IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 416 of 2016 (O&M)
Date of decision: 17.4.2017

Ravi Mallick, Prop. of M/s Sunkraft Designs, Ludhiana

….Appellant

Vs.

The DCIT, Circle III, Ludhiana

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Deepanshu Jain, Advocate with Mr. Divya Suri
Advocate for the appellant.

Ajay Kumar Mittal,J.

1. The delay in refilling the appeal is condoned.

2. The assessee-appellant has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.10.2015, Annexure A.8, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") in ITA No. 274/CHD/2013, for the assessment year 2009-10, claiming following substantial questions of law:-

> (i) "Whether under the facts & circumstances of the case, the benefit of the closing cash in hand as on 31.03.2008 duly disclosed can be given a set-off in the relevant assessment year 2009-10?

(ii) Whether under the facts & circumstances of the case, the onus stands discharged by the assessee under Section 68 of the Income Tax Act, 1961 for proving the source of cash deposits through substantial evidences already on record?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a proprietor of Sun Craft Designs and is primarily engaged in the business of manufacturing of hosiery garments. The assessee filed his return of income on 30.09.2008 declaring an income of ₹ 14,53,883/-. On 27.08.2010, the case was selected for scrutiny. Notice under Section 143(2) of the Act was issued to the assessee. The assessee filed detailed replies/information along with documentary evidence, books of account and vouchers. During the course of assessment proceedings, the assessee was required to explain the source of cash deposit of ₹ 26,77,000/- in the saving Bank account with ICICI Bank during the period ending 31.03.2009. Not satisfied with the reply submitted by the assessee, the Assessing Officer made assessment under Section 143(3) of the Act on 30.12.2011 at an amount of ₹ 41,78,460/-. An addition of ₹ 26,77,000/- under Section 68 of the Act and disallowance of ₹ 47,574/- under Section 40(a) (ia) of the Act was made. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax Appeals [CIT(A)]. Vide order dated 29.01.2013, Annexure A.6, the CIT(A) partly allowed the appeal filed by the assessee. Addition of ₹ 14.42 lacs out of ₹ 26,77,000/- was deleted. The additions of ₹ 12.35 lacs and ₹ 47,574/- were confirmed. Not satisfied with the order, the assessee and the revenue filed cross appeals before the Tribunal. Vide order dated 28.10.2015, Annexure A.8, the Tribunal dismissed both the appeals and upheld the order passed by the CIT(A). The

assessee filed a miscellaneous application dated 04.01.2016 before the Tribunal for reconsidering the order dated 28.10.2015. Vide order dated 03.2.2016, Annexure A.12, the Tribunal dismissed the miscellaneous application. Hence, the present appeal by the assessee before this Court.

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

5. Admittedly, during the period relevant for the assessment year under consideration the assessee had deposited ₹ 26,77,000/- in his saving account with ICICI Bank. The Assessing Officer was not satisfied with the explanation given by the assessee with regard to source of the deposit. Thus, addition was made by the Assessing Officer to the income of the assessee. It has been recorded by the CIT(A) that the cash withdrawals made on different dates by the assessee were from his saving Bank account with ICICI Bank. After examining the matter, the CIT(A) came to the conclusion that the cash deposits in the Bank account amounting to ₹ 14.42 lacs had been explained as being sourced from the cash withdrawals from the same account. It was further recorded that no evidence on record was shown that the withdrawals made by the assessee were invested in assets elsewhere. There was no substantial gap between the deposits and withdrawals. Thus, the Tribunal rightly upheld the order passed by the CIT(A). The assessee had paid professional fee of ₹ 47,574/- to Shri Radhey Shyam Sharma on account of supervision of works of the factory building. The Assessing Officer made disallowance under Section 40(a) (ia) of the Act on the ground that no TDS was deducted on this amount. The CIT(A) confirmed the disallowance holding that the entire amount was payable to Sh. Radhey Shyam Sharma who had raised consolidated bill of ₹ 47,574/-. Thus, the assessee was liable to deduct TDS on this amount. The

Tribunal upheld the order passed by the CIT(A) on this point also. In the miscellaneous application filed by the assessee before the Tribunal, it was pleaded that the cash deposits were made in the saving account from the available cash in hand, cash withdrawals from saving account and sale proceeds of land belonging to Smt. Ritu Mallick. It was recorded by the CIT(A) that no evidence of sale of land belonging to Smt. Ritu Mallick as well as source of cash in hand as claimed by the assessee was filed during the course of assessment proceedings. The Tribunal accordingly dismissed the miscellaneous application vide order dated 03.02.2016. The relevant findings recorded by the Tribunal dated 28.10.2015, Annexure A.6 read thus:-

