IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 286 of 2016 (O&M)
Date of Decision: 12.02.2018

Pr. Commissioner of Income Tax-I, Ludhiana

.......Appellant

versus

Baldev Singh, Proprietor of M/s Nankana Sahib Road Lines, G.T.Road, Ludhiana.

.....Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Rajesh Katoch, Advocate, for the appellant.
Mr. S.K.Mukhi, Advocate, for the respondent.

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S.J.VAZIFDAR, CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal allowing the respondent's appeal on the ground that the Assessing Officer wrongly assumed jurisdiction under section 147 of the Income Tax Act, 1961. The matter pertains to the assessment order 2008-09.

2. According to the appellant, the following substantial question of law arises:-

> 1. Whether upon the facts and circumstances of the case, the Hon'ble ITAT justified in law in quashing the assessment order of the Assessing Officer on the ground that A.O. has no power to review in the absence of any fresh tangible material whereas specific reasons for reopening of the case were recorded by the A.O.?

3. The Assessing Officer passed an order under section 144 read with section 147 of the Act. He held that the freight payment of about ₹ 1.88 crores from 01.04.2007 to 31.03.2008 to the truck owners without deduction of tax at source was not allowable as a business expenditure. The amount was, therefore, disallowed under section 40(a)(ia) for non-compliance of the provisions of section 194(c) and added back the same to the assessee's income. The order of the Assessing Officer records that the respondent derives income by providing transport services to various concerns. The Tribunal referred to the original assessment order. It is important to note that the original assessment order was under section 143(3). Paragraph-3 of the original assessment order reads as under:-

> "Assessee derives transport commission income from his proprietorship concern M/s Nankana Sahib Roadlines for last 6 years. W.r.t. specific query regarding the exact nature of assessee's business raising during the course of assessment proceedings, vide written submissions dated 07.10.2010 and 21.10.2010 assessee pleaded as under:-
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> "That the nature of business of assessee is that he is transport booking agency and his job is to supply the trucks to the firms to transfer their stock from one place to another. So whenever firms demand for trucks then all the transporters give their bid for the least fare and if assessee's bid is least from the others, then the booking was given to the assessee. After completing all formalities i.e. about the terms and conditions, some advance is given to the assessee from the fare fixed for the transportation. After the assessee gives the amount received to the truck driver whom he has arranged to do the job after deducting his commission for the transaction and the balance payment was given to the truck driver after completing his job or you can say that after delivering the goods at the destination from the person to whom goods have been delivered. The assessee is the link between the firms (supplying the goods) and the truck owners. Basically, the assessee acts only as the commission agent and his nature of job is to provide the transportation services to the firms to transfer their goods safely.
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> For example M/s Hero Cycles Ltd. wants a truck to deliver their goods from Ludhiana to West Bengal and for that they want sum truck to do the job. For

> which the assessee gives his bid of ₹ 25,000/- as the least fare and after finalizing the deal M/s Hero Cycles Ltd. gives him some nominal amount ₹ 4,500/- (₹ 5,000/- minus TDS deduction @ 2% of the total fare i.e. ₹ 500/-) in advance to deliver their goods. Suppose our commission settled with the truck driver is ₹ 1,000/-, so for which we have to give ₹ 4,000/- as an advance to the truck driver as an advance after deducting the commission of ₹ 1,000/- from the same and the balance amount of ₹ 20,000/- has to be received by the truck driver after delivering the goods to the destination in West Bengal. So from the decided commission, ₹ 500/- was received on the deal of transaction and the balance ₹ 5,00/- received after filing the income tax return and on receiving the excess TDS deducted by receiving the refund."

4. It is clear, therefore, that the Assessing Officer raised a specific query regarding the nature of the assessee's business and the same was answered in writing by the assessee. The nature of the transaction was spelt out in detail. On the basis thereof the assessee's contention that he was merely a commission agent was obviously accepted. The original assessment order proceeded on that basis. The subsequent proceedings for reopening were held to be on change of opinion. There is also held that there was no new information or material.

5. Mr. Katoch also merely sought to analyze the evidence that was already on record. The fact that in other cases the assessee had not succeeded would not make a difference. It is necessary in each case to see whether the transaction was on principle to principle basis or merely as an agent. The reasons for reopening are only that the assessee had shown payment amounting to ₹ 1.18 crores on account of freight paid to the truck owners for which the assessee had not supplied any details. It was, therefore, presumed that the assessee was liable to deduct tax at source under section 194(c)(ii) which applies to the case of sub contractors.

6. As we noted earlier the details in respect of transactions were called for by the Assessing Officer and the assessee furnished the same. On the basis thereof the Assessing Officer accepted the return in this respect. The Tribunal on this basis and after following the judgments of Delhi High Court in *Madhukar Khosla v. Assistant Commissioner of Income Tax (2014) 90CCH 0023 Delhi High Court* and *Orient Crafts Ltd. 354 ITR 536 (Delhi)* rightly allowed the appeal on the ground that the Assessing Officer was not entitled to assume jurisdiction under section 147 of the Act in the absence of any new information or material. We are unable to state that the finding is perverse or irrational.

7. The appeal is accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

12.02.2018
ravinder

Whether speaking/reasoned √ Yes/No
Whether Reportable: Yes/No√