IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 114 of 2019 (O&M)
Date of Decision: 11.9.2019

Basant Kumar ....Appellant

Vs.

Commissioner of Income Tax, Bathinda (Punjab) ....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Divya Suri, Advocate and
Mr. Sachin Bhardwaj, Advocate
for the appellant.

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AJAY TEWARI, J. (ORAL)
CM-5282-CII-2019

This is an application for condonation of delay of 45 days in re-filing the present appeal.

For the reasons stated in the application, the same is allowed.

Delay of 45 days in re-filing the appeal is condoned

ITA-114-2019 (O&M)

1. This appeal has been filed under Section 260-A of the Income Tax Act, 1961 ('*Act*' for short) against the order of Income Tax Appellate Tribunal ('*Tribunal*' for short) upholding the action of the authorities in invoking Section 68 of the Income Tax Act, 1961 and thereby adding an amount of Rs. 5,40,000/- to the income of the assessee.

2. The case of the assessee was that his employee Chiman Lal had advanced a sum of Rs. 5,40,000/- by way of cheque (which was duly returned with interest within the same year). However, the authorities below noticed that even as per his own case, Chiman Lal stated his monthly

income to be Rs. 14,000/- to 15,000/-. He opened an account on 16.5.2013 with an infusion of Rs. 3.00 lakhs in cash and the same was immediately transmitted to the appellant. Thereafter on 7.8.2013, a sum of Rs. 40,000/- was again introduced in the account and the same was also immediately handed over to the assessee. On 14.8.2013, there was another infusion of Rs. 2.00 lakhs by cash which was also handed over to the assessee. It was stated that prior to this, Chiman Lal had no bank account and the authorities below ultimately came to the conclusion that his creditworthiness was not proved.

3. Learned counsel for the appellant has argued that once Chiman Lal had appeared and given his own affidavit and the money was paid to the assessee-appellant by cheque by banking transaction and was returned through banking transaction, the authorities below erred in deciding against the appellant. He has, thus, emanated the following question of law:-

> *"Whether in the facts and circumstances of the case, the action for invoking the deeming provision for making additions u/s 68 of the Income Tax Act, 1961 is it an unreasonable action once the identity, creditworthiness, genuineness, bonafide and capacity to pay stands proved and onus discharged, yet making the addition hence suffers the vice of non application of mind ?"*

4. In our opinion, the appeal has to fail. The Tribunal noticed that it was very strange that the appellant would keep his entire savings in cash. We further find it strange that if on 16.5.2013, the appellant decided to change his method of saving and put his money in the bank, why he did not put the entire savings in the bank and why he retained a sum of Rs. 2,40,000/- with him in cash. Chiman Lal is admittedly not an income tax assessee, thereby strengthening the view that not only he is not a rich

man but he is barely able to make the ends meet.

5. Learned counsel for the appellant has relied upon ***Commissioner of Income Tax versus Deen Dayal Choudhary (2017) 148 DTR Judgments***. In that case, three persons had given credit of Rs. 25.00 lakhs, 45 lakhs and 20 lakhs, respectively to that assessee. All these three persons were income tax assessees and were able to show the infusion of funds in their banks to the satisfaction of the income tax authorities. In the circumstances, the facts of the case are entirely distinguishable.

The appeal is dismissed.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

September 11, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : No