authorities below in ignoring the provisions of Section 250(4) of the Act is legally unsustainable in the eyes of law ?
- (ii) Whether in facts and circumstances of the case, the Id. Authorities below ought to have either taken into consideration the additional evidence upon receiving the remand report from the AO or got an enquiry qua the payment being made from the cash credit account of the assessee as no income has accrued to the assessee which

could be chargeable to tax under the Act ?

- (iii) Whether in the facts and circumstances of the case, the actions of the authorities necessitate that the matter be reconsidered by the Id. Authorities below to find the veracity of the averments of the assessee ?
- (iv) Whether in facts and circumstances of the case, the action of the authorities below, the impugned orders are legally sustainable in the eyes of law as the Id. Authorities below failed to exercise the discretion judiciously ?”

Learned counsel for the assessee submitted that no doubt at the time of assessment, the assessee could not furnish the requisite details and the audited accounts on account of fault of the Chartered Accountant, however, at the time of hearing of the appeal before the Commissioner of Income Tax (Appeals)-II, Ludhiana [for short, 'CIT (A)'], balance sheet was furnished. It was from the material produced at that stage that it was clarified that certain amounts, which were shown in the credit of the creditors accounts had, in fact, been cleared. The transactions were through bank accounts. Additions were made stating that to be unexplained income. Once the amounts had been paid through bank transactions and there was no dispute about that, additional evidence produced by the assessee before the CIT (A) should have been considered. The authorities having failed to appreciate the same in violation of the provisions of Section 215(4) of the Act, this being a substantial question of law, the order passed by the Tribunal deserves to be set aside.

On the other hand, learned counsel for the Revenue submitted that on account of large scale discrepancies found in the books of accounts produced by the assessee at the time of assessment and on his failure to answer the queries raised, his books of accounts were rejected and the assessment was framed under Section 143 (3) of the Act. The discrepancies in the entries in creditors' accounts have not been disputed by the assessee. Even at the appellate stage, though the assessee filed fresh provisional balance sheet trying to explain the entries, which were found to be

manipulated with earlier balance sheet filed, but even that was not an audited balance sheet. The assessee is trying to claim isolated relief explaining one transaction. In the absence of audited balance sheet and explanation for other discrepancies found in the books of accounts, which are large in number, such a claim by the assessee cannot be accepted. There is no error in the order passed by the authorities below. No substantial question of law arises. The appeal deserves to be dismissed.

Heard learned counsel for the parties and perused the paper book.

The assessee in the present case filed e-return declaring his income at ₹ 2,43,980/-. The case was selected for scrutiny. Notice was served upon the assessee. A questionnaire was sent. Despite repeated notices seeking information, the assessee failed to comply with the same and furnish requisite information. On certain dates, even none appeared for the assessee. The assessee had furnished the names and addresses of the persons, who had been shown to be sundry creditors as on 31.3.2009. On 30.12.2011, during the course of assessment proceedings, the assessee submitted documents of confirmation of credit in the accounts of creditors. He did not produce any books of accounts, vouchers etc. The books of accounts, hence, were rejected and the assessment was made invoking the provisions of Section 143 (3) of the Act. Besides other discrepancies and anomalies found in the books of accounts in the list of creditors, the assessee had shown a credit amounting to ₹ 6,99,982/- in the account of Dewan Steel Industries. It was found that in his books of accounts, the balance was zero. Similar was the position in the account of Regent Steel Industries, another creditor, where credit balance of ₹ 30,00,000/- was shown, which was also found to be nil in the books of accounts of the creditor. This is despite the fact that the appellant had produced balance confirmation certificates. Substantial difference was found on the percentage of gross profit rates, as compared to the previous year. Certain expenses claimed without there being any supporting vouchers were disallowed. The taxable income was assessed at ₹ 44,12,374/- as against ₹ 2,43,980/-, declared by the assessee.

In appeal before the CIT (A), prayer was made for permitting the assessee to lead additional evidence in terms of Rule 46A of the Income Tax Rules, 1961, however, finding that none of the ingredients enumerated in the aforesaid Rule for permitting the assessee to lead additional evidence being available, the same was declined. The order passed by the Assessing Officer was confirmed. Even before the Tribunal, the assessee met the same fate. The observations made by the Tribunal in the order pertaining to conduct of the assessee are extracted below:

“17. In order to avail the benefit of Rule 46A of the IT Rules in relation to admission of additional evidence, the assessee is to show as to how its case of admission of additional evidence is covered by the conditions provided under sub-rule (1) to rule 46A of the IT Rules. As referred to by us in the paras herein above, it is not a case of the application of clause (a) under which such evidence could be admitted by way of additional evidence where the AO had refused to admit the evidence. The case of the assessee was that as the entries of the cash credit limit and its application were not available with it during the course of assessment proceedings, the same was now being produced by way of additional evidence, does not merit admission as the assessee has failed to establish the reasonableness of the evidence not being available during the course of assessment proceedings.

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In our opinion, no substantial question of law arises in the present appeal. The conduct of the assessee and the books of accounts produced by him did not inspire confidence and were rightly rejected by the Assessing Officer. Even at the appellate stage, he produced additional evidence in the form of unaudited provisional balance sheet and tried to take benefit of merely two entries which, in his books of account and the balance sheet earlier produced, he had shown differently. It cannot be said to be a mere error, rather, it was a deliberate attempt to defraud the revenue. The relief, which the assessee is claiming at this stage explaining two

transactions pertaining to the creditors, cannot be examined in isolation in the absence of other entries in the books of accounts, which could not be explained by him at the time of assessment as the queries raised by the Assessing Officer were not responded to and complete books of accounts were not produced.

For the reasons mentioned above, we do not find that any substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

28.3.2016
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(Refer to Reporter)