
(2013) 01 P&H CK 0263

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 123 of 2012 (O and M)

Ramesh Chand (HUF)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Jan. 28, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 40(A)(2)(b), 40(A)(3), 40A(3)

Citation: (2013) 217 TAXMAN 75

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: S.K. Mukhi, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Hemant Gupta, J.

The assessee is in appeal u/s 260A of the income tax Act, 1961 (for short "the Act") against the order dated 14.11.2011 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal") in ITA No. 1454/CHD/2011 for the assessment year 2007-08. Though the appellant framed six substantial questions of law, but on 06.12.2012, the appellant made a statement before this court not to press questions Nos. (A) and (C). Therefore, the following substantial questions of law arise for consideration only:-

(B) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in confirming addition of Rs. 6,16,150/- by invoking the provisions of Section 40(A)(3) without appreciating the evidence and the express provisions of law which finding is perverse?

(D) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in confirming additions of Rs. 19.867/- being hypothetical interest on the purchase advance made by A.O.,

ignoring the facts on record, relying upon various judgment though the same is not applicable in the case of appellant which finding is perverse?

(E) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified on facts and in law in confirming addition of Rs. 18,002/- out of interest paid on old loan by alleging higher rate of interest by applying the provisions of Section 40(A)(2)(b) of the income tax Act, 1961 which finding is perverse?

(F) Whether on the facts and in the circumstances of the case, the orders of the Income Tax Appellate Tribunal is perverse to the extent of above said grounds/questions of law?

We have heard learned counsel for the appellant at length and find that no substantial question of law arises for consideration by this Court.

2. In respect of question No. B above, the appellant is said to have purchased wheat from Shri Sai Baba Rice Traders, Naya Bazaar, Delhi for a sum of Rs. 39,25,680/- out of the said amount, Rs. 8,44,934/- was found to have been paid through cheques. The Assessing Officer found that the payment of Rs. 30,80,746/- was made by assessee otherwise by account payee cheque. Therefore, for the violation of Section 40A(3) of the Act, 20% of the above amounting to Rs. 6,16,150/- was disallowed and added to the income of the assessee. Such order was affirmed by the Commissioner of income tax (Appeals) and the Income Tax Appellate Tribunal.

3. Learned counsel for the appellant has vehemently argued that the appellant has sold the wheat through M/s. Shri Ganesh Trading Co., Naya Bazaar, Delhi and such firm has made the payment. For the said amount, the cheques were issued from the bank account of the said firm to the seller i.e. Shri Sai Baba Rice Traders and therefore, the said amount has been wrongly said to be in violation of Section 40A(3) of the Act. In support of such contention, learned counsel for the appellant relies upon the certificate (Annexure A-5) by Shri Sai Baba Rice Traders in respect of receipt of the six cheques of Rs. 30,80,746/- and also a copy of the ledger account of M/s. Shri Ganesh Trading Co. showing the issuance of the cheques of the aforesaid amount.

4. The learned Assessing Officer found that the appellant was directed to give evidence of payment made by account payee cheques vide order dated 30.11.2009, but the appellant has failed to give any evidence. Though the failure of the appellant to give evidence during the course of assessment proceedings or in appeal before the Commissioner of income tax or the Tribunal is sufficient to confirm the findings of fact recorded by the authorities under the Act for the reason of failure of the appellant to produce the proof of payment through the account payee cheques before the authorities. But a perusal of the documents produced by the appellant shows that such document may not prove the payments as alleged. Annexure A-5 is the certificate given by Shri Sai Baba Rice Traders in respect of receipts of six

cheques from M/s. Shri Ganesh Trading Co. However, the statement of account from the ledger of M/s. Shri Ganesh Trading Co. shows that the account produced is of Ram Nath Ramesh Chand of whom the appellant is the proprietor. There is no endorsement in the said account that the cheques in the sum of Rs. 30,80,746/- has been issued to Shri Sai Baba Rice Traders for and on behalf of the appellant or that the said cheques were ever issued to Shri Sai Baba Rice Traders. In view of the said fact, we do not find that said substantial question of law arises for consideration.

5. In respect of question No. D above, the appellant is said to have paid in advance Rs. 6 lacs to M/s. Preet Service Station, Kaithal for purchase of petrol pump. The appellant again relies upon his ledger account to prove that the payment was made for the purchase of petrol pump. In the ledger account (Annexure A-7) of the appellant, there is no reference that amount of Rs. 6 lacs which was in pursuance of any agreement to sell.

6. Learned counsel for the appellant contends that agreement to sell was the oral. Even if the agreement to sell was oral, the account books of the appellant should have contain an entry of payment of Rs. 6 lacs for the purchase of petrol pump. Since, there is no such entry, we find that the findings of fact recorded by the authorities under the Act cannot be said to be unjustified.

7. In respect of question No. E above, the authorities under the Act has added Rs. 18,002/- on account of higher rate of interest i.e. 18.5% paid by the appellant to his mother as against the market rate of 15%. Learned counsel for the appellant relies upon the judgment of this Court reported as [Commissioner of Income Tax Vs. Sawaran Singh Balbir Singh](#),

8. The learned Tribunal has returned a finding that the Assessing Officer has considered the rate of interest paid by the appellant as higher in comparison to prevalent market rate of interest. The judgment referred is not applicable as a finding of fact has been recorded that the transaction in question is not a genuine and bona fide transaction. The said finding is again the finding of fact. We do not find that even the said question arises for consideration. In view of the said fact, we do not find that any substantial question of law arises for consideration by this Court in the present appeal.