IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No. 453 of 2017

DATE OF DECISION : 16.03.2018

Parveen Kumar

.... APPELLANT

Versus

Commissioner of Income Tax, Ludhiana

..... RESPONDENT

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

Present: Mr. Sunil K. Mukhi, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

This is an appeal against the order of the Income Tax Appellate Tribunal partly allowing the appeal of the assessee.

2. The matter pertains to the assessment year 2011-12.

3. According to the appellant, the following substantial questions of law arise in this appeal :-

(i) Whether the ITAT is justified in confirming addition of ₹ 15,49,420/- without appreciating the cash-in-hand available as on 01.04.2010 to the extent of ₹ 10,94,260/- and without doubting the veracity of cash book even by the Departmental Representative after granting partial relief of ₹ 5 lakh without appreciating the `Peak Theory' duly accepted by this Hon'ble High Court in the case of **Ved Parkash vs. CIT in ITA 235 of 2015 decided on**

02.07.2015 wherein the peak being ₹ 8,71,131/- thus the addition having been based on suspicion without any adverse evidence against the appellant and conversely without appreciating cogent and plausible reasons with evidence filed therein, which finding is perverse?

(ii) Whether the ITAT is justified in confirming addition of ₹ 14,40,000/- in the joint account with grandfather who being the first account holder without appreciating various evidences filed having direct bearing on the facts of the case and thereby rejecting additional evidence being bank certificates confirming that all the transactions were being done by grandfather, the addition being on technical grounds, based on suspicion and thus being perverse?

(iii) Whether the ITAT is justified in dismissing the appeal ignoring the well settled law in the case of **Tek Ram (Dead) through LRs Versus Commissioner of Income Tax, Faridabad 357 ITR 133 (SC**) while rejecting additional evidence having substantive effect on the case and thus finding of the ITAT are perverse and deserve to be set aside?

(iv) Whether the order of ITAT is perverse and deserves to be set aside being devoid of proper appreciation of facts and against well settled law?"

4. The assessee filed the return showing income under the head `salary' only. The case was taken up for scrutiny. The Assessing Officer (AO) vide order dated 25.02.2014 finalised the assessment under Section 143 (3) of the Income Tax Act, 1961. The AO made additions of ₹ 20,49,420/- and ₹ 14,40,000/-, the amounts deposited in cash in Bank accounts, as income from undisclosed sources. Interest received from FDRs

not disclosed in the return was also added.

5. The Commissioner of Income Tax (Appeals)-I, Ludhiana [CIT (A)] dismissed the appeal vide order dated 30.11.2015.

6. The Tribunal partly allowed the appeal vide its order dated 06.03.2017. The addition made of ₹ 20,49,420/- was reduced by ₹ 5 lakh. The other addition made of ₹ 14,40,000/- was affirmed.

Re : Question No. (i)

7. Question No. (i) in the appeal relates to addition confirmed by Tribunal of ₹ 15,49,420/-.

8. The relevant facts are that the appellant filed return showing only the salary income. Questionnaire was issued during the assessment proceedings asking for details of the bank accounts. The assessee furnished his bank account statement with Axis Bank in respect of account No. 197010100090146. Later on, he furnished the bank statement of his account No. 197010100090401 with Axis Bank, stating that it was his salary account. There was a cash deposit of ₹ 23,39,420/- in bank account No. 197010100090146. The assessee explained that the cash deposited was from the salary earned during the period from 2007-08 to 2011-12. The salary was drawn from a brick kiln firm M/s Om Parkash Sunder Lal B.K.O, Narnaud, Jind during the assessment years 2007-08 and 2008-09. In this firm, the grand-father of the appellant was a partner. During the assessment years 2009-10 to 2011-12, he had a joint account in Axis Bank. He stated that the funds were rotated from time to time and hence, the cash was deposited. He failed to prove that the cash withdrawal made from his salary

account was deposited in bank account No. 197010100090146. It was noted that the withdrawals were through ATMs or cash from same account. Giving the benefit of the fact that there could have been cash re-deposited, the AO made an addition of ₹ 20,49,420/- under Section 69, giving a benefit of ₹ 3 lakh.

9. The appellant adduced additional evidence before CIT (A). The same was considered. Remand report was asked for. The CIT (A) considered the facts and the evidence produced. The claim of the appellant of having opening balance of ₹ 1,65,850/- from salaries earned upto 31.03.2008 was rejected after verifying bank details from the system of department and taking into account the withdrawals made. The claim that appellant had received some money for labour contract from M/s Parkash Rice & General Mills was rejected as he failed to substantiate that there was some actual receipt of money. Copy of the Profit & Loss Account of M/s Parkash Rice & General Mills was not produced. There was no proof with the appellant to show that there was cash in hand of ₹ 8,86,639/- as on 31.03.2010. The appeal was dismissed.

