IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : I. T. A. No. 171 of 2015
Reserved On : August 22, 2016
Pronounced On : September 05, 2016

Teji Singh .... Appellant

vs.

Commissioner of Income Tax, Karnal .... Respondent

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

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Present : Mr. Divya Suri, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondent.

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DEEPAK SIBAL, J. :

Invoking Section 260-A of the Income Tax Act, 1961 (for short – the Act), the assessee has preferred the instant appeal to challenge therein the order passed by the Income Tax Appellate Tribunal, Chandigarh Bench `A', Chandigarh (for short – the Tribunal).

The appeal pertains to the assessment year 2009-10 and according to the assessee, in the same, the following substantial questions of law arise :-

"I. *Whether the 'chargeable income' is to be in the hands of the beneficiary & the 'charge' has to be on the 'real income' of the assessee as emerging from the 'material facts' containing 'material particulars' in accordance with ITO Vs. Atchaiah (1996) 1 SCC 417 ?*

II. *Whether under the facts and circumstances of the case, the action of treating the 'capital account transactions' into 'revenue' is unreasonable while charging the character of bank receipts in the hands of the recipient ?"*

Having heard learned counsel for the parties and perusing the record with their able assistance, we are of the opinion that the present appeal raises no substantial questions of law as the Tribunal, as also the Commissioner of Income Tax (Appeals), Karnal (hereinafter referred to as – the Commissioner), on challenge made to the assessment order by the assessee, have only adjudicated upon factual issues.

The relevant facts lie in a narrow compass. The assessee filed his income tax return for the assessment year 2009-10. His case was selected for scrutiny, as a result whereof, he was issued and served upon notices under Sections 142 (1) and 143 (2) of the Act. A detailed questionnaire was also issued, to which the assessee filed his response. The assessee was asked to explain the cash deposits of Rs. 23,34,075/- and Rs. 59,92,750/- made by him in the previous year in his accounts in the State Bank of India and Axis Bank.

In response, attempting to explain the afore-referred cash deposits made by him which he claimed to have received from his father Solia Ram, the assessee submitted that his father, along with his brothers (assessee's uncles), through agreement dated 02.08.2008 with one Baldev Singh son of Ram Singh, had agreed to sell 30 kanals of land @ Rs. 1,11,00,000/- per acre. It was submitted that in pursuance to the afore-referred agreement, the advance of Rs. 60,00,000/- was received on 02.08.2008 and the date of registration of sale deed was fixed as 01.05.2009. However, on 30.04.2009, the agreement was cancelled. The advance of Rs. 60,00,000/- was returned. Thereafter, on 30.04.2009 itself, another agreement qua the same land was executed, in pursuance to which, advance of Rs. 85,00,000/- was received and date of registration of sale deed was fixed as 30.06.2009. This agreement was also cancelled on 25.06.2009 and the entire amount of the received advance was returned. The assessee then went on to submit that on 26.06.2009, another agreement was executed, in pursuance whereof, an advance of Rs.1,00,00,000/- was received, but the date of registration of sale deed qua this agreement was not mentioned.

The Assessing Officer disbelieved the stand of the assessee.

He found that none of the afore-referred agreements referred to the assessee as the owner of the land. The owners of the land were the assessee's father and his uncles. The sources of the afore-referred cash deposits of Rs. 23,34,075/- and Rs. 59,92,750/- made by the assessee in his accounts in the State Bank of India and Axis Bank respectively were found to be unexplained. The final sale deed dated 30.12.2009 was found to have transferred the aforesaid land in favour of Amar Nath, Nilima, Navita Khurania and Sweta, whereas the earlier agreements were found to have been entered into between the father of the assessee and his uncles on one side and one Baldev Singh son of Ram Singh on the other. The sale deed dated 30.12.2009 depicted the total sale price to be Rs. 54,12,000/-. There was no reference of any advance paid in the sale deed. When this was compared to the agreement dated 02.08.2008, it was found that in pursuance to such agreement, the advance itself paid by Baldev Singh to the assessee's father and his brothers was Rs.60,00,000/-. It was further found that the agreement dated 02.08.2008, as also the subsequent agreements, were for 30 kanals, but the final sale deed dated 30.12.2009 was for only 24 kanals 01 marla. The Assessing Officer asked the assessee to produce Baldev Singh son of Ram Singh but for reasons best known to him, the assessee failed to do so. Summons under Section 131 of the Act were issued to the said Baldev Singh, who, as per the Inspector's report, refused to accept the summons. Thereafter, a copy of the summons was sent to Baldev Singh by registered post, but he failed to comply with the same.

