IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

ITA No. 364 of 2013 (O&M)
Date of Decision: December 05 ,2014

Commissioner of Income Tax, Panchkula
.... Appellant

Versus

Smt. Kailash Grover
.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA AND HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Yogesh Putney, Advocate for the appellant.

Mr. Ravi Shankar, Advocate for the respondent.

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AMIT RAWAL(J)

The revenue has approached this Court by invoking the provisions of Section 260(A) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by challenging order dated 10.5.2013 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh in ITA No. 486/Chd/2011 and ITA No. 356/Chd/2011 in respect of assessment year 2007-08. It has been claimed that the following substantial questions of law would arise for determination before this Court.

(i) "Whether on the facts and in the circumstances of the case the learned ITAT is right in law in deleting the addition made on account of in-genuine expenses as the assessee failed to substantiate the same despite giving opportunity to explain."

(ii) "Whether on the facts and in the circumstances of the case learned ITAT is right in

law in recording the perverse findings contrary to the evidence on record.”

It would be apropos to narrate the facts which have given rise to the present appeal. The assessee had filed a return on 21.10.2007 by declaring an income at of ₹5,72,340/- against a gross receipt of ₹1.12 crores and claimed the expenses of ₹82,00,602/- out of which a sum of ₹60,01,578/- was towards the job work and ₹21,99,024/- was towards fabrication charges. The income of the assessee was assessed under sub Section (1) of Section 143 of the Act on 18.3.2008 and thereafter selected for scrutiny. Accordingly, a notice dated 29.9.2008 under sub Section (2) of Section 143 was issued, which was served upon the assessee, on 30.9.2008. On 7.1.2009 a questionnaire was also served upon assessee and on the basis of the reply to the questionnaire the Assessing Officer issued a fresh notice dated 19.1.2009 under sub Section (2) of Section 143 and sub Section (1) of Section 142 of the Act.

The assessee produced the books before the assessing officer to justify the claim of the expenses. The assessee filed list of 25 persons from whom various works had been done. The assessing officer in order to verify the genuineness of the list, ibid, called for a report through the Inspector who submitted his report dated 24.12.2009.

On the basis of the report the Assessing officer arrived at a conclusion that the assessee had shown fictitious payments purported to be on account of business expenses. The Assessing officer also found that copies of the bills produced by the

assessee appeared to be largely in the same format and thus, arrived at a conclusion, that the assessee concealed the income by not furnishing the correct particulars of its income and accordingly an addition of ₹60,01,578/- to the total income was made and initiation of the penalty proceedings under Section 271 (1) (c) of the Act was also ordered.

Besides disallowing the aforementioned expenses the Assessing Officer also did not accept the contention of the assessee in granting the benefit under various other heads i.e. (i) expenses on account of site rent to the tune of ₹ 11,14,055/-, which assessee was not able to prove and accordingly on fair and reasonable basis the Assessing Officer disallowed a sum of ₹1 lac and the said income was added to the assessee's total income. (ii) expenses of ₹2,26,232/- on account of personal uses expenses the Assessing Officer only caused addition of ₹37,705/-. (iii) expenses amounting to ₹3,03,853/-. However, the Assessing officer while negating the claim of the assessee disallowed a sum of ₹50,000/- and the said amount was added in the assessee's total income. Against the claim of expenses being incurred on running of tempo, assessee had claimed the benefit of ₹1,26,282/-. However, the Assessing officer only disallowed a sum of ₹30,000/- out of the same and it was ordered to be added to the assessee's total income.

The assessee moved an application under Section 154 of the Act before Assessing officer by pointing out that the payment made to M/s Jay Balaji Arts & Publicity was to the tune of ₹6,58,442/- and the said expenses were disallowed twice which

involved a sum of ₹13,16,884/- against a sum of ₹6,58,442/-. The contention of the assessee was accepted by the Assessing officer, accordingly, the assessing officer vide order dated 12.08.2010 rectified the mistake and passed a fresh assessment order.

Aggrieved against the order dated 30.12.2009 of the Assessing officer, the assessee preferred an appeal before the Commissioner of Income Tax (Panchkula). Before the Commissioner the assessee raised the plea of having not been granted reasonable opportunity to justify the expenses claimed and in that regard the Commissioner of Income Tax sought, twice, sought remand report from the Assessing officer, one on 21.6.2010 and second on 17.9.2010. After considering the contention of the assessee as well as the remand reports, the Commissioner partly allowed appeal of the assessee by maintaining the addition of ₹38,94,766/- out of the total addition of ₹60,01,578/- as assessed by the Assessing Officer, whereas, the other additions were upheld.