10. Tribunal re-appreciated the evidence and concluded that though the authorities below have given the benefit of ₹ 3 lakh of re-deposit of cash but have not considered that during the previous years, the appellant would have accumulated funds, for which a further benefit of ₹ 5 lakh was given. The Tribunal came to the conclusion that there was no specific evidence to support the opening balance of ₹ 8,86,639/- as on 01.04.2010. The evidence was not there to explain the cash deposits made to the tune of ₹ 23,39,420/- There was nothing on record to support the fact that the amounts withdrawn

from the salary account were re-deposited. The FDRs of the appellant indicated that he was intelligently investing the amount with the bank. The benefit of re-deposits and of accumulated funds for the previous year has already been given.

11. The question raised is a question of fact, as the issue is only regarding appreciation of evidence. No interference is called for in the findings recorded by the Tribunal affirming the addition of ₹ 15,49,420/-

Re : Question No. (ii)

12. An addition of ₹ 14,40,000/- was made for cash deposited in joint bank account No. 19701010011034 of Shri Om Parkash (maternal grand-father of the appellant) and the appellant.

13. During the assessment proceedings, in spite of specific queries in the questionnaire and in subsequent letters, the appellant never disclosed the said bank account to the authorities. The authorities had Annual Information Return (AIR) information. The appellant denied having any such joint account with Shri Om Parkash. The authorities confronted him with the bank statement and asked for the source of cash deposits made. At that stage, the assessee replied that the account was of his maternal grand-father, who expired on 10.11.2011 and all transactions related to his grand-father only. It was stated that his name was added just to assist his 85 years old maternal grand-father for operating the bank account. In his statement, the appellant stated that the source of income of his grand-father was only rental income of ₹ 3,630/- per month. But during the period from 06.05.2010 to 05.03.2011, cash deposits worth ₹ 14,40,000/- were made in

the account. It was further noted that even after the death of his grand-father, the appellant was continuously operating the account.

14. In appeal before the CIT (A), the appellant adduced additional evidence in the shape of bank statement and balance sheet of M/s Om Parkash Sunder Lal B.K.O, in which Shri Om Parkash, maternal grand-father of the appellant, was stated to be a partner. The said additional evidence was considered. The evidence produced in no way enhanced the case of the appellant. The bank statement only showed that apart from other deposits, there were cash deposits of ₹ 8,16,000/- made on 11.06.2010 and ₹ 4,08,000/- made on 12.06.2010. The appellant never proved that the amounts deposited were from the sources of income of Shri Om Parkash. The retirement deed was filed showing that Shri Om Parkash retired from the firm on 31.03.2010 and the balance sheet filed showed that there was capital of ₹ 4,46,615/-. No proof was adduced to show that the standing capital amount was re-paid by the firm to Shri Om Parkash. There was no evidence regarding the date of payment or mode of payment from the firm to Shri Om Parkash. The reliance on the cash book of Shri Om Parkash was found baseless as it showed an opening balance of ₹ 8,50,528/- as on 01.04.2010, for which there was no proof of entries or source of opening balance. The addition was affirmed by the CIT (A).

15. Before the Tribunal, the appellant relied upon a bank certificate dated 30.08.2016 and copy of capital account of Shri Om Parkash. The said documents were produced first time before the Tribunal without any application for permission to produce additional evidence. The Tribunal

confirmed the order of the AO and the CIT (A) regarding addition made of ₹ 14,40,000/-.

16. The question raised is one of fact. Addition made was on appreciation of facts. The appellant kept on denying that he had any joint account with his grand-father. His claim that his name was added in the account only for helping his old maternal grand-father for operating the account is belied by the fact that the ration card produced showed that Shri Om Parkash was staying with his two sons who could have helped him for operating the account. Shri Om Parkash had his own PAN number, yet PAN number of the appellant was mentioned in the bank account. The explanation furnished by the appellant that Shri Om Parkash was partner in M/s Om Parkash Sunder Lal B.K.O was of no help, as no income tax returns of the B.K.O were placed on record. There was no evidence to show that the said capital was ever received by Shri Om Parkash. Reliance was placed on a self serving capital account prepared but the appellant failed to establish that Shri Om Parkash had any other source of income, except the rental income of ₹ 3,630/- per month.

17. The view taken by the Tribunal is a possible view and by no stretch of imagination can be said to be perverse. The question raised is not a question of law, much less a substantial question of law. No interference is called for by this Court in appeal under Section 260-A of the Act.

Re : Questions No. (iii) and (iv)

18. So far as rejecting the additional evidence is concerned, no such application was moved before the Tribunal for permitting production

of additional evidence. Even otherwise, the capital account of Shri Om Parkash was a self serving document prepared without any basis. The said capital account showed opening balance of ₹ 8,50,528/-, for which there was no source or basis. The appellant failed to give any reason as to why these documents could not be produced earlier.

19. In view of the answers to questions No. (i) and (ii), no perversity has been established. The issues raised are only of appreciation of facts. The conclusions arrived at are logical. In appeal filed under Section 260-A, the evidence cannot be re-appreciated. There is no warrant for interference with the order passed by the Tribunal.

20. The questions are answered against the appellant.

21. The appeal is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

March 16, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes