

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

**ITA No.84 of 2016 (O&M)
Date of decision:11.4.2016**

**Jasbir Singh, Prop. M/s Jasbir Singh Gurcharan Singh, New Grain
Market, Patiala, Punjab 147001.**

.....Appellant

Commissioner of Income Tax, Patiala and another

.....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. Salil Kapoor, Advocate with
Mr. Rishabh Kapoor, Mr. Saurabh Kapoor,
Mr. Puneet Aggarwal, Ms. Annanya Kapoor and
Mr. Sumit Lal Chadha, Advocates for the petitioner.

Ajay Kumar Mittal, J.

1. 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 30.9.2015, Annexure P.4 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) under Section 254(1) of the Act in ITA No.72/Chd/2011, upholding penalty under section 271(1)(c) of the Act, for the assessment year 2006-07, claiming following substantial questions of law:-

1. Whether in view of the facts and circumstances of the case,

the Tribunal has erred in law and on facts in upholding the order of the Assessing Officer of imposing the penalty under section 271(1)(c) of the Act?

2. Whether in the facts and in the circumstances of the case, the Tribunal was correct in law in not admitting the evidence under Rule 29 of the Income tax Appellate Tribunal Rules 1963 being vital piece of evidence and have bearing over the fact in issue?
3. Whether the Tribunal has erred in ignoring the various judicial record, orders and copy of complaints which clearly reflects the liability of the creditors?
4. Whether on the facts and in the circumstances of the case, the findings arrived at by the Tribunal are perverse, in as much as no reasonable person correctly informed of the provisions of law would come to such a conclusion?
5. Whether the Tribunal has erred in law by wrongly applying the decision of the Hon'ble Supreme Court in the case of Mac Data 358 ITR 593 (SC) which is distinguishable on facts and not universally applicable?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is proprietor of M/s Jasbir Singh Gurcharan Singh. He is in the business of commission agent (Kacha Ahrtia) at Anaj Mandi, Patiala. The appellant facilitates the local farmers in selling the agriculture produce and in return charges commission on the same. He advances loans to the farmers and sometimes borrows the same for the business activity. The appellant filed his return of Income under section 139 of the Act which was processed

under section 143(1) of the Act. The case of the assessee was selected for scrutiny. Notice under sections 142(1) and 143(2) of the Act was issued to the appellant. The appellant supplied all the necessary financial statements and produced books of account before the respondent authorities. During the assessment proceedings, the Assessing Officer asked the appellant to file confirmation qua certain sundry creditors outstanding as on 31.3.2006. The appellant submitted confirmation of five creditors out of nine. The appellant was not in good relations with the creditors and therefore they refused to sign the confirmations. The Assessing Officer vide order dated 22.12.2008, Annexure A.1 made addition under Section 68 of the Act amounting to ₹ 5,24,000/-. The respondent also initiated penalty proceedings under section 271(1)(c) of the Act vide letter dated 3.6.2009. The appellant appeared before the respondent and submitted that for the last few years, he was not maintaining good relations with the creditors and therefore they refused to sign the confirmations. The Assessing Officer imposed penalty amounting to ₹ 1,42,942/- vide order dated 26.9.2009, Annexure A.2. The appellant challenged the said order before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 19.10.2010, Annexure P.3, the CIT(A) dismissed the appeal and upheld the order passed by the Assessing Officer. Aggrieved by the order, the assessee filed appeal before the Tribunal. The appellant also filed an application dated 14.6.2011 under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (in short, “the Rules”) for submitting certain documents as additional evidence. According to the appellant, he could not produce the evidence earlier before the Assessing Officer and the CIT(A) since he was in jail on account

of various criminal proceedings pending against him. Vide order dated 30.9.2015, Annexure P.4, the Tribunal dismissed the appeal of the appellant and upheld the order passed by the CIT(A). The additional evidence was also not held to be relevant. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant submitted that the Tribunal erred in not considering the additional evidence produced by the appellant. It was further submitted that even on merits, the findings recorded by the Tribunal are erroneous.

5. On perusal of the order passed by the Tribunal, we find that it has been categorically recorded by the Tribunal that the assessment order was passed on 22.12.2008. Some of the documents sought to be produced were prior to the passing of the assessment order. No explanation had been given why the same had not been filed earlier before the authorities below. No proof had been produced regarding the custody of the assessee in jail for not filing the documents before the authorities below. Even the application for admission of additional evidence had been filed on 14.6.2011 i.e. after three years of the passing of the assessment order. After considering the entire material on record and the case law on the point, the Tribunal declined to admit the additional evidence produced by the appellant. Further the amount in question i.e. ₹ 5,24,000/- pertaining to four of the creditors remained unexplained, false and bogus in the books of account of the assessee. The addition was made when the assessee was cornered by the Assessing Officer to explain the genuineness of the credit that he had

surrendered the amount of ₹ 5,24,000/- during assessment proceedings. It was recorded that the assessee failed to explain the genuine credits/liability in the books of account and furnished inaccurate particulars of income so as to invite levy of the penalty. The relevant findings recorded by the Tribunal read thus:-