Both the revenue and the Assessee assailed the order of Commissioner by filing two separate appeals. The appeal filed by the revenue was numbered as ITA No.486/chd/2011 and that of the assessee was numbered as ITA No.356/chd/2011.

The Income Tax Appellate Tribunal vide its order dated 10.5.2013 allowed the appeal of the assessee and dismissed the appeal of the revenue.

Learned counsel for the revenue has submitted that the order of the ITAT is erroneous, and perverse in as much as, the ITAT has not appreciated the order of the CIT in its correct

perspective and therefore present appeal involves a substantial question of law to be answered by this Court. In support of the question of law being proposed,the counsel for the Revenue further submitted that the order of the Assessing Officer was not only fair and just but was based upon the consideration of evidence, report of the Inspector and it found that the format of bill in respect of the charges was same, but the charges were found not to be genuine.

Whereas according to Mr. Ravi Shankar, Advocate appearing on behalf of the respondent supporting the finding rendered by the Income Tax Appellate Tribunal which was passed on appreciation of the remand report and on consideration of the assessment proceedings of previous year i.e. 2006-07 and subsequent year i.e. 2008-09. He further submitted that Commissioner was not justified in not setting the entire additions made by the Assessing Officer, for, while disallowing certain additions, ignored the statement of the persons who had put in appearance on behalf of the firms and proved that they had undertaken work for the assessee.

We have heard learned counsel for the parties and appraised the paper book as well as the order of the Assessing officer, Commissioner of Income Tax and ITAT and are in agreement with the findings rendered by the ITAT as the order of the ITAT is based upon a correct appreciation of the material on record. While allowing the appeal of the assessee the tribunal not only noticed the net profit rate of the assessee for the assessment year 2006-07 but as well as of the subsequent year 2008-09 which had been accepted

by the assessing officer. While accepting expenses claimed by the assessee in respect of the same kind of work got done from various firms.

We have examined the order of the Income Tax Appellate Tribunal and find that it is not only based upon the appreciation of evidence but is also supported by a plausible reasoning. For sake of reference relevant judgment of Income Tax Appellate Tribunal is extracted herein below:-

> We have heard rival submissions and have carefully perused the entire material on record. Both the parties have stuck to their original stand and have reiterated similar arguments which were taken before the ld.CIT(A). After hearing both the sides, we have found that the gross receipts during this period from this business of displaying of hoardings and wall painting etc.is at Rs.1,12,27,378/-. Towards the above receipt the assesee has claimed expenses of Rs.60,36,210/- on account of hoarding and flex structure and Rs.21,64,392/- on account of painting totaling Rs.82,00,602/-. The assessee has shown a gross profit rate of 26.96%, giving a net profit of Rs.5,87,691/-. Hence, the net profit rate has been declared at 5.23%. The A. O.has disallowed an amount of Rs.60,01,578/- and has allowed the balance amount of Rs.21,98,024/- by treating it is genuine expenses and has thus,assessed net income at Rs.67,91,620/- giving net profit rate of 60.49%. In our considered opinion, disallowance of 73.18% out of total expenses is utterly unjust."

It would not be out of place to mention here that the assessee had declared net profit in the previous assessment year i.e.

2006-07 against the gross receipt of ₹84,88,534/- being direct expenses incurred on hoardings and painting were accepted by the revenue as the net profit in that assessment year was 3.56% only. Whereas for the relevant assessment year 2007-08 the net profit rate was shown at 5.23% which was better than the rate accepted in the last year and thus the dis-allowance made by the assessing officer and partly allowed by CIT (A) was found not to be justified. The Tribunal has also agreed with the contention of the assessee that its claim of having incurred expenses towards hoarding, flex structure and paint were a necessary part of business being direct expenses.

The ITAT rejected the claim of the assessee with regard to the other disallowance. It is also a matter of record that the account books submitted by the assessee were not rejected by the assessing officer.

Counsel for the revenue has not cited any judgment in support of his case, thus the discretion exercised by the tribunal is based on relevant consideration and does not suffer from any legal infirmity warranting interference by this Court.

We find no reason to differ with the opinion recorded by the learned Tribunal and thus, the question of law sought to be determined by this Court is answered against the Revenue, accordingly the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

(AMIT RAWAL)
JUDGE

December 05 ,2014
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