IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-181-2018

Date of Decision: 25.10.2018

Raj Kumar

....Appellant.

Versus

Income Tax Officer, Bathinda

...Respondent.

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

PRESENT: Mr. Maninder Arora, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 31.10.2017 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar (hereinafter referred to as “the Tribunal”) in ITA No. 533/ASR/2015, for the assessment year 2011-12, claiming the following substantial questions of law:-

i. Whether under the facts and in the circumstances of the case the lower authorities and ITAT have not committed illegality by passing the impugned orders sustaining the addition of ₹ 14,73,000/-?

ii. Whether under the facts and in the circumstances of the case the impugned orders are not liable to be set aside being in violation of Principles of Natural

Justice?

iii. Whether under the facts and in the circumstances of the case, the Tribunal has not committed an illegality by not remanding the case to the file of Assessing Officer by setting aside the orders Annexures A-1 & A-2?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed his return of income on 12.3.2012 at ₹ 1,43,850/- for the assessment year 2011-12. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee could not receive the notices and even the registered notice dated 7.3.2014 was returned with the remarks that 'the assessee has left without new address'. The Assessing Officer vide order dated 19.3.2014 (Annexure A-1) added to the income of the assessee ₹ 14,73,000/- and after making the addition of ₹ 57,700/- by estimating the net profit @ 5% on the total amount of cash deposited by treating the same as turnover and the income returned of ₹ 1,43,850/- framed the assessment at ₹ 16,74,550/-. Feeling aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 26.8.2015 (Annexure A-2) dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 30.11.2017 (Annexure A-3) partly allowed the appeal and remanded the matter back to the CIT(A) to adjudicate ground No.4, i.e., 'That Ld. CIT(A) erred on facts and law in confirming the addition of ₹ 57,700/- made by the AO on account of estimating the net profit @ 5% on the total amount of cash deposits in the

saving bank accounts of the assessee' on merits. Hence, the present appeal by the assessee.

3. After hearing learned counsel for the assessee-appellant, we do not find any merit in the appeal.

4. On the basis of the substantial questions of law claimed by the assessee, the following issues emerge for consideration:-

> (1) Whether the addition of ₹ 14,73,000/- made by the Assessing Officer sustained by the CIT(A) and the Tribunal was justified?
>
> (2) Whether the Tribunal was right in remanding the issue of addition of ₹ 57,000/- on account of net profit @ 5% of the total amount of cash deposits to the CIT(A)?

5. Taking up first issue of addition of ₹ 14,73,000/-, the Assessing Officer made the said addition with the following observations:-

> "Since the assessee has not furnished any information regarding source of the amounts, the whole amount deposited by the assessee is to be treated as unexplained. However, since the assessee has made withdrawals of cash also on different dates, peak amount at ₹ 14,73,000/- has been worked out as above.
>
> In view of the above working, the peak amount of cash deposited by the assessee in cash in bank amounting to ₹ 14,73,000/- is held to be the income of the assessee from undisclosed sources and is added to his income u/s 69 of the Act. The total amount of cash deposited in both

> the accounts works at ₹ 35,31,000/-. It may be mentioned here that there are certain cash withdrawal below ₹ 10,000/-, but the same have not been taken into account while working out peak credit on the presumption that the same withdrawals relates day-to-day expenses of business."

6. During the appellate proceedings before the CIT(A), the assessee-appellant pleaded that cash deposits in bank accounts were on the basis of availability of funds with his mother Smt. Satya Devi on account of sale of portion of immovable property on 16.1.2008. According to him, the said property was sold for ₹ 56,50,000/- and the cash deposits were made by him from the said amount. The said ground was rejected by the CIT(A) with the following observations:-

> "Even during the appellate proceedings, there was a reluctance on the part of the appellant to come forward and explain the sources from which the impugned cash deposits were made in his bank accounts. An implausible explanation was offered that the said deposits were sources from the sale proceeds of ₹ 56,50,000/- which accrued to the appellant's mother on 16th of January, 2008. The appellant had no explanation for the considerable time lag in the purported deposit of the sale proceeds of January 2008, in the bank accounts during the financial year 2010-11. The appellant was also unwilling to give any information regarding the taxability of such accruals in the hands of the appellant's

> mother during the relevant period. Under these circumstances, the appellant was denied the opportunity of adducing the new evidence and the request was overwhelmingly rejected."

The Tribunal upheld the said addition sustained by the CIT(A).

7. In view of the concurrent findings of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal that the assessee-appellant was unable to satisfactorily explain the source of ₹ 14,73,000/-, which was added on account of peak addition, no error could be pointed out in the impugned orders which may warrant interference by this Court. Thus, question No.1 does not arise.

8. Now adverting to second issue, regarding the addition of ₹ 57,700/- on account of net profit @ 5% of the total amount of cash deposits in the saving bank account of the assessee, it may be noticed that the Tribunal had recorded that from the order passed by the CIT(A), it appeared that the said issue was taken by the assessee in the grounds of appeal before the CIT(A), however, neither specific agitation was made by the assessee nor adjudicated by the CIT(A). The relevant findings recorded by the Tribunal in this regard read thus:-

> "From the order passed by the Ld. CIT(A), we realize that although the assessee had raised the ground before the Ld. CIT(A) with regard to ground No.4 herein, however, from the order passed by the Ld. CIT(A), it appears that the said issue was taken by the assessee in the grounds of appeal before the Ld. CIT(A), however, neither specific agitation was made by the assessee nor

> adjudicated by the Ld. CIT(A), therefore, we feel it appropriate to remand back the issue raised in ground No.4 of instant appeal to the file of Ld. CIT(A) to adjudicate the same on merit by offering proper and reasonable opportunity of being heard. It is clarified that the Ld. CIT(A) shall be restricted to deal with ground No.4 only. Ground No.4 stands allowed."

9. Accordingly, the Tribunal had remitted the matter to the CIT (A) to decide the issue regarding 'the addition of ₹ 57,700/- made by the assessing Officer on account of net profit @ 5% on the total amount of cash deposits in the saving bank account of the assessee afresh on merits after affording proper opportunity of hearing to the assessee.

10. No illegality or perversity could be pointed out by learned counsel for the assessee in the findings recorded by the Tribunal which may warrant interference by this Court. No question of law, much less, substantial question of law arise in the appeal.

11. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 25, 2018
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**