IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No.858 of 2008 & other connected cases being
ITA Nos.693, 806, 813, 821 & 857 of 2008 and
ITA Nos.72, 159 and 160 of 2009
Date of decision: 13.7.2010

Vijay Kumar Sharma.

-----Appellant.

Vs.

Commissioner of Income Tax.

-----Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Mr. S.K. Mukhi, Advocate and
Ms. Jyoti, Advocate
for the assessee.

Ms. Urvashi Dhugga, Standing counsel
for the revenue.

ADARSH KUMAR GOEL, J.

1. This order will dispose of nine appeals being ITA Nos.693, 806, 813, 821, 857 and 858 of 2008 and ITA Nos.72, 159 and 160 of 2009, as all the appeals arise out of common order of the Income Tax Appellate Tribunal, Chandigarh. In I.T.A. Nos.858 of 2008 following substantial questions of law have been proposed by the assessee:-

> "i) Whether on the facts and circumstances, evidences on record and established principles of law the ITAT was justified in confirming the orders of the authorities below in treating the agricultural income to the extent of Rs.2,50,000/- as income from unknown sources

by allowing partial relief despite of the confirmatory statements as recorded by the AO of the genuine cultivators of the agricultural land of the appellant so that the order of the ITAT is perverse and thus unsustainable in the eyes of law in view of the various judicial pronouncements?”

ii) “Whether on the facts and circumstances evidences on record and established Principles of Law, the ITAT was justified in confirming the orders of the authorities below in treating the agricultural income being not in conformity with the prevailing trend and also ignoring the fact that under similar facts and circumstances the said agricultural income having been accepted in future years and thus the findings of ITAT are in direct confrontation with the judgment of the Hon’ble Supreme Court of India in the case of Berger Paints India Ltd. Vs. CIT, 266 ITR 99 (SC)?”

iii) “Whether on the facts and circumstances evidences on record and established Principles of Law, the ITAT was justified in not adjudicating upon the Ground of Appeal No.4 (as per Annexure A-7) as taken before the ITAT?”

2. In other appeals questions of law proposed are identical except in I.T.A. Nos.806, 813 and 857 of 2008 and I.T.A. No.159 of 2009. Additional question relate to correctness of reassessment under Section 147 of the Income Tax Act, 1961 (for short, “the Act”).

3. The assessees are family members and in their returns for the assessment year in question, they claimed their source of income being agricultural income which was partially turned down by the Assessing Authority and addition to the declared income was made by rejecting the plea that their source of income was agriculture to the extent of addition made. The Assessing Officer held the said income to be from undisclosed sources. The finding of the Assessing Officer has been affirmed by the CIT(A) as also by the Tribunal except for reduction in the quantum of additions to the declared income.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellants submitted that appreciation of evidence by the authorities below was not proper, as additions were made only on the statement of purchaser whose claim of sale consideration paid for popular trees was inflated. On the other hand, the evidence furnished by the assessee should have been accepted which was wrongly disbelieved. The assessees had the land and their version that they had income to the extent claimed, should not have been rejected. There was inconsistency in the assessment for different years. He submitted that findings concurrently recorded by the Assessing Officer, Appellate Authority and the Tribunal were perverse.

6. We are unable to accept the submission made. The Tribunal after taking into account the evidence produced, recorded the following findings:-

> "24. We now take up the common grounds of appeal relating to estimate of agricultural income and the income on account of sale of popular trees. There is no dispute about the ownership of agricultural land by the appellants. In the case of Smt. Kamla Devi the agricultural and holdings have been indicated at 54 acres and in the case of other appellants the agricultural land holdings are indicated at approx 18 acres each. The learned counsel for the assessee had claimed before Revenue Authorities as well as before us that the agricultural income was distributed by the joint owners in equal proportion notwithstanding the area owned by each of the co-owners. This claim on behalf of the appellants is contrary to the returned income in the case of appellants. In assessment year 2000-01 the agricultural income in the case of Smt. Kamla Devi has been disclosed at Rs.4 lacs. However, the agricultural income in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma has been disclosed at Rs.5 lacs each for the same assessment year. In the case of Smt. Santosh Sharma the agricultural income has been disclosed at Rs.2 lacs only. It is, therefore, evident that the claim on behalf of the appellants that the agricultural income derived from joint ownership of agricultural land was distributed equally is contrary to the returns of income filed by the appellants. The claim of the assessee in this regard is accordingly rejected.

