

(2006) 09 P&H CK 0308

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 366 of 2005 6 September 2006

Pirithi Ram Labour Contractor

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Sept. 6, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 143, 69

Citation: (2006) 156 TAXMAN 457

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Full Bench

Advocate: R.L. Gupta, for the Assessee Dr. N.L. Sharda, for the Revenue, for the Appellant;

Judgement

1. The assessee has approached this court by filing the present appeal against the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in I.T.A. No. 482 (Asr.) 2001 for the assessment year 1998-99, raising the following, substantial questions of law :

(i) Whether the instructions issued by the CBDT Annexure A-1 are binding on the Income Tax Authorities ?

(ii) If the answer to the question No. I is in the affirmative whether he taking up the case for scrutiny and notice issued thereafter and the impugned orders are void and ab initio in the facts and circumstances of the case ?

(iii) Whether the impugned orders of the Income Tax Authorities suffer from perversity in the facts and circumstances of the case ?

(iv) Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal is justified in reversing the deletion of Rs. 4,38,000 as made by the Commissioner (Appeals) and the order of the Income Tax Appellate Tribunal in remanding the case in the facts and circumstances of the case is legally sustainable?

(v) Whether in the facts and circumstances of the case, the Appellate Tribunal was justified in taking the view that the deposits made by the partners on the first day of the accounting period could be treated as the income of the firm from unexplained sources ?

(vi) Whether in the facts and circumstances of the case and more so when Income Tax Authorities have applied the net profit rate of 8 per cent, as the assessee firm could not produce the account books, the account books can be relied for making the addition of Rs. 4,38,000 being the capital contribution of the partners ?

2. We have heard learned counsel for the appellant. As far as question No. I is concerned, from the fact concurrently found by the authorities below, it is evident that show-cause notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 10-6-1999 and the instructions, which have been sought to be relied upon by the assessee to plead that in terms thereof, the case of the assessee could not be taken for scrutiny, were though issued on 7-6-1999 but received in the office of Additional Commissioner of Income Tax on 17-6-1999. Keeping these facts into consideration, the authorities below rejected the plea of the assessee holding that since the statutory process had already been initiated by issue of notice u/s 143(2) of the Act, the instructions coming later to the notice of the assessing officer, the same cannot be left mid way. In any case the assessee had the opportunity to defend his case on merits before the authority concerned. We concur with the findings recorded by the authorities below and do not find this to be substantial question of law.

3. As far as the other issues raised by the appellant is concerned, from a perusal of the order passed by the Tribunal, it is evident that the matter has been remitted back to the assessing officer for considering the addition of Rs. 4,38,000 on account of capital employed by the partners, which were added to the income of the firm in terms of section 69 of the Act, to be dealt with in accordance with law. Accordingly, we do not deem it appropriate to entertain the appeal at this stage on these issues, the same having been remitted to the assessing officer for re-determination in accordance with law as the assessee would have further opportunity of appeal etc. against the order passed by the assessing officer in remand proceedings.

4. Accordingly, finding no merit, the appeal is dismissed.