> "7. It is relevant to observe here that Ld. DR could not point out the additional evidence, if any, admitted by the CIT(A). On a perusal of the order of CIT(A), it would be clear that the CIT(A) has not admitted any additional evidence as alleged by the Revenue, therefore, there is no question of any violation of provisions of Rule 46A(2) of the I.T. Rules. As regards the merits of the case, it is an admitted fact that the assessee had deposited cash amounting to ₹ 26,77,000/- in his bank account with ICICI bank. The learned CIT(A) has given the details of the deposits made on various dates. The CIT(A) has also mentioned the cash withdrawals made on different dates by the assessee from his saving bank account with ICICI bank. The Learned CIT(A) has also annexed copy of the bank account of the assessee as Annexure I to the impugned order. The learned CIT(A) after analyzing the details of bank account statement, came to the conclusion that the cash deposits in the bank account amounting to 14.42 lacs have been explained as being sourced from the cash withdrawals from the same account. There is no material on record to controvert the above findings of the CIT(A). The question involved in this case is a pure question of fact and no legal point is involved. The assessee

had claimed that the cash deposits were made out of the cash available with him from the cash withdrawals made from the same account. There is no evidence on record to show that the withdrawals made by the assessee were invested in assets elsewhere and it is also not the case of the Assessing Officer. Furthermore, there is no substantial gap between the deposits and withdrawals. In our view, the order of the CIT(A) requires no interference at our level. Accordingly, we dismiss ground Nos. 1 to 3 of the assessee's appeal and ground Nos. (i) to (iv) of the Revenue's appeal.

8. xxxxxxx xxxxx

9. We have heard the rival submissions Shri Sudhir Sehgal learned counsel for the assessee submitted that assessee had paid professional fee of ₹ 47,574/- to Shri Radhey Shyam Sharma on account of supervision works of the factory building. However, the Assessing Officer made the disallowance under Section 40(a) (ia) of the Act stating that no TDS was deducted on this payment. On appeal, CIT(A) confirmed the disallowance stating that the whole of the amount was payable to Shri Radhey Shyam Sharma who had raised consolidated bill of ₹47,574/-. The assessee was therefore liable to deduct TDS on this payment. He accordingly held that disallowance made by the Assessing Officer was justified. In our view, the order of CIT(A) deserves to be upheld as the assessee has failed to deduct TDS on the payment made to Shri Radhey Shyam Sharma as the provisions relating to TDS are mandatory. Accordingly, we dismiss ground No.4 of the assessee's appeal."

6. Further the findings recorded by the Tribunal in the miscellaneous application vide order dated 03.02.2016 read thus:-

"4. In this case, during the period relevant to assessment year under consideration, the assessee had deposited ₹ 26,77,000/- in his bank account with ICICI bank. In the absence of any satisfactory explanation of the source of deposit, the Assessing Officer made the addition. During the course of appellate proceedings before the CIT(A), the assessee took the plea that the cash deposits were made in the saving account from the available cash in hand, cash withdrawals from saving account and sale proceeds of land belonging to Smt. Ritu Mallick. Further, the assessee vide his written submissions dated 22.01.2013, submitted the cash flow statement for the financial year 2007-08 and shown the cash deposit of ₹ 50,000/- on 31.07.2007, ₹ 50,000/- on 27.12.2007 and ₹ 30,000/- on 28.03.2008 in the name of Smt. Ritu Mallick, wife of the assessee. Thus, the cash flow statement submitted by the assessee pertained to the assessment year 2008-09 and not for assessment year under reference. As regards the assessee contention of having cash in hand and also having cash on account of sale or property by the assessee's wife Smt. Ritu Mallick, the learned CIT(A) observed that no such reply was filed by the assessee before the Assessing Officer during the course of assessment proceedings to claim the source of cash deposits in the bank account relevant to period under consideration. The learned CIT(A) has categorically stated that the said contention of the assessee was merely an afterthought. He has also observed that no evidence of sale of land belonging to Smt. Ritu Mallick as well as source of cash in hand as claimed by the assessing was filed during the course of assessment proceedings.

5. The next contention of the assessee before the CIT(A) was that the following deposits in bank account of the assessee were made out of income of Smt. Ritu Mallick, wife of the assessee.

Date	Amount
31.07.2007	₹ 50,000/-
27.12.2007	₹ 50,000/-
28.03.2008	₹ 30,000/-

The learned Commissioner has observed that the cash deposits in bank account were made during the period 01.04.2007 to 31.03.2008 and the addition in the assessee's case has been made on account of cash deposits in the bank account during the period 01.04.2008 to 31.03.2009. Therefore, the assessee failed to explain the cash deposits made during the period 01.04.2008 to 31.03.2009 in the bank account out of cash available from the income of Smt. Ritu Mallick. We may also observe here that the instant miscellaneous application, the assessee has not pointed out any apparent mistake in the order of the Tribunal Sh. Deepanshu Jain, learned counsel of the assessee submitted that the assessee had filed the cash flow statement for the period 01.04.2008 to 31.03.2009 before the CIT(A). However, the assessee failed to substantiate his claim that any cash flow statement relating to the period from 1.04.2008 to 31.03.2009 was filed before the CIT(A). Even during the course of appellate proceedings before the Tribunal, no such cash flow statement was submitted by the assessee. Thus, considering the entire facts and circumstances of the present case, the miscellaneous application filed by assessee is devoid of any merit and deserves dismissal. Accordingly, we dismiss miscellaneous application filed by the assessee."

7. The findings recorded by the Tribunal are pure findings of facts which have not been shown to be illegal or perverse by the learned counsel by the appellant-assessee. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed. In view of the dismissal of the appeal on merits, the question of condonation of delay in filing the appeal is left open.

(Ajay Kumar Mittal)
Judge

April 17, 2017 **(Ramendra Jain)**
'gs' **Judge**
Whether speaking/reasoned **Yes**
Whether reportable **Yes**