

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

I.T.A. No. 203 of 2009 (O&M)

Date of decision: November 5, 2009

Commissioner of Income Tax, Karnal ...Appellant

Versus

Balbir Singh Mohinder Singh ...Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE GURDEV SINGH**

Present: Mr. Sukant Gupta, Advocate, for the appellant.

ORDER

1. This revenue has preferred this appeal under Section 260A of Income Tax Act, 1961 (for short, "the Act") against the order of the Income Tax Appellate Tribunal, Delhi Bench "I" New Delhi in IT (SS) No. 381/Del/2005 dated 31.8.2007 for the block period 1997-98 to 2003-04, proposing to raise the following substantial questions of law:-

"Whether on the facts and in the circumstances of the case, the finding recorded by the Ld. I.T.A.T. are perverse and contrary to evidence and statements of parties on record ?

Whether on the facts and in the circumstances of the case, the Ld. I.T.A.T. Was right in law in allowing the appeal of the assessee thereby deleting the addition of Rs. 1,60,000/- made by the Assessing Officer and confirmed by the CIT (A) ?"

2. During the course of checking by the police, cash was found with the respondent, which was seized under Section 132 of the Act. The

same was followed by the assessment under Section 158BC/BD for block period 1997-1998 to 2003-2004 and declaration of the amount as undisclosed income. The CIT (A) partly allowed the appeal of the respondent but the Tribunal accepted the explanation in entirety and held that the amount was not undisclosed income. The observations of the Tribunal are as under:-

“...In the present case the assessee has satisfactorily explained the source of money recovered from him. At the same time it is clear from a reading of Section 69 that before the amount is said to be unexplained and is added as income of the assessee, opportunity should be provided to the assessee to explain the source. The assessee's income is to be assessed by the assessing officer on the basis of material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement of third party unless and until there is a material to corroborate that statement. The mere fact that one of the accomplices tendered inconsistent statement that itself cannot be treated as having resulted in an irrebuttable presumption against the assessee specially when in the receipt seized alongwith the money names of these persons are mentioned, the statements of these persons were duly recorded and they were examined by the assessing officer. Now, under this situation, it can be said that burden shifted to the revenue. For this proposition, we can draw support from the decision in the case of CIT Vs. N.Swamy (241 ITR 363) (Mad) and the decision in CIT Vs. Daya Chand Jain Vaidya (98 ITR 280)

(All).”

3. We have heard learned counsel for the appellant.
4. The above finding of the Tribunal has not been shown, in any manner, to be perverse. The questions proposed cannot be held to be substantial questions of law.
5. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 5, 2009
prem

(GURDEV SINGH)
JUDGE