IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-465-2019
Date of decision:- 22.03.2023

Pr. Commissioner of Income Tax, Karnala ....Appellant

vs.

Rakesh Kumar ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Ms. Gauri Neo Rampal, Sr. Standing counsel for the appellant.

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Ritu Bahri, J.

The present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short 'Act 1961') seeking setting aside of order dated 20.12.2018 passed by Income Tax Appellate Tribunal, Delhi Bench 'F' New Delhi passed in 6187/Del/2015 for the assessment year 2011-2012.

Brief facts of the case is that assessee filed his return of Income for assessment year 2011-12 on 24/9/2011 declaring a total Income of Rs. 3,01,310/-. The assessee is engaged in the business of retailing of liquor for human consumption. The case of the assessee was also selected through computer aided scrutiny system (CASS). During the course of assessment proceedings, the learned assessing officer Issued questionnaires which were replied to by the assessee. The net profit earned by assessee was examined and the addition on the lump-sum basis was made to the total income of the assessee, as assessee could not furnish the details of item wise sale of bottle etc. Further only vouchers of total sales of the day have been prepared and stated that the wine is sold in cash and the amount of each item on sale is meager and also varying range. The total income was assessed at Rs. 421310/-, vide order dated 30/12/2013.

On 27/7/2015, a show cause notice under section 263 of the income tax act was issued to the assessee by the principal Commissioner of Income tax stating that while perusing the assessment records, it was noticed that assessee has made purchases in cash totaling Rs. 1,31,24,334/- in contravention of the provisions of section 40A(3) of the income tax Act 1961. Hence, the expenditure exceeding Rs. 20,000 incurred in cash in contravention of the above section is not allowable as deduction. It was further noted in the show cause notice that on perusal of the copy of account of the bank filed by assessee during the course of assessment proceedings, it revealed that assessee has made the cash deposits of Rs. 54,37,000 in the bank account and there is no evidence on record to explain the source of the above cash deposits.

The assessee submitted his reply on 18/8/2015 explaining the reasons for deposit of cash in the bank account as well as the payment of purchases. However the learned CIT was not satisfied with the explanation of the assessee and held that Rs. 103.94 lakhs deposited in cash in the bank account of the assessee remain unexplained which were not properly enquired and examined by the assessing officer. It was further held that assessee has made purchases of Rs. 131.24 lakhs in violation of the provisions of section 40a(3) of the income tax act which was not properly explained before the assessing officer and therefore that issue was also required to be set-aside as the assessment being erroneous and prejudicial to the interest of the revenue. Thus, the assessment order passed in the case of assessee was set-aside to be made afresh on the issue of purchase of Rs. 131.24 lakhs in case in violation of section 40A(3) of the income tax Act and for verification of the source of case deposit of Rs. 103.94 lakhs in savings bank account maintained with the Jammu and Kashmir Bank, Panipat branch which remained unexplained.

The assessee challenged the order dated 27.10.2015 before ITAT, which was allowed on 20.12.2018 and hence the present appeal has been filed by the revenue.

Heard.

While allowing the appeal of the assessee, the Tribunal has observed as under:-

> *"The Tribunal has rightly observed that there was an audit objection by the Internal audit party which is placed at page number 30 of the paper book. As per the para number two of that audit note it is mentioned that that the case of the assessee was selected for scrutiny under the CASS with a specific direction that the AO should examine the source of cash deposits in his savings bank account as per AIR information. The audit party further notes that from the perusal of the printouts of the screenshots of the AIR Information placed on records, it is transpired that during the year the total case deposits have been made by the assessee in his bank account maintained with Jammu and Kashmir bank of Rs. 11876000/-. Thus, the selection of the case for scrutiny was with specific aspect of verification of cash deposits in the bank account of the assessee. It is required to be seen that whether the learned assessing officer has verified the source of the cash deposits in the bank account of the assessee or not. It is further required to be tested whether the due inquiries have been made by the assessing officer on this aspect or not. The first questionnaire issued by the learned assessing officer on 25/7/2013 to the assessee vide question number 15, the AO asked about the details of the bank accounts maintained by the assessee along with bank statement for the assessment year. Complete books of accounts were also required along with the bills, vouchers, stock registers, and other relevant records maintained by the assessee for*

