IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No.48 of 2000 (O&M)
Date of decision : 13.01.2020

M/s Gheeru Lal Bal Chand .... Appellant

versus

Commissioner of Income Tax, Jalandhar & anr. ...... 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.

Mr. Vivek Sethi, Advocate with
Mr. Varun Issar, Advocate
for the respondents.

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AJAY TEWARI, J. (Oral)

1 This appeal has been filed against the order of the Tribunal setting aside that of the Commissioner and upholding the assessment made by the Assessing Officer.

2 The following questions of law have been framed :-

(a) Whether in the facts and circumstances of the case, the orders Annexure P-1 and P-3 are legally sustainable ?

(b) Whether in the facts and circumstances of the case, the confirmation of the regular assessment made is legally sustainable in view of the earlier decisions of the Income Tax Appellate Tribunal in Income Tax Appeal Nos.271 and 240 (ASR)/1992 and I.T.A. No.1014 (ASR)/1990 wherein on similar grounds and on similar facts, the I.T.A.T. had held in favour of the assessee?

(c)Whether in the facts and circumstances of the case, the

> *confirmation of the assessment made is legally sustainable in the absence of a specific challenge to the correspondence, contracts and affidavits produced on record by the assessee-appellant?*
>
> *(d) Whether in the facts and circumstances of the case, the respondents were legally justified in making the addition of Rs.2,13,330/- on account of diversion of profits on mere presumptions and sermises without there being any independent evidence on record to corroborate the same?*

3 The brief facts are that the appellant had purchased 2991 bales of cotton in the year in question. Out of that its case was that 1411 bales were those which were its own direct purchases and on the sale of which it had earned a profit which it had honestly reported. However, the remaining 1580 bales were purchased on behalf of some other persons and the appellant had only earned commission thereon while the profits had gone to those other persons. On a consideration of the entire evidence the Assessing Officer came to the conclusion that the assessment had not been able to prove the fact that it had purchased the cotton on behalf of those other persons and held that it was a case of diversion of profits. On a re-appreciation of fact the Commissioner gave partial relief to the appellant but in an appeal carried out by the Revenue that relief was also declined and the order of the Assessing Officer was maintained.

4 Learned counsel for the revenue has relied upon ***New Kailash Cotton Factory Vs. Assessing Officer-cum-Income Tax Officer, Ward No.1, Mansa (Punjab), passed in ITA No.510 of 2006 decided on 21.03.2007,*** para 3 of the same is as follows :-

> "3. *Having heard learned counsel for the assessee, we do*

> *not find any merit in the appeal. A perusal of the concurrent findings recorded by all the authorities below show that assessee had not been able to prove on record the genuineness of the transactions resulting into claim made by him for diverting the profits arising out of his speculation business. It was found that there was no proof available either in the form of written or oral agreement between the parties for purchase and sale of commodities. For the purpose of conducting so called business on behalf of 3rd parties, the assessee invested its own fund, no 'Sauda Bahi' was maintained recording day-to-day transactions. All the purchases and sales were made in the account of assessee. It was assessee's own infrastructure which was used in all the transactions. These being the facts on record, even if there is a second view possible on re-appreciation of evidence on record in preference to view taken by the Tribunal, we are unable to hold that the view expressed by the Tribunal was not possible view. The findings recorded are based on evidence and could not be regarded as perverse. In the appellate jurisdiction under Section 260-A of the Act, the appeal can be entertained only on a substantial question of law. No doubt perversity in the findings of the Tribunal would amount to substantial question of law but learned counsel for the assessee has failed to point out any material on record which could impel this Court to hold that the view expressed by the Tribunal was not at all possible. Accordingly, we do not find any merit in the present appeal and the same is dismissed."*

5 We find that the facts are similar in both the cases. Resultantly, we are of the opinion that the questions raised are pure questions of fact and the questions of law do not arise.

6 Appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

January 13, 2020
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No