IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20857 of 2018
Decided on : 20.08.2018

Swaran Singh Thakur

. . . Petitioner

Versus

Union of India and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

PRESENT: Mr. J.S. Bhasin, Advocate
for the petitioner.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of Civil Writ Petitions No.20857 & 20874 of 2018, as according to the learned counsel for the petitioner, the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No. 20857 of 2018.

2. Prayer in this writ petition under Article 226 of the Constitution of India, is for quashing the order passed under Section 264 of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year 2011-12, passed by respondent No.2 – Principal Commissioner of Income Tax-2, Amritsar, dated 26.03.2018 (Annexure P-5), dismissing the revision petition and confirming the assessment dated 22.01.2016 (Annexure P-1), passed by respondent No.3 – Income Tax Officer, Pathankot.

3. A few facts relevant for the decision of the controversy

involved as narrated in CWP No. 20857 of 2018 may be noticed. The petitioner is an agriculturist cultivating over 25 acres of agricultural land. From his agriculture receipts, he made cash deposits amounting to ₹ 5,05,000/- in his savings bank account with HDFC Bank Limited during the Assessment Year 2011-12. Respondent No.3 issued notice under Section 148 of the Act dated 20.03.2015 to the petitioner. However, due to some personal family problems during that period, the petitioner could not submit any reply to the notice. On 22.1.2016, the petitioner received Assessment Order Annexure P-1 along with a Demand Notice for a sum of ₹ 4,58,610/- against the assessed income of ₹ 11,86,750/-. The petitioner approached the local Chartered Accountant for taking necessary remedial action and submitted all the relevant papers including assessment order to him. In July 2016, the petitioner received another notice dated 20.07.2016, under Section 271(1)(c) of the Act along with a Demand Notice of ₹ 7,15,690/-. The petitioner again approached the above said Chartered Accountant and left the documents with him for taking appropriate necessary action. The said Chartered Accountant having failed to file an appeal against the Assessment Order due to some unavoidable circumstances, of his own filed petition under Section 264 of the Act. He also filed written submissions in revisional proceedings, wherein, the source of cash deposits made in the bank account was explained to be out of agricultural operations. A copy of the Fard Jamabandi was placed on record in evidence showing 25 acres of agricultural land owned and cultivated by the petitioner. However, non-appearance before respondent No.3 during assessment proceedings under Section 148 of the Act was attributed to mental tension caused by crop failure during April 2015 to July 2016, besides some personal problems. The explanation of the petitioner that the deposits in Bank were made from agricultural income and also agricultural limit of ₹ 20.00 lakh was availed and no return was filed being exempted from tax was not accepted by the Commissioner of Income Tax, during the proceedings under Section 264 of the Act vide order dated 26.03.2018 (Annexure P-5). The revision petition was dismissed by respondent No.2. Hence the instant petitions by the petitioner.

4. We have heard learned counsel for the petitioner.

5. Admittedly, the assessee was found to had made cash deposit of ₹ 5,05,000/- in his savings bank account with the HDFC Bank Limited. Since he had not filed the return of income, case was reopened under Section 147 of the Act. Notice under Section 148 of the Act was issued to the assessee on 20.03.2015, but he had not file the return of income. It has been categorically recorded by the Principal Commissioner of Income Tax that most of the letters and notices including one under Section 148 of the Act were served on the assessee, but he did not reply any of the said notices. Even prior to issue of notice under Section 148 of the Act, the Assessing Officer allowed the opportunity to the petitioner to explain the source of cash deposit, but he did not avail the said opportunity. He did not file the return of income. Consequently, the Assessing Officer completed the assessment ex-parte under Section 144 of the Act, raising the tax demand on him. The Assessment Order and Demand Notice were served on the assessee, but he did not file any appeal before the Commissioner of Income Tax (Appeals) within the stipulated period. It was only after when the

Assessing Officer imposed penalty under Section 271(1)(c) of the Act, the assessee filed revision petition under Section 264 of the Act. Even in revisional proceedings, it was recorded that the assessee did not file any evidence in respect of the cash deposited out of the agricultural income. Further, the assessee did not file any evidence in respect of his claim of agricultural limit availed from the Punjab National Bank. Even the address given in the Bank was different. Thus, the revision petition was rightly dismissed by the Principal Commissioner of Income Tax. The relevant findings recorded by the Principal Commissioner of Income Tax read thus:-

> "On examination of the assessment record, it is observed that most of the letters and notices including the notice under Section 148 of the I.T. Act, were served on the assessee himself but he did not comply any of the letter or notices issued to him. It is observed that prior to the issue of notice u/s 148 of the I.T. Act, the Assessing Officer allowed the opportunity to assessee to explain the source of cash deposit, but he did not avail the opportunity granted to him. He did not file the return of income in response to the notice u/s 148 of the I.T. Act. He also did not comply the notices and letters issued to him, in the course of assessment proceedings to explain the source of cash deposits. The A.O. Completed the assessment ex-parte u/s 144 of the I.T. Act raising the tax demand on him. The assessment order and demand notice were served upon the assessee himself on 02.02.2016 but he did not file appeal before the CIT (A) within 30 days, if he

was having any grievance against the assessment order passed by A.O. The assessment record shows that it was only after when the A.O. Imposed penalty u/s 271(1)(c) and u/s 271(1)(b) of the I.T. Act, 1961 and the tax recovery proceedings were started, the assessee filed revision petition u/s 264 of the I.T. Act.

In the course of hearing in respect of revision petition, it is submitted by the Ld. Authorized representative that the assessee is the owner of about 25 acres of agriculture land and submitted copy of fards of agriculture land. However, he did not file any evidences in the respect of agricultural activity and quantum of agriculture income. On the contrary, it was submitted that the assessee could not comply the letters/notices by the AO for the reason that the assessee was not mentally stable because of crop failure. If, there was crop failure, as stated by the assessee, then how substantial amount of cash was deposited by him in the bank account. Merely, the ownership of the agriculture land is not sufficient to prove agriculture income. Though, the assessee has submitted that the only source is agriculture income but he nowhere stated that the cash deposited were out of agriculture income. He did not file any submissions and explanation in respect of the other credit entries appearing in the bank account and added to the income by the AO. The assessee did not file any evidence in respect of his claim of agriculture limit availed from the PNB. Further, on perusal of copy of bank statement of HDFC bank, a/c no.0526100000554 in which cash deposits were made, the address given to the bank is Shining Star Securities P. Ltd., 68/69, F-Block, 1st Floor, Opp. Shri Ram Market, Dalhousie Road, Pathankot. The assessee could not produce any evidence that the cash deposited in the account was out of agriculture income. In view of the above, I find no reason to interfere with the order passed by the AO. The revision petition is dismissed."

6. Learned counsel for the petitioner has not been able to point out any error or illegality in the findings recorded by the Principal Commissioner of Income Tax.

7. Consequently, we do not find any merit in the petitions and the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

August 20, 2018
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Whether speaking/reasoned: ***Yes***
Whether Reportable: ***Yes***