the year. The AO further asked month wise details of purchases and sales made during the year. As per letter placed at page number 18 of the paper book the assessee submitted the copy of the bank account to the assessing officer. Further vide a letter assessee explained regarding sales and cash deposit in bank accounts submitting that the assessee is holding license and selling liquor for human consumption to retail customers. The products were delivered as a mint, half bottles/BS etcetera whereas the sale price ranges from Rs. 50 to Rs. 1000 depending upon the quantity of liquor. It was further stated that the cash collected from retall customers and deposited in the bank account on the same day or alternate days. Assessee also produced vide same letter the cashbook for the relevant period. Assessee also placed the copy of the bank account with Jammu and Kashmir bank at page number 21 of the paper book, which was submitted along with that letter. Therefore assessee gave complete explanation about the cash deposit in the bank account with the Jammu and Kashmir bank and also demonstrated the cash realized on sale of goods. Undisputedly the sale of goods have also been shown. on the credit side of the profit and loss account, the cash has been generated out of the sale and same has been deposited in the bank account. The above fact has been verified by the learned assessing officer with respect to the cashbook, sales book and bank account of the assessee. On perusal of the order under section 263 of the income tax act of the learned principal Commissioner of income tax does not show that what kind of further enquiry the learned assessing officer should have done on the issue of cash deposit into the bank account of the assessee. the learned principal Commissioner of income tax did not say what other enquiry on this aspect the learned assessing officer should have been made. According to us so far as the cash deposit is concerned in the Jammu and Kashmir bank by the assessee. the learned assessing officer has made all possible enquiries to verify the source of cash deposit. According to us on this account. The *order of the learned Commissioner of Income tax passed under section 263 of the Income tax act is not sustainable.*

9. On the 2nd Issue the learned CIT has held that the AO has failed to verify the cash payment made for purchase of goods which are not in conformity with the provisions of section 40A(3) of the Income tax act. It is apparent from the audit objection filed before us at page number 30 of the paper book that the case of the assessee was selected for the scrutiny to verify only the cash deposit in the bank account of the assessee. the issue before us is whether assessing officer has made any enquiry with respect to the above purchases. Though, learned assessing officer has obtained the explanation of the assessee with respect to the purchase made by the assessee in cash, whether the learned assessing officer is required to make any such enquiry or not is also an issue. This because of the reason that the learned assessing officer was only required to verify the cash deposit in the bank account of the assessee. In this respect instruction dated 29/12/2015 issued by the central board of direct taxes is very relevant. Apparently the selection of the scrutiny in case of the assessee was also only on the parameters of AIR information. According to para number 2 (il) the scope of enquiry should be limited only on that aspect only. In such cases, the assessing officer are also directed to confine themselves by questionnaire only to the specific issues pertaining to AIR data and further the wider scrutiny in those cases can only be conducted as per the guidelines and procedures stated in Instruction number 7/2014. Therefore according to us when the learned assessing officer was not required to enquire on those issues such as purchases in cash more than specified sum, the learned CIT was not correct in holding that the learned assessing officer has not made due inquiries on that ground as the verification of the purchases exceeding specified limit in cash was not an issue before the assessing officer. Naturally, he should not have made any enquiry on that aspect. Even though the learned assessing officer has raised *the specific questions on that aspect and verified the requisite detail. Therefore, it cannot be said that the order of the learned assessing officer is erroneous and prejudicial to the interest of the revenue on this ground also."*

Learned counsel for the appellant has not been able to point out that the findings recorded by the Tribunal suffers from any infirmity.

The order passed by the Tribunal has been passed after going through the entire record in detail.

No substantial question of law arises for consideration in the present appeal.

The appeal is dismissed.

(RITU BAHRI)
JUDGE

(AMARJOT BHATTI)
JUDGE

22.03.2023
G Arora

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