IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 152 of 2018 (O&M)
Decided on : 04.10.2018

Krishan Kumar ...... Appellant

Versus

The Income Tax Officer, Patiala ...... Respondent

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

Present : Mr. Arvind Bansal, Advocate
for the appellant.

* * *

AVNEESH JHINGAN, J.

The appellant has filed the present appeal under Section 260A of Income Tax Act, 1961 (for brevity, 'the Act') against the order dated 01.12.2016 passed by Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') in ITA No.70/CHD/2014 to the assessment year 2008-09, dismissing the appeal of assessee.

2. As per the appellant, the following substantial question of law arises for consideration in the present appeal:-

> *"Whether on the facts and in the circumstances of the case the Tribunal was right in law in upholding the addition of ₹ 26,68,525/- under Section 69A of the Income Tax Act, 1961, as confirmed by the CIT(A) in utter disregard of the fact that primarily all the business transactions of the Assessee were routed through regular Banking Channel vide his Saving Bank account in erstwhile Centurian Bank of Punjab."*

3. The brief facts of the case are that for assessment year 2008-09, the assessee who is a proprietor of M/s United Traders filed Income Tax

Return declaring income of ₹ 1,03,896/-. The department had information by Annual Information Return (AIR) that the assessee had made cash deposit to the tune of ₹ 37,73,695/- in his saving account with Centurian Bank of Punjab Ltd., (now HDFC) Calibre Mkt., Rajpura The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued on 02.09.2009. The detailed questionaire dated 29.03.2010 was also issued. The assessee in the income tax return declared that his case is "No Account Case", and showed gross receipts of ₹ 9 lakhs and net profit of ₹ 1,20,000/-.

4. During the assessment proceedings, the assessee contended that his sales were of ₹ 29 lakhs whereas it was inadvertently declared as ₹ 9 lakhs in the return. It was contended that the assessee was not maintaining any books of account. The Assessing Officer (AO) asked for details of purchases and sales and the copy of VAT return, but these were not produced on the pretext that VAT returns were not available and the purchase files were missing. The AO obtained the copy of VAT return from Sales Tax Office, Rajpura. From the return, it was evident that the assessee had shown sales of ₹ 9,65,170/- in the VAT return and the assessee had also filed a Trading and Profit & Loss account in the balance sheet with the VAT return.

4. On being confronted with the documents received from the Sales Tax Department, the assessee furnished a cash flow chart as an explanation, but it was not accepted as there were number of discrepancies. The entries made in the cash flow charts were not substantiated by any evidence. In order to explain the cash deposits made, the assessee explained the source as withdrawal of cash from accounts, advances received from the parties and unsecured loans of ₹ 1,40,000/-. Since, no evidence was produced in support of the claim of withdrawal from accounts and advances from the parties, the

AO rejected the same. The assessee was able to substantiate unsecured loans of ₹ 1,40,000/- and the AO gave the credit of the said amount. Vide order dated 29.11.2010 the assessment was finalised by making following additions:-

i) Addition of ₹ 26,68,525/- under Section 69A of the Act;

ii) Addition of ₹ 7,21,958/- on account of difference in closing stock figure;

iii) Addition of ₹ 80,000/- on account of undisclosed income from Labour Job.

5. Aggrieved of the assessment made, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Patiala (for brevity, '(CIT(A)'). Appeal was dismissed vide order dated 29.10.2013. Further, appeal was filed before the Tribunal, which was also dismissed vide order dated 01.12.2016. Hence, the present appeal.

6. Learned counsel for the appellant argued that the Tribunal erred in upholding the addition of ₹ 26,68,525/- under Section 69A of the Act. He submitted that the assessee was able to explain the source of cash deposits. It was contended that AO erred in not appreciating the figures of purchases as per the VAT return as ₹ 13,12,607/-, being coupled with the value of closing stock at ₹ 11,51,958/-.

7. The contention raised by learned counsel for the appellant that the authorities have not considered the figure of purchase and closing stock as per the VAT return deserves rejection.

8. The assessee filed an income tax return showing the gross receipts of ₹ 9 lakhs, on the other hand, there were cash deposits made of more than ₹ 37 lakhs in the savings bank account. The assessee tried to

explain the source of cash deposits by taking a stand that the actual sales were of ₹ 29 lakhs but were wrongly mentioned as ₹ 9 lakhs in the income tax return. The details of the purchases and copy of VAT return were withheld by the assessee on the excuse that same were not available. The AO got the copy of the VAT return from the Sales Tax Office in which the sales were mentioned amounting to ₹ 9,65,170/-. Before the AO the stand taken was that the appellant was not maintaining books of account, on the other hand with the VAT return, the appellant had filed Trading and Profit & Loss Account and the balance sheet. The appellant had withheld the material information available with him.

9. All the three authorities below have recorded consistent findings of facts. The appellant has not been able to dispute the findings of facts much less to prove perversity. No interference is called for in the order passed by the Tribunal.

10. No substantial question of law is involved. Therefore, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 04, 2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes