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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-111-2018(O&M)
Date of Decision: 02.12.2019

Lalit Singla **... Appellant**

v/s

Commissioner of Income Tax, Patiala (Punjab) **... Respondent**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

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

Mr. Kunal Sharma, Advocate
for the respondent.
* * * *

AJAY TEWARI, J. (ORAL)

1. This appeal has been filed under Section 260A of the Income Tax Act 1961 (for short 'the Act') for the assessment year 2011-12 against the order of the Income Tax Appellate Tribunal Chandigarh in ITA No. 227/CHD/2016 dated 18.4.2017 whereby the Tribunal had set aside the order of CIT and remand the assessment case of the appellant to the Assessing Officer for a fresh decision after considering evidence on record.

2. Aggrieved against the order of the Tribunal the assessee has approached this Court claiming the following substantial question of law :-

1. Whether under the facts and circumstances of the

> *case, in accordance with the provisions of Section 40A(3) the disallowance can be made without appreciating the chargeability of transactions to tax by way of TCS forms in accordance with Section 206CA r.w. Rule 114A substantiating the purchases made and the genuineness thereof ?*

3 . A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is in the business of retail selling of liquor and for the relevant year he showed its income from business as Rs.19,32,730/-. Later on, the case was selected for manual scrutiny and notice under Section 143 (2) of the Act and subsequently notice under Section 142 (1) and 143 (3) of the Act along with questionnaire were issued. The assessee-appellant appeared and stated that he has lost his books of accounts, bills, vouchers and produced a copy of complaint made with the Police Division No. 4, Patiala dated 17.12.2012 under Section 156 Cr.P.C.

4. In view of that, notices under Section 133 (6) of the Act were issued to various parties who had supplied material to the assessee. One of those parties disclosed that the assessee had made purchases of Rs.7,91,61,309/- during the relevant year under consideration. One of the suppliers M/s Patiala Distrillers and Manufacturers limited, Patiala has informed that the appellant had made payment of Rs.79,00,000/- odd through cash. Assessee was asked to explain the same in the circumstances enumerated in Section 40 (A)(4) 40 (A)(B) and it faint complete ignorance under the pretext that it had lost all its books of accounts and rather denied any relationship with one Mr. Ashok Kumar through whom payments had been routed.

5. In these circumstances, the Assessing Officer added the entire

amount of Rs.79 Lakhs plus the total sales to the income of the appellant. The appellant filed an appeal and therefore, for the first time it put on record bank statement showing that TCS was collected most of them and on the basis of that the appellate authority set aside the order of the Assessing Officer and allowed all the expenses through bank forms 26AS. The Revenue carried up the matter to the Tribunal which vide impugned order, as mentioned above, has remanded the case back to the Assessing Officer.

6. Learned counsel has argued that documents placed before the Commissioner clearly showed that on the vast majority of purchases made by it tax was collected at source. Moreover, the business of the assessee viz. retail selling of liquor is a cash business and in these circumstances, the order of the Commissioner was justified while remand order passed by the Tribunal is clearly unjustified.

7. On the other hand, learned counsel for the Revenue has argued that the appellant has been shifting his stand at various places. Before the Assessing Officer, his stand was that he has no dealing with the said Ashok Kumar while before the CIT, his stand was that Ashok Kumar was an agent of the supplier and therefore, payments were made to him.

8. He has further argued that the Tribunal has merely remanded the matter and has given opportunity to both the parties to substantiate the claims made by them and consequently, no interference is called for.

9. We are in agreement with learned counsel for the Revenue. In view of the shifting stand taken by the appellant, no illegality can be found with the order of the Tribunal which, it must be remembered, has not restored the order of the Assessing Officer but has asked both the parties to lead evidence in support of their claims and by source no prejudice can be caused to the appellant.

10. Consequently, the appeal stands dismissed.

11. Since the main case has been dismissed, the pending application if any also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

02.12.2019
Janki

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No