25. We now proceed to consider the reasonableness of the estimate of agricultural income by the Assessing Officer. It is pertinent to mention that the assessee had claimed that the agricultural land was given on lease for cultivation and fixed amount of money was received from the cultivators. This claim of the assessee is not supported by any written agreement or by the Revenue records. There is no entry in the Revenue records about the agricultural land owned by the appellants having been given on lease. In the absence of any written document and entries in Khasra girdawari (Revenue Record) the Assessing Officer was justified in not accepting the claim of the assessee that the agricultural land owned by the appellants had been given on lease for cultivation. The Assessing Officer, however, has accepted the fact that the land has been cultivated by the assessee as per the revenue records and he has accordingly estimated the agricultural income and in our view his action is justified.

26. The only issue that remains for our consideration is about the reasonableness of the estimate made by the Assessing Officer. It is observed that in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma the agricultural income disclosed by them in assessment year 2001-02 is Rs.2 lacs only. IN the case of Smt. Santosh Sharma, the agricultural income disclosed by her for assessment year 2000-01 is also only Rs.2 lacs only. It is not, therefore, appreciated as to how in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma the agricultural income at Rs.5 lacs each in assessment year 2000-01 has been claimed when the

land holdings are same. It is also pertinent to mention that in the case of S/Shri Bal Bhushan Sharma the agricultural income accepted by the Revenue Authorities for assessment year 1998-99 was Rs.40,000/- only even in appeal.

27. In the light of the above facts we are of the considered view that the estimate of the agricultural income in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma at Rs.2 lacs for assessment year 2000-01 was more than reasonable. We, therefore, uphold the estimation of agricultural income in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma for assessment year 2000-01 at Rs.lacs.

28. In the case of Smt. Kamla Devi the agricultural income disclosed is Rs.4 lacs for assessment year 2000-01. The Assessing Officer has estimated her agricultural income at Rs.2 lacs. It is not disputed that she owns 54 acres of agricultural land as against 18 acres of agricultural land in each case of S/Shri Bal Bhushan Sharma, Vijay Kumar Sharma and Smt. Santosh Sharma. In the case of S/Shri Bal Bhushan Sharma, Vijay Kumar Sharma, the Assessing Officer has estimated the agricultural income at Rs.2 lacs each. We are, therefore, of the considered opinion tha the estimate of the agricultural income in the case of Smt. Kamla Devi is too low. In our view, the returned income at Rs.4 lacs in respect of 54 acres of land is reasonable when we consider that in respect of 18 acres of land owned by in the case of S/Shri Bal Bhushan Sharma, Vijay Kumar Sharma, the Assessing Officer has estimated the agricultural income at Rs.2 lacs each. We, accordingly, hold that

the addition of Rs.2 lacs in the case of Smt. Kamla Devi out of Rs.4 lacs agricultural income for assessment year 2000-01 is not justified. The addition of Rs.2 lacs in the case of Smt. Kamla Devi for assessment year 2000-01 is accordingly deleted. For the same reasons, the income of Rs. 3 lacs disclosed by Smt. Kamla Devi iin assessment year 2001-02 is also considered to be reasonable and the same is accepted. The addition of Rs. 1 lac out of Rs. 3 lacs for assessment year 2001-02 in the case of Smt. Kamla Devi is also accordingly deleted.

29. For assessment year 2001-02 in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma agricultural income of Rs. 5 lacs each had been disclosed against which the Assessing Officer has estimated the same at Rs. 2 lacs each. In our considered opinion view, the estimation of agricultural income for assessment year 2003-04 at Rs.2,50,000/- each would be reasonable. The addition of Rs.50,000/-each in the case of S/Sh.Bal Bhushan Sharma and Vijay Kumar Sharma for assessment year 2001-02 is accordingly deleted.

30. We now proceed to consider the additions made in respect of sale of popular trees. The sale of popular trees has been claimed in the case of Smt. Kamla Devi, in the case of S/Shri Bal Bhushan Sharma and Vijay Kumar Sharma in assessment years 2000-01 and 2001-02. In the case of Smt. Santosh Sharma the sale of popular trees was claimed at Rs.5,49,360/-in the original return. So however, in the revised return no such income has been disclosed. The assessing Officer has made the addition of Rs.5,49,360/-on the basis of the original

return. We shall deal with the case of Smt. Santosh Sharma separately as she has retracted from the claim of sale of popular trees by filing a revised return.

