**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

410 **ITA-25-2001 (O&M)**
Date of Decision : 30.1.2020

Sh. Tara Chand ...... Appellant

Versus

Commissioner of Income Tax, Chandigarh and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE AVNEESH JHINGAN
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Present : Mr. Alok Mittal, Advocate
for the appellant.

Ms. Urvashi Dhugga, Sr. Standing counsel
for the respondents.

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AJAY TEWARI, J. (Oral)

1. This appeal has been filed by the assessee under Section 260-A of the Income Tax Act, 1961 (for short 'the act') against the order dated 29.9.2000 of the Income Tax Appellate Tribunal, Chandigarh Bench 'B' Chandigarh (for short 'the Tribunal') passed in Income Tax Appeal No.2143/Chandi/1992 relating to A.Y. 1990-91, claiming the following substantial questions of law :-

> *(a). Whether in the facts and circumstances of the case, the orders Annexures P-1 and P-3 are legally sustainable ?*
> *(b). Whether in the facts and circumstances of the case, the order passed by the Appellate Tribunal is legally sustainable in as much as all facts and evidence was in the knowledge of*

the Assessing Authority prior to passing of the assessment order ?

(c). Whether in the facts and circumstances of the case, order passed by the Appellate Tribunal is legally sustainable in as much as no opportunity of hearing had been afforded to the assessee-appellant by the Assessing Authority during the proceeding initiated U/s 131of theAct against Shri Sumer Chand and the same have not been brought on record ?

(d). Whether in the facts and circumstances of the case, the order of the Appellate Tribunal in remanding the case back to the Assessing Authority is legally sustainable in as much as the Assessing Authority had the knowledge of the facts and evidences qua the said additions of Rs. 2,77,375/- and Rs.3,95,200/-?

(e). Whether in the facts and circumstances of the case, the order of the Appellate Tribunal is legally sustainable in as much as the factum of the retraction of the affidavit dated 29.6.1992 by Shri Sumer Chand subsequent to the issuance of Notice U/s 131 of the Act during the pendency of the assessee-appellant appeal before the CIT(A) had not been taken into consideration by the Appellate Tribunal ?

2. Brief facts of the case are that the assessee was trading in wheat and also had a rice sheller. He had filed its return of income tax for the assessment year 1990-91 on 30.11.1990 declaring income of Rs.1,43,970/-. By this appeal the appellant has challenged the order of the Tribunal whereby the case was remanded back to the Assessing Officer to re-decide the issue regarding the addition. The Assessing Officer had treated some sales to be outside the book of accounts and other sundry issues relating to yield. In appeal, the Commissioner set aside the order of the Assessing Officer and accepted the appeal of the assessee. The Tribunal noticed that two sets of documents had been placed before the

authorities and thought it fit that the entire issue be re-looked at by the Assessing Officer after considering all the documents afresh. Relevant portion of Tribunal order is quoted below :-

> *"7. Now before us there are two statements of Sumer Chand, one made before the CIT(A) and the other recorded by the AO dis-owning his earlier statement and the affidavit made before the CIT(A) and similarly there are two copies of stock register, one filed before the CIT(A) and the other produced before the AO in support of his submissions made before the AO. The CIT(A) has rejected second statement given by Shri Sumer Chand before the AO recorded but during the proceedings initiated u/s 271(1)(c)though of course during the pendency of appellate proceedings. The CIT(A) rejected the statement of Sumer Chand, made before the AO and supporting the case of the department to the effect that no sales were made in the month of June to the assessee by M/s Angel Rice Mills, because according to the CIT(A) the AO had recorded the statement of this witness at the back of the assessee and further because the AO has not allowed an opportunity to the assessee to cross-examine this witness. It is also important to mention here that these contradictory stands taken by Shri Sumer Chand one before the CIT(A) and the other before the AO, are so significant and important that their values cannot be under estimated because of the statement of this witness as well as the veracity of the entries in the stock register of Angel Rice Mills is going to resolve the main controversy i.e. as to whether any rice was sold by this firm to the assessee on 26.6.89 or the same was sold in the month of July 1989 because this very rice in turn had been sold by the assessee firm to some other party. If we carefully go through the order of CIT(A) we find that even on the face of his orders it appears that the statements recorded by the CIT(A) during the course of appellate proceedings, the affidavits of the*

parties taken on record and the copies of stock register of Angel Rice Mills obtained by the CIT(A) and kept on record during appellate proceedings, the affidavits of the parties taken on record and the copies of stock register of Angel Rice Mills obtained by the the CIT(A) and kept on record during appellate proceedings do not seem to have been properly confronted to the AO and it further appears that the CIT(A) has also not given proper opportunity to the AO to cross examine these persons whose statements and affidavits were taken on record by the assessee though the CIT(A) seems to have completed the formalities of writing in his order that he had complied with the requirements of law because he observed that the AO was present during the entire proceedings because in our opinion, had the CIT(A) in real sense allowed appropriate opportunity to the AO to cross examine these witnesses and had allowed opportunity to him in confronting the affidavits of the parties taken on record, there would have been no need for the AO to call the witness Shri Sumer Chand again to produce the records before him and make statement before him wherein he has explained in detail before the AO as to how he gave wrong statement before the CIT(A) and as to how the wrong affidavit was filed before the CIT(A) supporting the case of the assessee though in fact the stand taken by the department on the basis of the records of Angel Rice Mills was correct with regard to the fact that Angel Rice mills as per their stock register and other relevant records has sold the rice to the assessee in the month of July and not in the month of June 1989 as claimed by the Assessee. In the peculiar circumstances of the case we refrain from commenting on the evidentiary value of the statement of the witness of Shri Sumer Chand recorded by the CIT(A) and the one recorded by the AO as well as regarding evidentiary value of the affidavit well as material collected and placed on the record by The CIT(A) during the appellate proceedings as well as *the proceedings initiated u/s 271(1)(c) against the assessee (of course both the proceedings in this regard took place on or near about the same time), but we cannot help commenting on the point that the CIT(A) has not afforded opportunity to the AO before admitting the statement, affidavit and other material as evidence. At the same time we also find that the AO also does not seem to have afforded appropriate opportunity to the assessee before relying upon the statement given by Sumer Chand as well as before taking other material on record which lateron also came into consideration before the CIT(A).*

3. In these circumstances of the case, we do not find the impugned order to be a perverse or illegal.

4. Consequently, the appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

30.1.2020
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No