

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.444 of 2015 (O&M)
Date of decision:7.4.2016**

Sanjeev Bajaj

.....Appellant

**Commissioner of Income Tax, Aayakar Bhawan, Rishi Nagar,
Ludhiana, Punjab.**

.....Respondent

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.K.Mukhi, Advocate with Ms.Perna Talwar, Advocate
for the assessee-appellant.

Ajay Kumar Mittal, J.

1. Delay of 59 days in refiling the appeal is condoned.
2. This appeal has been preferred by the appellant-assessee
Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the
order dated 6.2.2015, Annexure A.3 passed by the Income Tax Appellate
Tribunal, Chandigarh Bench, 'B', Chandigarh (in short, "the Tribunal") in
ITA No.184/Chd/2012, for the assessment year 2008-09, claiming following
substantial questions of law:-

“A. Whether the Income Tax Appellate Tribunal is justified in rejecting the application for additional evidence under given facts and circumstances of the case in not admitting the additional evidences there being reasonable cause for not filing the same before the authorities below by clearly defying well settled law that where the documents have bearing on the case, the same need to be taken into consideration by the competent authorities as was held in the case of Tek Ram (dead) through Lrs vs. CIT 93 DTR 350 (SC) wherein it was held that “Fresh documents placed before it for the first time which are of some relevance are required to be looked into by the High Court before it comes to any conclusion”?

B. Whether the impugned order passed by Hon'ble Income Tax Appellate Tribunal, Chandigarh, confirming the addition of ₹ 30,40,620/- after rejecting application for additional evidence, and ex parte before the CIT(A) is devoid of proper appreciation of facts, and the established principles of law that no one should be condemned unheard and thus deserves to be set aside while making addition of all the 27 parties though no enquiry was conducted in respect of balance 23 parties which is perverse in view of the fact that Hon'ble ITAT is the last fact finding body?

C. Whether under the facts and circumstances of the case, the ITAT was justified in treating the income under the head Short Term Capital Gain and Long Term Capital Gain on investments in personal capacity as income from business without appreciating the facts, evidences and past record and thereby confirming the addition of ₹ 7,27,796/- by clearly defying the principles of consistency?

D. That the finding of ITAT in confirming the impugned additions without adhering to various contentions, evidences and additional evidences filed is perverse and

illegal?”

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is an individual based at Ludhiana. He filed his return of income for the assessment year 2008-09. Notice was issued to the appellant to explain certain points. The Assessing Officer asked the appellant to explain the deposit of amounts in account books from various customers for whom he was doing trading in commodities amounting to ₹ 30,40,620/-. The appellant replied that the same were receipts from his customers for whom he was doing trading of commodities as per past and future practice. The Assessing Officer deputed his Inspector to verify the claim from only four persons as a test check. After examining the matter, the Assessing Officer treated the entire set of receipts from all the 27 persons claimed as unexplained cash credits/unexplained investments under sections 68/69 of the Act and made addition of ₹ 30,40,620/- vide order dated 31.12.2010, Annexure A.1. Further, the Assessing Officer treated Short Term Capital gain of ₹ 6,93,533/- and long term capital gain of ₹ 34,263/- as business income. It was also stated that the assessee was earning his income from trading in equities in his personal capacity as well as trading in commodities on behalf of clients from M/s Neel Kanth Commodities Services. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (appeals) [CIT(A)]. Due to non appearance before the CIT(A), the addition was sustained by the CIT(A) vide order dated 5.1.2012, Annexure A.2. In the meantime, the father of the assessee expired on 23.2.2010 and his son was diagnosed with Type I diabetes. Ultimately the appellant filed appeal before the Tribunal wherein he prayed for placing

on record additional evidence under Rule 29 of the Income Tax Rules, 1962. Vide order dated 6.2.2015, the application for additional evidence was rejected and the addition was sustained by the Tribunal. Hence the instant appeal by the appellant-assessee.

4. We have heard learned counsel for the appellant-revenue.

5. The main grievance of the assessee was that due to death of his father and illness of his son, he could not produce proper evidence before the Assessing Officer in time. The Tribunal had recorded that the assessee by way of additional evidence is trying to produce the copy of the ledger account and PAN numbers of various people and in some cases bank pass books without producing any confirmation from those persons from whom allegedly he had received the amounts. Further the Tribunal had noticed that the assessee under the garb of additional evidence was making half-hearted effort to gain a remand so that he can fabricate some story before the Assessing Officer. The relevant findings recorded by the Tribunal on this issue read thus:-

