

Gurbax Singh
2017-05-16 14:49

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

ITA No. 171 of 2017(O&M)
Date of decision: 27.04.2017

M/s Fusion Coaching Redefined

.....Appellant

Vs.

Income Tax Officer, Ward No. 6(3), SAS Nagar, Mohali.

.....Respondent

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

Present: Mr. Maninder Arora, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 01.03.2016, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench “SMC”, Chandigarh (in short, “the Tribunal”) in ITA No. 59/CHD/2016, for the assessment year 2008-09, claiming following substantial questions of law:-

(i) “Whether under the facts and in the circumstances of the case, the lower authorities & ITAT have not committed illegality by passing the impugned orders?

(ii) Whether under the facts and in the circumstances of the case, the impugned orders are not liable to be set aside?

(iii) Whether under the facts and in the circumstances of the case, the Tribunal has not committed an illegality by wrongly appreciating the facts and legal aspects of present case?”

(iv) Whether under the facts and in the circumstances of the case, the authorities below and ITAT have not committed error in taxing the amount thrice in the case of receipts relating to Rajeev Khurana?

(v) Whether under the facts and in the circumstances of the case, the authorities below have not committed an illegality in taxing twice in case of receipts relating to Sarabjit Kaur & Ms. Sukhdeep Kaur?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee M/s Fusion Coaching Redefined is a partnership firm constituted w.e.f. 01.09.2007 to carry on the activities of coaching consisting of three partners, namely Mr. Rajeev Khurana, Ms. Sarabjit Kaur and Ms. Sukhdeep Kaur. All the individual partners were also providing coaching classes in their individual proprietorship concerns, i.e. Mr. Rajeev Khurana, Prop. M/s Khurana Institute, Ms. Sarabjit Kaur, Prop. M/s Physics Planet and Ms. Sukhdeep Kaur, Prop. M/s Academic 71. Mr. Rajeev Khurana, Prop. M/s Khurana Institute had taken the premises SCF 23, Top Floor, Cabin No.1 on rent through lease deed executed on 10.01.2007 in his individual capacity. The receipt books were also got printed from the said address in bulk and were used even after the constitution of the partnership firm. In the receipt books of the individual, the word "Fusion" was also mentioned which was brand name of the individual coaching classes even prior to the constitution of the firm. During the course of survey, the department impounded the receipt books marked as Annexure A.2, with regard to Mr. Rajeev Khurana, Prop. M/s Khurana Institute for whole of the period including 01.04.2007 to 31.03.2008 and in all the receipts of the said receipt books, the word "Fusion" had been mentioned. The Assessing Officer confronted the

assessee during the course of assessment proceedings that the receipts totalling ₹ 1,41,150/- had not been accounted for in the books of account of the assessee firm. The assessee submitted that these were the receipts in the hands of the partner Mr. Rajeev Khurana but could not explain that these were accounted for in the hands of the partner. Therefore, additions of these tuition fee receipts were made in the hands of the assessee firm. The assessee challenged the additions before the Commissioner of Income Tax (Appeals) [CIT(A)]. It was pleaded that Mr. Rajeev Khurana was partner of Fusion Coaching Institute providing coaching separately in his individual capacity to the students. Mr. Rajeev Khurana had accounted for all these additions and thus it could not be added in the hands of the firm. The CIT(A) found that the assessee could not establish before the Assessing Officer that these “Fusion” fee receipts had been accounted for in the books of Mr. Rajeev Khurana in his individual capacity. Since no evidence had been filed in support of the same, the addition was confirmed. Similarly, during the course of survey, a document Annexure A.7 was impounded giving details of fees received from students. The assessee pleaded that these receipts were of the individual partner. The Assessing Officer made the addition in the hands of the assessee and the assessee submitted before the CIT(A) that the receipts mentioned in document Annexure A.7 contained the fee received by Mr. Rajeev Khurana and Ms. Sarabjit Kaur in their individual capacity. The CIT(A) on the same reasoning affirmed, the addition of ₹ 1,05,000/- . The appeal filed by the appellant-assessee before the Tribunal against the order dated 30.11.2015, Annexure A.2, passed by the CIT(A) having been dismissed vide order dated 01.03.2016, Annexure A.3, the appellant-assessee is before this Court through the instant appeal.

