IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.117 of 2016 (O&M)
Date of decision: 23.05.2016

Satpal Goyal

……Appellant

vs.

Commissioner of Income Tax (Central) Ludhiana

…..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. Deepak Aggarwal, Advocate for the appellant-assessee.

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 10.2.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chandigarh (in short, "the Tribunal") in ITA No.743/CHD/2014, for the assessment year 2005-06, claiming following substantial questions of law:-

"a) Whether in the present facts and circumstances of the case, the learned ITAT was justified in upholding the addition of ₹ 5,80,100/-?

b) Whether in the present facts and circumstances of the case, the order of the learned ITAT is perverse?

3. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. The assessee is a property dealer. He is

engaged in the business of booking plots and constructing them in collaboration with Motia group. Search and seizure operation under section 132 of the Act was conducted on 25.2.2009. Notice under section 153A of the Act was issued on 9.7.2009 to the assessee to file the return of income. Accordingly, return declaring income of ₹ 1,35,570/- was filed on 2.9.2009 by the assessee. The case was taken up for scrutiny. Notice under section 143(2) of the Act was issued to the assessee. Representative of the assessee appeared and furnished the requisite information. The assessee had shown business income from property dealing. The assessee had also shown sundry creditors of ₹ 7,97,600/-. The assessee was required to file certified copy alongwith narration in the books of all the creditors with regard to the amount of ₹ 7,97,600/-. He was also required to furnish the status of the credit balance in his books of account for the financial year 2005-06, i.e. the next year. The Assessing Officer made an addition of ₹ 5,80,100/- towards unexplained credits under Section 68 of the Act vide order dated 22.12.2010, Annexure A.1. The details of unexplained credits are as under:-

Sr.No.	Name	Amount
1.	Shri Ajay Bansal	₹ 1,71,500/-
2.	Mukat Bricks Kiln Dhodan	₹ 1,93,700/-
3.	Yaseen	₹ 23,300/-
4.	Hari Iron & Cement Store	₹ 1,67,600/-
	Total:	₹ 5,80,100/-

The Assessing Officer made the additions on the ground that the assessee failed to provide confirmation or documentary evidence at the time of assessment proceedings. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] alongwith application under Rule 46A of the Income Tax Rules, 1962 (in short, "the Rules") for admission of additional evidence. Vide order dated 15.5.2014, Annexure A.2, the CIT(A) rejected the appeal and confirmed the additions made by the Assessing Officer. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 10.2.2015, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee-appellant.

4. We have heard learned counsel for the appellant.

5. It has been categorically recorded by the Tribunal after appreciating the evidence on record that the assessee failed to prove the identity of the creditors, their capacity and genuineness of the transactions in the matter. It was observed that the additional evidence produced before CIT(A) was not sufficient to discharge the onus upon the assessee to prove the genuine credit in the matter and further that the assessee had also failed to explain as to why the additional evidence could not be produced before the Assessing Officer. It has also been recorded that no independent confirmation of the creditors had been filed by the assessee. Thus, it was concluded that the assessee had booked bogus purchase of construction material in the profit and loss account as no purchase vouchers for a sum of ₹ 5,80,100/- had been produced. The relevant findings recorded by the Tribunal read thus:-

"16. We have heard the learned representatives of both the parties and perused the material available on record. The Assessing Officer has specifically found that the assessee has booked bogus purchase of construction material in the profit and loss account because no purchase vouchers for a sum of ₹ 5,80,100/- have been produced. Therefore, there is no question of entering the genuine credit in the books of account. This finding of fact has not been rebutted by the assessee at all. The assessee in the paper book has filed application for admission of additional evidence before the learned CIT(Appeals) in which the assessee sought admission of the confirmation and documentary evidences before the learned CIT(Appeals). However, the same would show that in the case of Shri Ajay Bansal photo copy of account and photocopy of bill have been filed. In the case of Mukat Bricks Kiln Dhodan same copy of the account and copy of the bill and copy of confirmation of the account is filed. The same is the position in respect of Yaseen and Hari Iron and Cement Store. It is therefore clear that in none of the cases the assessee has filed an independent confirmation. All the outstanding balance appearing in the books of account of the assessee are stated to have been from the creditors. Mere confirmation of the account or copy of the account would not prove the genuineness of the credit in the matter. As noted above, since the purchase vouchers qua these parties have not been produced before the Assessing Officer at assessment stage, would prove that the assessee booked bogus purchases in the books of account as well as noted bogus credit entries in the books of account. We have already referred to the judgments of Hon'ble Calcutta High Court in the cases of Bharati Private Limited and United Commercial and Industrial Company Pvt. Limited (supra) for the proposition that mere filing of confirmation is not enough to prove the genuine credit, would clearly prove that the assessee failed to prove the genuine credit in the matter. The assessee failed to prove the identity of the creditors, their capacity and genuineness of the transaction in the matter. Whatsoever additional evidences were produced before the learned CIT(Appeals) are not sufficient to discharge the onus upon the assessee to prove the genuine credit in the matter. Further the assessee failed to explain why the same were not filed before the Assessing Officer. Therefore, the learned CIT(Appeals) was justified in refusing to admit this additional evidence in the case Shri Guljari Lal for loan of ₹ 2,50,000/-. Even before us no confirmation or any evidence have been filed to prove the genuineness of the credit. Therefore, the learned CIT (Appeals) was justified in confirming both the additions."

6. 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

May 23, 2016 **(Raj Rahul Garg)**
'gs' **Judge**