IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No.370 of 2017 (O&M)
Date of Decision:- 16.11.2017

Pr. Commissioner of Income Tax (Central), Gurgaon
… Petitioner

Versus

Sh. Ranjit Singh Gill
... Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present:- Mr. Rajesh Sethi, Senior Standing Counsel with
Ms. Varinder Kaur Warraich, Advocate,
for the appellant.

*****

Rajesh Bindal, J.

The revenue has filed the present petition raising the following substantial questions of law arising out of order dated December 30, 2016 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh in ITA No.100/Chd/2015-Ranjit Singh Gill Vs. The D.C.I.T., Central Circle-II, Chandigarh for the assessment year 2009-10:-

"i) Whether on the facts and circumstances of the case the ITAT was right in concluding that there was a difference in scope of proceedings under Section 153-A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment?

ii) Whether on the facts and circumstances of the case the ITAT was right in holding that no addition can be made u/s 153A in respect of completed assessment if no incriminating material is found during search?

iii) Whether there is any restriction on the powers of the Assessing Officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se?

iv) Whether on the facts and circumstances of the case the ITAT was correct in interpreting section 153A which started with a non-obstinate clause stating therein that the operation of section 139, 147, 148, 149, 151 & 153 was deposed. Meaning thereby that in search cases the Assessing Officer is duty bound to take up the assessment u/s 153A and that the above mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if any escaped income or under-assessed income undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceeding u/s 153A in search cases?

v) Whether on the facts and circumstance of the case the ITAT was right to bring in the special procedure of block assessment as laid in Chapter XIV B into the new procedure of search assessment u/s 153A introduced by Finance Act, 2003, w.e.f. 1.06.2003, when Chapter XIV B was scrapped to reduce litigation and disputes regarding treatment of a particular income as undisclosed and whether it is relatable to material found during search (Finance bill 2003 under head "Assessment in search cases-abolition of the special procedure in Chapter XIV-B and introduction of new provisions")?

vi) Whether on the facts and circumstances of the case the ITAT was right in ignoring the basic difference in search assessment u/s 153A and chapter XIVB being that in section 153A the "total income" has to be *assessed or reassessed in six separate A.Ys., as opposed to assessing the "undisclosed income" in the scraped Chapter XIV B for block period in a single assessment?*

vii) *Whether on the facts and circumstances of the case the ITAT was right in following Delhi High Court decision in the case of CIT vs. Kabul Chawla (61 taxman.com 412) when the Hon'ble HC itself admits in para 37(iv) the "Although section 153A does not say that additions should strictly made on the basis of evidence found in course of search….." thereby interpreting the statute in the manner which were never worded or intended by the legislature?*

viii) *Whether or the facts and circumstances of the case the ITAT has erred in ignoring the Principle of Strict interpretation of statues when the words used in the statute i.e. sec 153A(1)(b) of the IT Act, 1961 are Assess or Reassess the "Total Income"*

ix) *Whether on the facts and circumstances of the case the ITAT right in not following the Hon'ble SC judgment on interpretation of statue in the case of Smt. Tarulata Shyam & other vs. CIT (108 ITR 345), Keshavji Ravji And Co vd. CIT (183 ITR 1), Padamsundara Rao (Decd.) & others vs. State of Tamil Nadu 255 ITR 147, Prakash Nath Khanna & Other vs. CIT 266 ITR 1, Institute of Chartered Accountants of India vs. Price Water House 93 Taxman 588?*

x) *Whether on the facts and circumstances on the case the ITAT is not following the Hon'ble HC judgment on the issue of additions in search case u/s 153A in the case of CIT vs. Anil Kumar Bhatia 352 ITR 493 (Delhi HC), Madugula Venu vs. DIT 29 Taxman.com 200 (Delhi HC), CIT vs. Raj Kumar Arora 367 ITR 517 (Allahabad HC), Canara Housing Development*

Company vs. DCIT 49 taxman.com98 (Karnataka HC), Filatex India Ltd. vs. CIT 229 Taxman 555 (Delhi HC), Sunny Jacob Jewellers and wedding centre, 362 ITR 664 (Kerala HC) and CIT vs. Continental Warehousing Corporation 64 taxman.com34(SC)?"

xi) Whether the Hon'ble ITAT was justified in following the decision of the Hon'ble Delhi High Court dated 28.05.2015 in the case of CIT Vs Kabul Chawla, when the said decision was distinguished in the Revenue favoring judgment of the Hon'ble Delhi Court dated 27.10.2016 in the case of Smt. Dayawanti through Smt. Sunita Gupta (L/H) Vs CIT."

Learned counsel for the appellant submitted that the tax effect in the present appeal being ₹ 11,64,930/-, which is less than the monetary limit prescribed by the Central Board of Direct Taxes for filing appeals in the High Courts vide circular No.21/2015 dated 10.12.2015, he may be permitted to withdraw the present appeal.

Ordered accordingly.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

16.11.2017
pankaj

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No