111

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

ITA No. 10 of 2018 (O&M)
Decided on : 04.07.2018

Pr. Commissioner of Income Tax-1, Ludhiana

. . . Appellant

Versus

Shyamal Pal

. . . Respondent

* * *

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

Present : Mr. Rajesh Katoch, Sr. Standing Counsel,
for the appellant.

* * *

AVNEESH JHINGAN, J.

Revenue (hereinafter referred to as 'the appellant') has filed the appeal against the order dated 04.07.2017, passed by the Income Tax Appellate Tribunal, Chandigarh (in short 'the Tribunal'). The matter pertains to assessment year 2009-10.

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

> *1. "Whether upon facts and circumstances of the case, the Hon'ble ITAT was justified in dismissing the appeal of the revenue without going into the merits of the case by holding that the tax effect involved in this case is below the prescribed monetary limit of Rs. 10 lacs for filing of appeal before the Hon'ble ITAT, while the case falls within the exception (c) of para 8 of CBDT's circular No. 21/2015 dated 10.12.2015?"*
>
> *2. "Whether upon facts and circumstances of the case, the Ld. CIT(A) is right in directing to apply peak theory on Cash Deposits in Bank Account, particularly when the cash was deposited at Ludhiana and withdrawn at for off location in*

Hoogly, West Bengal?"

3. Bare facts necessary for adjudication of present appeal as noticed in the appeal are that the case of the assessee was selected for scrutiny on the basis of Annual Information Return regarding cash deposits amounting to ₹ 17,48,000/- made in the accounts of the assessee. The assessment under section 143(3) of Income Tax Act, 1961 (for short 'the Act') was finalized vide order dated 15.11.2011 by making an addition of ₹ 40,000/-.

4. The order of assessment was taken in revision. The Revisional Authority set aside the assessment framed vide order dated 18.03.2014 and directed Assessing Officer to reframe assessment in accordance with discussions made in the revisional order.

5. In pursuance to the revisional order, assessment was framed vide order dated 08.07.2014 and the entire amount of ₹17,48,000/- deposited in the bank account of the assessee was held to be income from un-disclosed sources.

6. Aggrieved of the order, assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The first appellate authority vide order dated 17.11.2016, partly allowed the appeal. It was held that the peak theory should be applied for additions to be made in the hands of the assessee.

7. The appellant being aggrieved of the order of the C.I.T.(A) preferred an appeal before the Tribunal. The Tribunal relying upon the statement of the departmental representative dismissed the appeal vide order dated 04.07.2017 as the tax effect was less than the monetary limit fixed in the C.B.D.T.'s circular No. 21/2015, dated 10.12.2015. The

questions of law were kept open.

8. Although the appellant claimed that two substantial questions of law arises, but in fact the issue involved would only be with regard to question No.1. The Tribunal has not gone into the merits of the case. In such circumstances, question No.2 does not arise.

9. Undisputedly, the tax effect involved in the appeal is only ₹5,40,117/-. As per the circular dated 10.12.2015, the monetary limit for filing the appeal before the Tribunal has been prescribed as ₹ 10,00,000/-. For ready reference, the relevant portion of the circular is quoted below :-

> *3. Henceforth, appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-*

S No	*Appeals in Income-tax matters*	*Monetary Limit (In Rs.)*
1.	*Before Appellate Tribunal*	***10,00,000/-***
2.	*Before High Court*	***20,00,000/-***
3.	*Before Supreme Court*	***25,00,000/-***

> *It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.*

10. It would be pertinent to note here that the departmental representative admitted before the Tribunal that the appeal of the appellant may be dismissed as the tax effect was less than ₹ 10,00,000/-. Learned counsel for the appellant contended that the Tribunal erred in dismissing the appeal relying upon the circular as this case falls within the exception mentioned in para 8 of the circular. Suffice to say that no such case was made out before the Tribunal, rather the departmental representative himself relied upon the circular with the prayer that the appeal may be dismissed because of the low tax effect. Even while arguing the present

appeal, learned counsel for the revenue was unable to substantiate that the present case fell under any of the categories under clause 8 of the ibid circular which is in the following terms:-

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> *8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*
>
> *(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or*
>
> *(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
>
> *(c) Where Revenue Audit objection in the case has been accepted by the Department, or*
>
> *(d) Where the addition relates to undisclosed foreign assets/bank accounts.*

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11. We do not find any error in the order passed by the Tribunal. No substantial question of law arises.

12. The appeal is dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

04.07.2018
pankaj baweja

Whether speaking/reasoned ? *Yes / No*

Whether reportable ? *Yes / No*