31. In the case of Smt., Kamla Devi, S/Sh. Bal Bhushan Sharma and Vijay Kumar Sharma considerable amount has been shown to have been received on account of sale of popular trees allegedly grown on the agricultural land. The assessee had furnished a photocopy of the receipt signed by Sh.Man Singh as proof for the sale of popular trees. The said receipt was also signed byt Sh.Sham Singh, Halka Patwari and Sh.Charanjit Singh, Sarpanch. The Assessing Officer had made enquiries. Sh.Man Singh who is supposed to have purchased popular trees from the appellants had been summoned and his statement was recorded. In his statement Sh.Man Singh has categorically denied having purchased popular trees from the appellants. The Assessing Officer had given opportunity to the appellants to cross examine Shri Man Singh. So however, the appellants did not bring Shri Man Singh that is their own witness, for recording of any cross examination before the Assessing Officer. The assessee had relied upon the two witnesses who had signed the payment receipt purportedly issued by Shri Man Singh. The statement of Shri Sham Singh Patwari and Shri Charanjit Singh Sarpanch had been recorded by the Assessing Officer. The Halka Patwari, namely Shri Sham Singh had confirmed to have signed the payment receipt at the behest of the appellants in his own office when the receipt had been sent to him through one of the employees of the appellants. Shri Sham Singh Patwari had categorically stated that no

cash transaction had taken place in his presence in respect of the sale of popular trees. He had also stated that Shri Man Singh was not known to him. Shri Charanjit Singh had also stated that no transactions for the sale of popular trees had taken place in his presence. It is thus evident that assessee had failed to establish the receipt of money from Shri Man Singh or any other person on account of sale of popular trees. We hardly need to mention that the burden of proof lies on those who would fail if no evidence was produced. The assessee had furnished evidence in the shape of payment receipt. The said receipt was found to be bogus. No other evidence was produced to establish the genuineness of the receipt of money reflected in the statement of accounts and books of account of the appellants. Needless to say that the burden of proof was upon the assessee to establish the genuineness of the receipts. Reference may be made to the decision of the Supreme Court in the case of CIT Vs. P.Mahanakala, 291, ITR 278 and in the case of CIT Vs. K.Chinnathanban, 292 ITR 682. In the present cases the appellants have failed to discharge onus in regard the receipt of money allegedly to be on account of sale of popular trees.

32. Taking the totality of the facts and circumstances of the case into consideration, we are of the considered view that the appellants have miserably failed to establish the genuineness of the cash receipts on account of alleged sale of popular trees. The addition of Rs.13,81,248/-and Rs.7,85,100/-for assessment year 2000-01 and 2001-02 respectively in the case of Smt. Kamla Devi is thus

fully justified and the same are accordingly confirmed. Similarly, in the case of S/Shri Bal Bhushan Sharma the additions of Rs.5,55,660/-and Rs.5,23,035/-for assessment years 2000-01 and 2001-02 respectively is hereby confirmed. In the case of Shri Vijay Kumar Sharma the addition of Rs.5,38,200/-and Rs.5,12,760/-for assessment years 2000-01 and 2001-02 respectively are also hereby confirmed.

33. In the case of Smt. Santosh Sharma, the Assessing Officer had made an addition of Rs.5,49,360/-for assessment year 2000-01. The assessee had herself not disclosed the said amount in the revised return thereby admitting the claim in the original return to be wrong.

34. The question before us is as to whether on these facts the Assessing Officer is justified in making the addition of Rs.4,59,690/-whereas in the original return the assessee had claimed the receipt of Rs.5,43,690/-on account of sale of popular trees. In the subsequently return no such claim was made. In our considered view, the addition on account of the original return can be made if the assessee had taken credit for the said amount in explaining any expenditure or investment out of the said amount or had taken its credit in any balance sheet if produced. We accordingly, restore the issue relating to the addition of Rs.5,49,360/-in the case of Smt. Santosh Sharma to the file of the Assessing Officer for fresh decision in accordance with law after giving reasonable opportunity of being heard to the assessee.

7. We are unable to hold that the finding recorded by the Tribunal, quoted above, are in any manner perverse. The said findings are pure findings of fact. We, thus, do not find any ground to hold that any substantial question of law arise.

8. In so far as question regarding assumption of jurisdiction under Section 147 of the Act is concerned, the Tribunal placing reliance upon the judgment of the Apex Court in ***ACIT* v. *Rajesh Jhaveri Stock Brokers (P) Ltd.*** [2007] 291 ITR 500 repelled the contention of the assessee and upheld the validity of proceedings initiated under Sections 147/148 of the Act. Nothing could be pointed out which may show that the reasoning of the Tribunal was erroneous in any manner. No substantial question of law arises in that regard as well in these appeals.

9. The appeals are dismissed.

10. A photocopy of this order be placed on the files of each connected case.

(ADARSH KUMAR GOEL)
JUDGE

July 13, 2010 **(AJAY KUMAR MITTAL)**
ashwani **JUDGE**