IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.463 of 2015 (O&M)
Date of decision:11.4.2016

Dilraj Sharma

……Appellant

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

…..Respondents

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. Sunil Kumar Mukhi, Advocate with
Ms. Prerna Talwar, Advocate for the appellant.

Ajay Kumar Mittal, J.

1. Delay in refiling the appeal is condoned.

2. This appeal has been preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 10.9.2014, Annexure P.3 passed by the Income Tax Appellate Tribunal, Bench 'B', Chandigarh (in short, "the Tribunal") in ITA No.173/CHD/2014, for the assessment year 2007-08, claiming following substantial questions of law:-

"A. Whether under the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal, is justified in confirming the orders of authorities below in treating the entire bank deposits as unexplained deposits by clearly deviating from the principles of judicial consistency which is trite law in view of judgment in the case of ***Radhasoami Satsang vs. Commissioner of Income Tax***, AIR 1992 SC 377?

B. Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in not considering the additional evidences during the course of regular hearing and also in Misc. application which is against the trite law as held by Hon'ble Supreme Court of India in ***Tek Ram (dead) through Lrs vs. Commissioner of Income Tax,*** (2013) 357 ITR 133 (SC)?

C. Whether the impugned order passed by the Hon'ble Income Tax Appellate Tribunal is perverse and deserves to be set aside?"

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. She is engaged in the business of commodity exchange, resale of ladies suits and rental. She is also earning from interest. She filed return of Income for the assessment year 2007-08 on 31.10.2007 declaring income of ₹ 1,17,351/-. The case was selected for scrutiny. The assessee appeared before the Assessing Officer in response to the notice issued to her. She was asked to explain the source of deposits in bank accounts and as to why these investments in saving bank account should not be treated as unexplained income under sections 69/69B of the Act. The assessee filed reply dated 23.11.2009 pleading that she was carrying out work as broker for feed ingredients also and the amounts had been received from the poultry farmers on various dates and the same had been deposited in the bank accounts and paid through cheques to suppliers

of feed ingredients against bills. The appellant had received brokerage of 1.5 to 2% only. The Assessing Officer presumed that the bank transactions were circulation of money and made addition of entire deposits of ₹ 16,78,961/-. Even LIC maturity deposits were not spared and they had been added as unexplained deposits. Against the assessment order, the appellant filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 16.12.2013, Annexure A.2, the CIT(A) dismissed the appeal on the ground that there was no evidence to support the claims and res judicata was not applicable in income tax matters. Aggrieved by the order, the assessee filed appeal before the Tribunal. The assessee also filed certain documents during appellate proceedings in support of her case. According to the appellant, she was not given proper advice by her counsel and therefore, the entire record was not filed before the Assessing Officer. It was further submitted that since the Assessing Officer had adopted peak theory for the assessment year 2006-07, the same was to be followed in the year under appeal also. However, for the earlier year and even for the year under appeal, the documents like affidavits of farmers and supporting documents of financial transactions were submitted before the Assessing Officer during penalty proceedings and therefore penalty had been dropped for both the years. The Tribunal vide order dated 10.9.2014, Annexure A.3 dismissed the appeal filed by the appellant following the case of ***Sudhir Kumar Sharma HUF vs. CIT.*** The assessee filed application dated 8.12.2014 for correction of factual errors. Vide order dated 19.3.2015, Annexure A.4, the said application was dismissed by the Tribunal. Hence the instant appeal by the appellant-assessee.

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

5. A perusal of the findings recorded by the authorities below shows that the assessee had made several cash deposits in the bank account and had withdrawn money by way of cheques and demand drafts issued to different parties. She was asked to explain the source of entries in the said bank accounts. The assessee replied that she was acting as a broker for feed ingredients and the amount was received from poultry/dairy farmers which was deposited in her bank account and was paid through cheque to the suppliers of feed ingredients against the material. It was noticed by the Assessing Officer that the assessee in her return of income had declared income under the head business at ₹ 1,16,365/- on account of Income from commodity exchange of ₹ 60,250/- and estimated income from resale of ladies suits at ₹ 56,115/- in addition to the income declared under house property and other sources. The assessee had not declared any income from the business of commission claimed to have been carried out. She also failed to produce the names and addresses of the parties from whom the payments had been received and to whom cheques were issued. Since the deposits in the bank were made in cash whereas withdrawals were made through issue of cheques, the plea of the assessee of circulation of money was not accepted and addition of ₹ 16,78,961/- was made in the income of the assessee. The said findings were upheld by the CIT(A) and the Tribunal. It has been categorically recorded by the Tribunal that inspite of several opportunities, the assessee failed to produce any evidence to establish her claim. Alternatively, it was pleaded that addition be made on account of peak credit in the bank accounts. The Tribunal after following the decision

in Sudhir Kumar Sharma's case (supra) upheld the addition made to the income of the assessee. The Tribunal also considered the additional evidence sought to be produced by the appellant and found the same to be irrelevant. The relevant findings recorded by the Tribunal read thus:-

> "8. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in relation to the cash deposited in the bank accounts of the assessee. The assessee had admittedly not declared any income on account of the said circulation of money in his bank account with Kotak Mahindra Bank Limited and Oriental Bank of Commerce. The assessee had periodically deposited cash in the said bank account against which it had issued cheques to various parties. The plea of the assessee before the Assessing Officer was that the said amount was being deposited on behalf of the poultry/Dairy farmers but had failed to produce any evidence in this regard nor any list of persons from whom the cash was received was filed. Similarly, the assessee failed to furnish any evidence as to whom the said cheques were issued from the said bank account. In the absence of the same, the Assessing Officer made addition on account of total cash deposited in the bank account. However, despite several opportunities, the assessee had failed to produce any evidence to establish his claim and now before us has raised the plea that in the alternative, addition if any be made on account of peak credit in the said bank accounts. It may be brought on record that the assessee, on one hand had deposited cash in the said bank accounts and thereafter, withdrawn the money by way of cheques/DDs.
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> 9. We find that similar issue of cash deposit in the bank account and the non furnishing of complete details in respect of the said cash deposit and thereafter issuance of cheques from the said account had arisen before the Tribunal in cross appeals in ITA No.713/CHD/2010 and ITA No.963/CHd/2010 in the case of

Sudhir Kumar Sharma vs. ITO relating to assessment year 2007-08 and others and vide order dated 27.6.2013.....xxxxx

12. The issue raised in the present appeal is identical to the issue before the Hon'ble Punjab and Haryana High Court in the case of Shri Sudhir Kumar Sharma, HUF vs. CIT, Ludhiana (supra) and following the same parity of reasoning, we uphold the addition of ₹ 16,78,961/- under section 68 of the Income Tax Act."

6. The plea of the assessee for addition on the basis of peak credit and also for producing additional evidence which was considered to be irrelevant, had been rightly declined by the Tribunal as noticed above.

7. The Tribunal has recorded the findings after considering the entire evidence and material on record, which are pure findings of fact. Learned counsel for the appellant has not been able to demonstrate that the said findings are perverse or erroneous in any manner. We find no error in the view adopted by the Tribunal. No substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 11, 2016 **(Raj Rahul Garg)**
'gs' **Judge**