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

4. Concurrent findings have been recorded by the authorities below. It has been categorically recorded by the Tribunal in its order dated 01.03.2016 that impounding of documents in the survey proceedings had not been disputed by the assessee. The contention of the assessee was that the receipts had been shown in the hands of the partners in their personal capacity. The premises from where the assessee firm was carrying out coaching classess was taken on rent. The address of the assessee firm was SCF-23, Phase-VII, Mohali. It was not disputed that the details mentioned in the seized paper were of the amount of fees received from the students which had not been accounted for in the books of the assessee firm. The assessee claimed that these receipts pertained to individual partner. The complete top floor was in the possession of the assessee firm and there was no reason for the partner to print the receipt book indicating the said address. The receipt book had been co-related with other documents impounded during the survey, which was the attendance register marked A.6. The Assessing Officer recorded that the income from the fees of the students assessable in the hands of the firm was diverted to the partners. During the survey proceedings, a diary marked A.5 was also impounded, containing the details of receipts/expenses amounting to ₹ 3,39,906/- . The assessee explained that these expenses were incurred by the partner of the assessee firm in personal capacity. However, the assessee could not reconcile the same. After considering the entire material on record, it was concluded by the Tribunal that the additions were rightly made by the authorities below in the hands of the assessee firm because the receipts pertained to the assessee firm only. Thus, the Tribunal rightly concurred with findings recorded by Assessing Officer as well as the CIT(A). The relevant findings recorded by the Tribunal read thus:-

“I have heard the learned representative of both the parties and perused the material on record. The impounding of documents as mentioned above in the survey proceedings have not been disputed by the assessee. The learned counsel for the assessee contended that these receipts have been shown in the hands of the partners in their personal capacity. He has also stated that the property where assessee firm carried on coaching business is taken on rent by the partner. The learned D.R., however, submitted that no specific details were furnished before the lower authorities. Therefore, the details submitted in the paper book are additional evidences in nature and may not be considered. The Assessing Officer has mentioned the details of the seized paper found during the course of survey from the premises of the assessee. The address of the assessee is SCF 23, Phase-VII, Mohali where the survey was conducted and certain incriminating documents were impounded. It is not in dispute that the details mentioned in seized paper were of the amounts of fees received from the students, which have not been accounted for in the books of the assessee firm. The assessee claimed that these receipts pertained to individual partner. It is also explained that the individual also gave coaching in the same premises where the assessee firm is conducting the business providing commercial coaching to the students. The Assessing Officer specifically noted that it is not explained why the receipt book of partners were lying at the business premises of the assessee firm. It was also found that the complete top floor is in the possession of the assessee firm and there was no reason for the partner to print the receipt book indicating the said address. The Assessing Officer also noted that it is highly improbable that students were making payment of their fees to Shr. Khurana by visiting at the said address during the relevant date when the premises was acquired by the assessee firm. The receipt book also has been co-related with the other documents impounded during the survey, which is the attendance register marked A.6. The attendance register indicated the presence of students during

the coaching classes with assessee firm. It was therefore, found that most of the students were present at the coaching classes conducted by the assessee firm. The Assessing Officer, therefore, held that the incomes from fees of students assessable in the hands of the firm were diverted to the partners. The findings of the Assessing Officer with regard to other additions were also same. The findings of fact recorded by the Assessing Officer have not been controverted or rebutted through any evidence on record. I may also note here that during the survey proceedings, a diary marked A.5 was also impounded, which contains details of receipts/expenses amounting to ₹ 3,39,906/-. The assessee similarly explained that these expenses were incurred by the partner of the assessee firm in personal capacity, however, the assessee could not reconcile the same. Therefore, learned counsel for the assessee offered ₹ 1,00,000/- for taxation and no further appeal have been filed. These findings and material on record clearly support the findings of the authorities below that the impounded documents contained the amount of fees received by the assessee firm from the students and the assessee firm to the partner to suppress its income. The reply of the assessee has not been proved by any cogent evidence on record. Section 16 of the Partnership Act, 1932 provides personal profits earned by the partner subject to contract between the partners.

(a) -----

(b) “If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.”

Admittedly, firm and partners are doing same business in the same premises but no specific contract in business is explained.

The Hon’ble Supreme Court in the cases of CIT Vs. Durga Prashad More, 82 ITR 540 and Sumati Dayal Vs. CIT, 214 ITR 801 have held that the courts and the Tribunals have to judge the evidence before them by applying the test of human

probabilities and shall also consider surrounding circumstances.

5. Considering the above discussion in the light of findings of fact recorded by the authorities below, it is clear that both additions were rightly made by the authorities below in the hands of the assessee firm because these receipts pertained to the assessee firm only. The findings of the fact recorded by the Assessing Officer have not been rebutted through any evidence. I am, therefore, not inclined to interfere with the orders of the authorities below in making both the additions.”

5. Learned counsel for the appellant-assessee has not been able to point out any error in the findings recorded by the authorities below warranting interference by this Court. Consequently, no substantial question of law arises and 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 27, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes