IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 287 of 2016 (O&M)
Date of Decision: 15.11.2016

M/s Ekta Construction Co. through Shri Amrit Lal

..Appellant

versus

Commissioner of Income Tax, Ludhiana, Punjab

…Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE.
HON'BLE MR. JUSTICE A.B.CHAUDHARI, JUDGE.

Present : Mr. S.K.Mukhi, Advocate, for the appellant.
Mr. Zora Singh Klar, Advocate, for the respondent.

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S.J.VAZIFDAR, CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal partly allowing the appeal of the Revenue and dismissing the assessee's cross objections. The appeal pertains to the assessment year 2007-08.

2. The appellant contends that the following substantial questions of law arise in this case:-

"A) Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, is justified in reversing a well versed order of CIT(A) in deleting the addition of Rs.10,75,832/- on account of surrender during the survey under section 133A without appreciating the true intention of appellant in making the impugned surrender and without appreciating the trite law as laid down by the Supreme Court of India in the case of CIT v. S.Khader Khan Son, 79, DTR, 184 (SC) that no addition can be made on the basis of statement recorded in survey as section 133A does not empower any income tax authority to examine any person on oath and thus any such statement has not evidentiary value and any admission made during such statement cannot be made the basis for addition while in the present case, the appellant had rightly declared an amount of Rs.1,61,23,710/- as per its intention which should have been accepted without any further addition?

B) Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in reversing a well versed order of CIT(A) in deleting the addition of ₹ 24,00,000/- on account of unsecured loans under section 68 without appreciating the fact that the appellant had duly discharged its onus and having filed the requisite evidences without bringing any adverse material on record and without controverting the fact that the impugned loans were duly returned in future through banking channel which findings of ITAT are perverse and against trite law?

C) Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in reversing a well versed order of CIT(A) in deleting the addition of Rs.1,64,340/- on account of interest actually paid on the unsecured loans of Rs.24,00,000/- without appreciating the fact that the appellant had duly discharged its onus and having filed the requisite evidences without bringing any adverse material on record and without controverting the fact that the impugned loans were duly returned in future with the impugned interest through banking channel which findings of IT^AT are perverse and against trite law?

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

Re: Question-A

3. On 07.09.2006, a survey was conducted in the assessee's premises. During the survey, the assessee surrendered a sum of ₹ 1,60,00,000/- on account of the discrepancies found during the survey. By an undated letter, the appellant stated that during the survey certain loose

papers/documents were impounded and that there may be discrepancies in the documents or loose papers. The letter further stated that in order to avoid litigation with the department and for peace of mind the assessee agreed to declare net income of ₹ 1,60,00,000/- including book profit upto 07.09.2006 to cover up the difference in purchase/sale price of the plots and all other defects in the books/loose papers and documents. The assessee further stated that it would not claim any kind of deductions/exemptions in respect of the declaration. The Assessing Officer found that the pre-survey and post-survey profit and loss account of the assessee showed for the period 01.04.2006 to 07.09.2006 a net profit of ₹ 83,47,719/- and for the latter period i.e. from 08.09.2006 to 31.03.2007 net profit of ₹ 77.75 lacs which included an amount of ₹ 67 lacs as income surrendered during the survey. On this basis, it was found that the net profit for the post-survey period itself was about ₹10,75,832/-. Accordingly, this amount was added to the surrendered income of ₹ 1,60,00,000/-. The Tribunal confirmed the Assessing Officer's view that by preparing the profit and loss account in a particular manner, the assessee had attempted to circumvent the undertaking given in the said letter. The Tribunal also agreed that there was voluminous incriminating material found during the survey and by surrendering the said amount, the assessee had the benefit of having the further enquiry shut.

4. The view taken by the Assessing Officer and the Tribunal cannot be said to be perverse. The amount of ₹ 1,60,00,000/- had been surrendered for the first half of the year. The assessee itself showed a profit of the said amount of ₹ 10.76 lacs and therefore added the same to the surrendered amount of ₹ 1,60,00,000/-. It is to say the least a possible

approach to the matter**.** The same does not raise a substantial question of law.

Re: Question-B

5. The Assessing Officer noticed that the assessee had advanced certain amount to the partners which were not for the business purposes. The assessee had also borrowed unsecured loans from various persons on interest at the rate of 12% per annum.

6. The assessee claimed to have received the amounts from 12 parties. The Assessing Officer issued summons to these parties and only two of them responded. The Assessing Officer accepted these two transactions. He, however, did not accept the other 10 transactions. The parties were issued notices but failed to appear. A notice was issued to the assessee to show cause why these unsecured loans should not be added to its income under section 68 of the Income Tax Act, 1961.

7. What is important is that these parties had immediately before advancing the amounts deposited the like amounts in their own accounts. It is far too much of a co-incidence that all the creditors immediately before they advanced the amounts to the assessee deposited in their accounts similar amounts. The Tribunal examined these facts and found the assessee's case to be doubtful. The income of all the creditors was below the taxable limit. All of them had their accounts with the Punjab National Bank, Dhuri Branch. We will overlook the fact that the affidavits filed by them are identical.

8. The Tribunal analyzed all the cases individually. For instance, in respect of one of the creditors, namely, Ms. Ranjit Kaur, it was found that she earned a professional income. She opened her account on 18.08.2006 with a sum of ₹ 1500/- and then deposited a sum of ₹ 3,00,000/- in cash on

23.08.2006 and issued a cheque of the same amount on the same day i.e. 23.08.2006. As observed by the Tribunal, if she was a professional, there was no explanation why she had not opened her own account earlier. Moreover, her income was stated to be only ₹ 82,000/- per annum. There was no explanation as to how she had suddenly obtained ₹ 3,00,000/-. In this manner, the Tribunal also analyzed the case of the other alleged lenders.

9. This was an appreciation of the facts of the case. We are unable to say that the view taken by the Tribunal is perverse or unsustainable.

10. Question-B is, therefore, answered against the assessee.

Re: Question-C

11. The answer to this question follows the answer to question-B. It is answered against the assessee.

Re: Question-D

12. In view of what we have held earlier, this question is obviously against the assessee. The order of the Tribunal cannot be said to be perverse.

13. The appeal is, therefore, dismissed.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(A.B.CHAUDHARI)
JUDGE

15.11.2016
'ravinder'

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√

RAVINDER SHARMA
2016.11.21 17:04
I attest to the accuracy and authenticity of this document