“10. We have considered the rival submissions carefully and find no force in the submissions of learned counsel for the assessee. The father of the assessee died on 23.2.2010 whereas the assessment proceedings initially started from 30.8.2010 i.e. after a gap of almost six months and therefore death of the father of the assessee cannot be an excuse for not filing the proper evidence. Further the son of the assessee also remains not well only during the period from January to November whereas the assessment order was also finally passed on 31.12.2010. In any case the perusal of the medical report shows that maximum test reports relates to blood sugar level which is not a serious

disease. In any case once the issue was decided against the assessee he should have taken the precaution to file evidence if any before the CIT(A). The learned CIT(A) has originally fixed the date of hearing on 7.9.2011 which was adjourned to 15.9.2011, 10.10.2011, 4.11.2011, 22.11.2011, 2.12.2011, 12.12.2011, this means that the learned CIT(A) gave more than half a dozen opportunities to the assessee but assessee did not take any precaution to file these evidences. We further find that during the assessment proceedings the assessee has filed a list of 27 persons from whom the cash is supposed to have been received out of which PAN etc. was given for ten persons. The AO issued summons to two persons which were returned because addresses were not correct and when this was confronted to the assessee it was simply stated that may be these persons have shifted but no plausible explanation was given. The other two persons i.e. Shri Chaman Lal and Shri Manoj Kumar straightway refused that they have undertaken any transaction with assessee and even during the cross examination the assessee's counsel could not explain the statement or filed any evidence to show that they have undertaken any transaction with the assessee. This fact clearly shows that assessee is trying to build a story as an afterthought. We further find that the evidence which is sought to be filed now as additional evidence consists of copy of the ledger account and PAN numbers of various people and in some cases Bank pass book is also there. But in no case only confirmation has been filed from such persons from whom cash is supposed to have been received. Therefore, assessee is trying to make a half hearted effort just to gain a remand so that assessee can go back and cook something before AO. In these circumstances we are not inclined to admit the additional evidence and therefore reject these

applications for admission of additional evidence. Further in almost similar circumstances in case of M/s Big Bull Commodities Pvt. Limited vs. The CIT III (supra) where assessee moved an application for admission of additional evidence before the Hon'ble High Court, the same application was rejected by observing in para 9 that assessee had failed to produce any evidence in support of the creditors and since AO has given sufficient opportunities therefore, additional evidence was not required to be admitted. Therefore, considering the circumstances as well as the observations of the Hon'ble High Court in case of M/s Big Bull Commodities Pvt. Limited vs. The CIT III (supra) we reject this application for admission of additional evidence.”

6. It could not be effectively pleaded by learned counsel for the appellant that the approach and the conclusion of the Tribunal warranted interference by this Court. It was also noticed by the Assessing Officer that the assessee had declared income from trading of shares and which was treated as income of business and profession and normal tax was paid. Further the assessee had claimed income under the head capital gain as short term capital gain as well as long term capital gain on some other transactions of dealing in shares. Perusal of the balance sheet revealed that the shares were shown as stock in trade and not as investment. Therefore, the transactions in shares were held to be in the nature of business activity and the income was assessed as income from business and profession. The finding of the Assessing Officer was confirmed by the CIT(A). The Tribunal after examining the matter recorded that once the shares had been shown in stock in trade by the assessee itself, it could not be said that the assessee had made investment in such shares and thus these transactions

were held to be in the nature of trading transactions. Upholding the findings recorded by the Assessing Officer and the CIT(A) on this issue, it was recorded by the Tribunal as under:-

“Before us a chart showing transactions was also filed and perusal of the same clearly shows that assessee has dealt in various share transactions and they are in the nature of trading transactions, in large number of transactions the assessee held shares for less than seven days, in some cases the transactions are of repeated nature for example in case of GMR INFRA 500 shares were purchased on 20.11.2007 and sold on 21.11.2007, again 2000 shares were purchased on 21.11.2007 and sold on 28.11.2007, on 12.3.2008, further 200 shares were purchased and sold on 13.3.2008. Again in case of HFCL 100 shares were purchased on 6.6.2007 and sold on 2.7.2007, again 1000 shares were purchased on 25.10.2007 and sold on 30.10.2007, again 7500 shares were purchased on 26.2.2008 and sold on 27.2.2008, on 29.2.2008 further 2500 shares were purchased and sold on 31.3.2008. Same things happened in case of shares of HDIL, BHEL, ICICI Bank, INFOSYS etc. If the assessee had intention to invest then why he purchased shares of GMR INFRA first on 20.11.2007 and sells them on 21.11.2007 and then again purchased on 21.11.2007 and sells them on 28.11.2007 and then again purchased on 12.3.2008 and sold on 13.3.2008. This itself shows that assessee was a trader. Further assessee has dealt in large number of shares totalling to 64 scripts in various transactions during the year. AO has also noted that total number of shares purchased during the year were 11,12,741 for a sum of ₹ 1,87,76,103/- and sold 11,12,741 shares for a sum of ₹ 1,94,69,637/-. In any case AO has rightly noted that shares have been shown as stock in trade in the balance sheet and not as investment. Once the shares

have been shown in stock in trade by the assessee itself then it cannot be said that assessee had made investment in such shares therefore in our opinion the AO and CIT(A) have correctly held these transactions to be in the nature of trading transactions and we find nothing wrong in the same and uphold the order of learned CIT(A).”

Learned counsel for the assessee-appellant was not successful in demonstrating that the findings recorded by the Tribunal were based on either misreading or misappreciation of material on record.

7. The view adopted by the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the impugned order. No substantial question of law arises in this appeal. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 07, 2016
‘gs’

(Raj Rahul Garg)
Judge