In view of the afore-referred facts, the Assessing Officer added to the income of the assessee the cash deposits made by him for Rs. 23,34,075/- and Rs. 59,92,750/- in the State Bank of India and Axis Bank respectively.

The assessee challenged the assessment order by way of an appeal before the Commissioner, who dismissed the same. The reasons, as given by the Assessing Officer, for addition of the cash deposits made by the assessee, were sustained by the Commissioner. The Commissioner further found that no offer was made by the assessee to explain the source of deposits made by him in his saving bank account maintained with the State Bank of India. So far as the source of deposit of cash in his saving bank account maintained with Axis Bank was concerned, the assessee had submitted that his father, along with his three uncles, in pursuance to the sale agreement dated 02.08.2008, had received Rs. 60,00,000/- in advance and it was this amount, which had been handed over by his father to him, which he deposited in his bank account maintained with Axis Bank, Kaithal. This fact had also come in the statement of his father. When the veracity of the above stand taken by the assessee was gone into by the Commissioner, he found that cash deposits had been made by the assessee in his savings account maintained with Axis Bank to the tune of Rs. 6,00,000/- and Rs. 22,00,000/- on 16.07.2008 and 01.08.2008 respectively, which were prior to the agreement to sell dated 02.08.2008. Thus, the submission of the assessee and the statement of his father were found to be false.

The assessee had submitted that initially, the agreement to sell the land had been entered into on 02.08.2008, in pursuance to which, Rs. 60,00,000/- as advance had been received by the assessee's father and his uncles. According to him, the amount deposited in Axis Bank was out of this amount. He further went on to submit that this agreement was cancelled on 30.04.2009 and on such cancellation, the entire amount was returned. The Commissioner found that no transaction for withdrawal of any money from the bank accounts of the assessee had been made between 16.04.2009 to 30.04.2009.

The assessee had further submitted that after cancellation of the afore-referred agreement dated 02.08.2008, another agreement dated 30.04.2009 qua the same tract of land was entered into between the father and the uncles of the assessee on one side and Baldev Singh on the other side. In pursuance to this agreement, Rs. 85,00,000/- was received. The assessee stated that this agreement was also cancelled on 25.06.2009 and the entire amount so received was returned. On perusal of the record, the Commissioner found that there was no transaction of withdrawal of any money by the assessee on 25/26.06.2009 from his bank accounts.

In view of the above, the Commissioner, being of the view that the cash deposits made by the assessee in his saving bank accounts maintained with the Axis Bank and State Bank of India had nothing to do with the sale of land by his father and his uncles, dismissed his appeal, which gave him a cause to file an appeal before the Tribunal.

The facts, as referred to above, were gone into by the Tribunal and agreeing with the Assessing Officer and the Commissioner, the Tribunal, gave its stamp of approval to the orders passed by them by dismissing the appeal of the assessee. The afore-referred inconsistencies in the stand of the assessee, were noticed which led to the rejection of the appeal of the assessee.

Thus, the factual position brought forward by the assessee, to explain the cash deposits made by him in his saving bank accounts, were concurrently considered and rejected by both – the Commissioner as also the Tribunal. After having gone through the same, we find no absurdity or perversity in them warranting any interference on our part.

Resultantly, finding no merit in the appeal, the same is ordered to be dismissed.

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*

(S. J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

September 05, 2016
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