Sushil Kumar Vs. V.

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Court : Punjab and Haryana

Decided On : Aug-01-2013

Appellant : Sushil Kumar

Respondent : V.

Judgement :

ITA No.86 of 2012 -:

1. :- IN THE HIGH COURT FOR THE STATESOF PUNJAB AND HARYANA AT CHANDIGARH ITA No.86 of 2012 (O&M) 1.

Sushil Kumar ..Appellant v.

Commissioner of Income Tax, Karnal ..Respondent 2.

ITA No.87 of 2012 (O&M) Naresh Kumar Jain ..Appellant v.

Commissioner of Income Tax, Karnal ..Respondent Date of decision: August 01, 2013.

CORAM: HON'BLE Mr.JUSTICE RAJIVE BHALLA HON'BLE Mr.JUSTICE DR.

BHARAT BHUSHAN PARSOON Present: Shri Pankaj Jain, Advocate for the appellant.

Dr.

Bharat Bhushan Parsoon, J.

These two income tax appeals under Section 260A of the Income Tax Act, 1961 (for short, the 1961 Act) are directed against order of the Income Tax Appellate Tribunal, Chandigarh Bench-A, Chandigarh passed in ITA No.718/CHD/ 2011 dated 28.9.2011 for assessment year 2007-08.

Both these appeals are being decided by this common judgment as matter in issue to be adjudicated is the same.

For convenience and clarity, facts have been taken from Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

2. :- ITA No.86 of 2012 and decision is being rendered in both the said appeals.

Facts of the case: The appellant, who is a proprietor of the firm, is a commission agent, engaged in the business of trading in foodgrains.

On 19.1.2007, a survey under Section 133-A of the 1961 Act was carried out on the business premises of the appellant.

During the couRs.of survey proceedings vide letter Annexure A-1, there was surrender of an amount of Rs.6.00 lacs.

Later on, the said amount was disclosed by the assessee by crediting it in profit and loss account vide Annexure A-2.

Return of income was filed by the assessee declaring an income of Rs.87,997/-.

Scrutiny proceedings which were initiated by way of issuance of notices under Sections 143(2) and 142(1) of the 1961 Act culminated in assessment at an amount of Rs.29,93,210/- vide order dated 30.12.2009 (Annexure A-4) .

Aggrieved by this assessment order, challenge to the same was made before the Commissioner of Income Tax (Appeals).Karnal.

Accepting some of the pleas of the appellant- assessee, his appeal was partly allowed vide order dated 28.3.2011 (Annexure A-6).This order was unsuccessfully challenged by the assessee as also by the revenue.

Order of the Income Tax Appellate Tribunal is of 28.9.2011 (Annexure A-8) vide which the appeal was dismissed while appeal of the assessee was partly allowed.

Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

3. :- The present Income Tax Appeal has been preferred by the assessee raising the following questions of law:- Questions of law proposed by the Assessee: 1.

Whether under the facts and circumstances of the case, the Tribunal order is sustainable in law while upholding the action of the Assessing Officer for rejection of books of accounts u/s 145(3)?.

2. Whether under the facts and circumstances of the case, the Tribunal order is sustainable in law by dismissing the appeal of the assessee for upholding the addition of Rs.3,39,954/- out of Rice Permal Account and Rs.1,97,364/- out of Rice sold out of State Account, which is contrary to the material on record?.

3. Whether the decision of CIT versus Ram Sanehi Gian Chand, (1972)86 ITR 72.(P&H) is a binding precedent for the proposition of law regarding getting the 'advantage of surrendered amount' against the amount deposited in banks on various dates after the date of surrender?..

When the matter is analyzed in the interface of all the facts of the case, it transpires that the proposed questions of law neither concern law not have legal implications; rather the entire dispute in these appeals revolves around only the factual matrix and in fact have no connection with law.

Plea of the Assessee: Contention of the assessee is that his books of accounts were wrongly rejected whereas those were maintained by it in the regular couRs.of business.

It is claimed that corresponding account books of the parties (to whom sale of paddy and rice was made) had also been gone through by the Assessing Officer and no defect was found therein even after cross verification from the delivery and transit challans of Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

4. :- form ST-38, as also on verification of payments from the bank accounts.

It is further averred that the method of market value of the sold rice adopted by the Assessing Officer was wrong as in such a case, rate of parties would generally differ.

It is contended that due to financial constraints andalso the fact that the appellant-firm had suffered losses in the past some yeaRs.the assessee had sold its stock at the price, whatsoever became available in the market so as to clear the stocks.

Plea of the Revenue: Whereas plea of the revenue per contra is that the assessee had fudged the accounts and that it had also been indulging in under-billing.

It is explained that neither books of accounts of the assessee could be tallied with the corresponding entries from the traders with whom it had been transacting business not from the allied agencies of sales tax Department as also from the banks.

Appraisal of rival claims - discussion follows: When rival claims of the parties are examined on the canvass of stark facts, it is found that the assessee during survey operations had declared an additional income of Rs.6.00 lacs over and above his normal profits.