“7. We have heard learned representatives of both the parties, perused the material available on record and considered the findings of the authorities below. The assessee has filed application under rule 29 of the ITAT Rules for admission of the additional evidences. The same are order of the Hon'ble Punjab and Haryana High Court suspending the sentence of the assessee in case of Harkewal Singh dated 21.2.2011, Compromise deed with the same person dated 5.9.21007, order dated 2.3.2010 of Additional Sessions Judge in the case of assessee and Babu Ram Gopal, copy of appeal in this case dated 22.8.2008, complaint filed by Shri Bihari Lal under section 138 of NI Act dated 18.10.2005 and copy of the order dated 31.5.2010 of Additional Sessions Judge in the case of the assessee and Bag Singh. The learned counsel for the assessee submitted that since assessee was in jail for some time, therefore, these documents could not be filed. Therefore, same may be admitted for hearing. He has also relied upon decision of Delhi High Court in the case of *CIT vs. Test Hundred India (P) Limited* 51 DTR 251 in which it was held that “Tribunal can admit additional evidence on the application of one of the parties, if it is of the opinion that doing so would be necessary for proper adjudication of the matter and that such party was prevented by sufficient cause from leading such an evidence before the lower authorities”. The learned DR, however, strongly objected to the admission of the additional evidence and submitted that no reasons have been explained why same were not filed before the authorities

below and that for proving genuine credits, it is well settled law that assessee shall have to prove identity of the creditor, their credit worthiness and genuineness of the transaction in the matter. Since assessee failed to file even the confirmation form these parties, therefore, these documents now sought to be admitted, are not relevant to the matter in issue and therefore, same may be rejected.

8. After reconsidering rival submissions, we do not find any justification to admit the above additional evidences filed by the assessee. The Assessing Officer passed the assessment order on 22.12.2008. Some of the documents sought to be admitted are prior to passing of the assessment order as noted above. No reasons have been explained why the same were not filed before the authorities below. The learned counsel for the assessee merely explained that during some period assessee was in jail. Therefore, documents could not be filed, however, no specific averments have been proved having any connection with custody of the assessee in jail and for not filing the documents before the authorities below. Further, learned counsel for the assessee has failed to prove as to what is the relevance of these additional evidences with the matter in issue involved in the present appeal. It is well settled law that the burden is upon assessee to prove the nature and source of the sundry creditors appearing in the books of account of the assessee. The assessee shall have to prove identity, credit worthiness and genuineness of the transactions in the matter. The assessee has not produced any confirmation or evidence before the Assessing Officer to prove all the three conditions and has virtually vide letter dated 22.12.2008 (PB-23) agreed to surrender the amount of ₹ 5,24,000/- for the purpose of taxation and to pay the tax. This letter is signed by assessee. The theory of assessee in jail at assessment stage is false. Thus, the crux of the matter would be that the amount in

question i.e. ₹ 5,24,000/- pertaining to four of the creditors remained unexplained, false and bogus in the books of account of the assessee. The assessee has failed to explain as to how the documents now sought to be admitted pertain to the matter in issue or have any relevance to the matter in issue. No reasons have also been explained why the same were not filed before the authorities below despite some of the documents are prior to passing of the assessment order. Even the application for admission of additional evidence has been filed in the paper book dated 14.6.23011 i.e. after three years of passing of the assessment order. The Hon'ble Punjab and Haryana High Court in the case of Jawahar Lal Jain, HUF vs. CIT 370 ITR 712 held that “No satisfactory explanation had been furnished to demonstrate why the material sought to be produced now could not be produced earlier. Therefore, Tribunal was justified in rejecting the application for admission of additional evidence filed by the assessee.”

9 to 12. xxxxxxxxx

13. We had considered rival submissions. The Assessing Officer asked the assessee to furnish confirmations in respect of sundry creditors outstanding in the books of account of the assessee. The case was adjourned to 17.12.2008 and on this date, assessee has not filed the confirmations of the above four creditors and the matter was, therefore, adjourned by the Assessing Officer to 22.12.2008. On 22.12.2008, the counsel or assessee has shown his inability to furnish the confirmation of these four creditors. The copy of the surrender letter is filed at page 23 of the paper book in which the assessee agreed to include the amount of ₹ 5,24,000/- in his income and to pay the tax on the same. The addition was, therefore, made on agreed basis when assessee was cornered by the Assessing Officer to explain the genuineness of the credit in the matter and assessee failed to prove genuine credit/liability in books of

account. There is no question of assessee surrendering the amount in question voluntarily. In the present case, at the assessment stage as well as at the penalty proceedings, the assessee has failed to explain the genuineness of the credits in the matter. Whatever explanation was filed, was not substantiated through any evidence or material on record. Thus, assessee failed to explain the genuine credits/liability in books of account on the matter in issue and has therefore, furnished inaccurate particulars of income so as to invite levy of the penalty.”

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. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 11, 2016
‘gs’

(Raj Rahul Garg)
Judge