

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:057533-DB
ITA-167-1999 (O&M)
Date of Decision: 25.04.2024.

Comm. of Income Tax ...Appellant

Vs.

Suresh Kumar Kohli ...Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Ran Vijay Singh, Sr. Standing Counsel for the appellant.

Mr. Khushagara Mahajan, Advocate for the respondent.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. We have heard learned counsel at length and also perused the order passed by a Coordinate Bench in ITA-71-2000, decided on 17.11.2014, in 'Commissioner of Income Tax (Central), Ludhiana vs. Naresh Kumar Kohli, with regard to the same search and seizure in relation to the daughter and daughter-in-law of Naresh Kumar Kohli, wherein, the Division Bench of this Court has observed as under:-

“A search of the assessee's business premises, his house and various banks is the foundation of block assessments for the years 1987-88 to 1997-98. The Assessing Officer, after considering various transactions, jewellery and other documents added substantial amounts to the income of the assessee. The assessee filed an appeal. The Tribunal by way of the impugned order confirmed a major part of the assessment order but with

respect to addition of Rs.4,92,325/- on account of non-genuine gifts, deleted this addition. The Tribunal also granted benefit of Rs.4 lacs as past savings and allowed the value of 400 gms. of jewellery as ishtridhan of the assessee's wife, Smt.Surbhi Kohli. The Tribunal also deleted Rs.8,29,936/- added by the AO on account of unexplained jewellery by holding that the jewellery belongs to one Harbans Lal.

A due consideration of arguments advanced by counsel for the revenue, does not enable us to hold that the Tribunal has violated any provision of the Income Tax Act, 1961 much less does it indicate a perversity of reasoning or an arbitrary exercise of discretion. An appeal, under the Income Tax Act, 1961, is maintainable only if it raises a substantial question of law and, therefore, infers an infraction of law, a misreading of evidence, disregard of statutory provisions, a consideration that is perverse and arbitrary or if it raises a question of law that has not been answered. A perusal of the impugned order reveals that it does not suffer from any of these infractions and the Tribunal has while recording its opinion considered the matter in its entirety and only thereafter recorded findings against the revenue.

Admittedly, Rs.4,92,325/- on account of non- genuine sales was already included in the addition of Rs.9,75,333/- made by the Assessing Officer. The Tribunal, therefore, rightly deleted this addition. As regards the benefit of past savings of Rs.4 lacs granted to the appellant, the Assessing Officer himself held that jewellery belongs to the appellant and was, therefore, required to apportion some amount towards investment or savings. The

Tribunal, therefore, rightly granted the benefit of Rs.4 lacs as past savings. The plea with respect to ishtridhan is similarly unfounded as benefit has been granted on account of ishtridhan of the assessee's wife Smt.Surbhi Kohli. The benefit granted to Suresh Kumar Kohli, father of the assessee pertains to the latter's wife i.e. mother of the appellant and then also in the assessment pertaining to Suresh Kumar Kohli.

The question relating to unexplained jewellery found in locker No.72 has been considered in detail by the Tribunal. After appraisal of the evidence adduced before the Assessing Officer namely an affidavit by Harbans Lal and his statement recorded before the Assessing Officer, it was held as a matter of fact that the jewellery does not belong to the assessee. We are not inclined and nor can we while exercising jurisdiction as a second appellate Court re- appraise evidence much less the statement made by HarbansLal etc. till such time as consideration of this evidence is perverse or arbitrary. The Tribunal has after appraising the affidavit and the statements recorded a plausible finding.

Counsel for the revenue is unable to point out any misreading of evidence or perversity in the process of reasoning as would enable us to interfere with the findings of fact recorded by the Tribunal.

In view of what is recorded hereinabove, finding no merit, the substantial questions of law are answered against the revenue and the appeal is dismissed.”

2. The issues framed for adjudication before this Court under Section 260A of the Act are as under:-

“1. Whether on facts and in the circumstances of the case, the ITAT was right in law in substituting distinct additions made by the Assessing Officer on account of unexplained investments/deposits on the basis of examination of seized records by additions worked out on account of peak investment, profit on unrecorded sale and interest?.

2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in computing the addition from uncounted transactions reflected in loose papers found during survey U/s 133A of the Income Tax Act, ignoring evidence available in these papers regarding liquor business carried on by the respondents in *Benami* names?”

3. We find that the issues raised are based on findings recorded by the Tribunal on the basis of evidence available on record. This Court while hearing the appeal under Section 260(A) of the Income Tax Act, 1961, would not interfere with the findings of fact unless they are wholly perverse. Considering that the Coordinate Bench has also examined the facts threadbare, and the evidence was examined by the Tribunal at its level, we are not inclined to re-examine the evidence afresh, since there is no perversity in the findings arrived at by the Tribunal on the basis of material placed before it.

4. We are supported by the law as laid down by the Hon’ble Apex Court in the case of *Sudarshan Silks and Sarees vs. Commissioner of Income Tax Karnataka* 2008 (12) SCC 458, wherein, it was held as under:-

“In the present case, the question of law referred to the High Court for its opinion was, as to whether the Tribunal was right in upholding the findings of the CIT (Appeals) in canceling the penalty levied under Section 271(1)(c). Question as to perversity of the findings recorded by the Tribunal on facts was neither raised nor referred to the High Court for its opinion. The Tribunal is the final court of fact. The decision of the Tribunal on the facts can be gone into by the High Court in the reference jurisdiction only if a question has been referred to it which says that the finding arrived at by the Tribunal on the facts is perverse, in the sense that no reasonable person could have taken such a view. In reference jurisdiction, the High Court can answer the question of law referred to it and it is only when a finding of fact recorded by the Tribunal is challenged on the ground of perversity, in the sense set out above, that a question of law can be said to arise. Since the frame of the question was not as to whether the findings recorded by the Tribunal on facts were perverse, the High Court was precluded from entering into any discussion regarding the perversity of the finding of fact recorded by the Tribunal.”

5. We are also satisfied on the findings regarding the addition on account of loose papers found during survey to the fact that the loose papers found relate to liquor business of one Rattan Lal. The Assessing Officer could not make additions on the said basis which belong to liquor business of one Rattan Lal and was not that of the assessee. The findings arrived at by the Tribunal, therefore, do not warrant any interference.

6. The draft purchases made by son and wife of Suresh Kumar Kohli would not fall within the ambit of *benami*. We also noticed that the statement of one Anil Kumar grandson of Rattan Lal was recorded during survey and he has categorically denied involvement of Suresh Kumar Kohli with the liquor business of Rattan Lal.
7. Thus, the findings arrived at by the Tribunal do not require any interference by this Court. The questions of law, therefore, as framed, are answered accordingly.
8. In view thereof, the appeal is found bereft of merit and is dismissed accordingly.
9. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

25.04.2024.
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No