During the survey, certain books of accounts and other documents of the assessee were also impounded.

It was revealed that the assessee had not been maintaining books of accounts.

It had also not accounted for the incriminating documents.

Sequelly, correctness and genuineness of the books of accounts of the Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

5. :- assessee had rightly come under a question-mark.

When no regular books of accounts e.g.cash book, ledger etc.had been produced by the assessee on the date of survey, it is evident that these books were prepared later on so as to derive credit from concealed income and were product of an afterthought.

Invoking provisions of Section 145(3) of the Act, the Assessing Officer had come to a firm finding that no reliance could be placed on the entries in the said books of accounts of the assessee.

Many defects were noticed and pointed out in such books of accounts of the assessee and as such actual gross profits could not be deduced from those books.

As a consequence, the Assessing Officer taking the average rate of rice to be Rs.1,063/- per quintal had taken total sale value of the rice i.e., 1464.44 quintals, to be Rs.15,56,700/- as against Rs.9,52,992/- shown by the assessee and as a result, difference of Rs.6,03,708/- was added to the income of the assessee on account of low selling rate of rice shown by the assessee towards taxable income.

Similarly, on account of rice (O/S).the assessee had shown the sale of 1954.10 quintals for Rs.16,09,357/- @ Rs.824/- per quintal, whereas the assessee itself had purchased such rice @ Rs.1,047.20 per quintal.

The Assessing Officer had found that when the assessee had purchased this quality of rice at a higher rate, it could not have sold the same at lower rate of Rs.824/- per quintal.

Conclusion drawn by Assessing Officer was that the assessee had shown lower Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

6. :- selling rate with a difference of Rs.101/- per quintal, of 1954.10 quintals of rice for which the difference came to Rs.1,97,364/-.

The assessee had not been able to explain this difference.

Accounts books of the debtors having business with the assessee were found to be divergent with the entries of the books of accounts of the assessee.

Consequently, finding that the assessee had concealed income to the extent of Rs.1,97,364/-, the same was added in its income for the purpose of tax.

Certain incriminating documents had also been found in the premises of the appellant-assessee during the couRs.of survey proceedings and those were then impounded.

Transactions recorded in the said incriminating documents were found to be worth Rs.12,94,775/-.

Reply filed by the assessee was not found to be genuine and acceptable as no details of purchase, sale, quantity and rate of such recorded transactions were given.

Sequelly, addition of Rs.12,94,775/- was disallowed under Section 69 of the Act and the said amount was added towards taxable income.

It was also found from certain other incriminating documents that certain transactions had been found recorded therein, for which there was no corresponding entries available in the books of accounts of the assessee.

Sequelly, difference of Rs.2,68,504/- was disallowed under Section 69 of the Act and was added to the income of the assessee.

On submission of income tax return by the assessee Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

7. :- after the survey proceedings, it was noticed that the assessee had deposited Rs.10.30 lacs in cash, as per details given hereunder:- Sr.not Date of deposit Amount (Rs.

20. 03.2007 3,00,000/

23. 03.2007 1,30,000/

26. 03.2007 1,00,000/

16. 03.2007 5,00,000/- Plea of the assessee on this count was that entries from No.1 to 3 pertained to surrendered income, whereas entry No.4 showed cash received from a trader for consignment sent on 15.3.2007.

When called upon to explain, the assessee could not furnish any acceptable explanation as to how the cash shown in the table as above, was generated.

It was explained by the assessee that receipt of Rs.5.00 lacs on 16.3.2007 was on account of advance taken from a trader for whom goods had been consigned for sale.

Sequelly, cash to the tune of Rs.5.30 lacs remaining unexplained was taken as income from undisclosed source under Section 68 of the Act and was added to the income account of the assessee.

From the incriminating documents impounded during the couRs.of survey, certain bills were found in cash purchase exceeding Rs.20,000/- but those had not been shown by the assessee in its books of accounts, details thereof are as under:- Sr.not Nature of payment Payment made Amount against bill not Truck freight G.R.No.572 dated Rs.27,300/

31. 08.2006 -do- G.R.No.10,904 Rs.27,000/- 2 dated 31.08.2006 Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

8. :- When the assessee was called upon to explain as to why 20% of the cash purchase made by it from said parties should not be disallowed under Section

40A(3) of the Act, no satisfactory explanation could be furnished.

Thus, a sum of Rs.10,860/-, i.e., 20% of Rs.54,300/- was held to be in violation of the provisions of Section 40A(3) of the Act and was disallowed in respect of expenditure incurred in cash on account of freight paid.

In short, following additions were made in the income of the assessee:- (i) Rs.6,03,708/- (ii) Rs.1,97,364/- (iii) Rs.12,94,775/- (iv) Rs.2,68,504/- (v) Rs.5,30,000/- (vi) Rs.10,860/- Additional income surrendered by the assessee under Sections 69 of the 1961 Act was Rs.6.00 lacs.

For such additions made in income of the assessee, penalty proceedings under Section 271(1)(c) of the Act had also been started against the assessee for furnishing inaccurate particulars of income in its returns.

Out of these additions made by the Assessing Officer, Commissioner of Income Tax (Appeals) had completely approved additions only in respect of serial No.(v) and (vi) and had partly allowed in respect of items at Sr.No.(i) and (ii).During the couRs.of appeal proceedings, it was noticed by the Commissioner of Income Tax (Appeals) that the rice had been sold for more than the purchase price except for Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

9. :- sale made on 4.3.2007, i.e., subsequent to the date of survey.

In short, there was no justification offered by the assessee for sale of rice @ Rs.630/- per quintal which had been purchased by it during the year itself for Rs.925/- per quintal.

The Assessing Officer had taken the sale price of the rice to be Rs.1,035/- but the CIT(A) had rejected the said price and had taken the rice to be sold for Rs.931/- per quintal.

Accepting the plea of the assessee to this extent, the Commissioner of Income Tax (Appeals) had remitted this matter to the Assessing Officer for working out the additions on this count.

Additions made as per details at Sr.No.(iii) and (iv) on the back page were deleted.

So far as addition of Rs.5.30 lacs mentioned at Sr.No.(v) is concerned, it was confirmed.

Addition mentioned at Sr.No.(vi) was affirmed.

From the totality of facts and circumstances, it is a clear cut case of manipulation of books of accounts.

At the time of survey, books of accounts had not been found to have been written and these were prepared later on.

Commissioner of Income Tax (Appeals) had been constrained to observe in para 1.10 of its order as follows:- 1.10.

In view of the facts discussed above, the only inference which can be drawn is that the entire exercise was carried out just to set off the additional income declared during survey.

Taking the enitrety of facts in consideration, the loss declared on sale of opening stock of rice is held to be not genuine and hence is disallowed.

Again speaking about ingenuiness of books of accounts in para 3.4 of its order, the Commissioner of Income Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

10. :- Tax (Appeals) had adversely commented against veracity of entries in the books of accounts of the assessee, in the following terms:- 3.4 As discussed above, that books of accounts of the year under consideration were not found to be written on the date of survey i.e.19.01.2007.

The accountant in the statement recorded during survey stated that no cash was available on the appellate firm.

Further no surrender was made on account of unexplained cash.

In view of this fact, cash introduced in the cash book in the month of March cannot be said to be covered by the additional income of Rs.6 lakh declared during survey.

Had the unexplained cash been available at the time of survey, the same would have been specified in the letter of surrender of income filed by the appellant after survey with the department.

The plea of the appellant is, therefore, not tenable and hence cash of Rs.5.3 lakh introduced in the cash book in March 2007 is held to be income from undisclosed ources and hence addition thereof made by the AO is, hereby, confirmed.

Before the Income Tax Appellate Tribunal, the assessee had not been able to put forth any defence, much less strong enough, to persuade the said authority to return a finding in its favour except with regard to relief of Rs.10,860/- out of freight account.

During the couRs.of appeal proceedings in this Court, counsel for the assessee has made a vigorous endeavour to take us through the text of order of Commissioner of Income Tax (Appeals) as also of Income Tax Appellate Tribunal to persuade us that the books of accounts were genuine and had periodically been got audited from an independent agency and were also subject to scrutiny by the sales tax authorities as he was also a dealer having sales tax Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

11. :- number as a dealer under Haryana VAT Act 2003 and Rules thereof.

The revenue, on the other hand, has asserted validity and legality of the impugned order of the Tribunal while casting genuineness of books of accounts of the assessee.

Notwithstanding some relief having been given by Commissioner of Income Tax (Appeals) to the assessee, it remains a fact that all the authorities right from the Assessing Officer to the Tribunal have consistently held against the genuineness of the books of accounts of the appellant.

Relevant observations of Commissioner of Income Tax (Appeals) as also of Income Tax Appellate Tribunal have already been reproduced in earlier part of this judgment.

When questions of law framed by the assessee are mapped on the canvass of facts and circumstances of this case, it turns out to be clearly a case which has no legal implications to be resolved and rather is entirely dependent upon fact situations which have adequately been dealt with by the statutory authorities within the sweep and domain of their jurisdiction.

Conclusion: When the questions proposed by the appellant have neither legal contours not have any legal aspect to be discussed, debated or decided or legal complications to be resolved, these questions framed in this appeal, cannot be termed as questions of law much less substantial questions of law.

When Assessing Officer had rejected books of accounts of Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh ITA No.86 of 2012 -:

12. :- the assessee under Section 145(3) of the Act and this finding of fact has been affirmed consecutively by the two statutory appellate authorities which had then proceeded to deal with the entries in such books of accounts under different heads and had rendered their verdicts which have no potential for exposition of any legal theory or concept, the appeal is not maintainable under Section 260A of the Act.

In view of above discussion, we find that since no substantial question of law arises for consideration in this appeal, this appeal is sequelly dismissed.

[Dr.

Bharat Bhushan Parsoon].Judge [Rajive Bhalla].August 01, 2013.

Judge kadyan Kadyan Vinot Kumar 2013.08.19 11:33 I attest to the accuracy and integrity of this document Chandigarh