(2010) 07 P&H CK 0201

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 220 of 2010

Bachittar Singh APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:
Income Tax Act, 1961 — Section 132(4), 133A, 260A

Citation : (2010) 236 CTR 587 : (2010) 328 ITR 400

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Radhika Suri, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Assessee u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against the order dated June 18, 2008 passed by the Income Tax Appellate Tribunal, Chandigarh Bench in I.T.A. No. 224/Chd/2007, for the assessment year 2003-04, proposing to raise the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in sustaining the addition of Rs. 19 lakhs made solely on the basis of the statement of the Assessee recorded on March 21, 2003 which was retracted on May 28, 2003, which was recorroborated by evidence collected during the course of survey, contrary to the ratio of the Supreme Court in Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and Another,

(ii) Whether the hon''ble Income Tax Appellate Tribunal was correct in law in sustaining the addition of Rs. 19 lakhs when the Assessee was able to explain the source of investment through entries made in his gatta diary which was seized during the course of survey and therefore could not be fabricated ?

(iii) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in ignoring the decision of its co-ordinate

Bench given in identical circumstances arising out of the same survey conducted on March 21, 2003 ?

2. The Assessee is an individual. In the course of survey u/s 133A of the Act, he gave a statement on March 21, 2003 surrendering for taxation a sum of Rs. 19 lakhs. He stated that he had purchased Shop No. 5-A, New Cloth Market, Ambala City for Rs. 24 lakhs jointly with his brother and source of investment was not reflected in the books of account. Later, the Assessee sought to resile from the said statement by taking a stand that he had agricultural income to that effect and investment was from that source. He had done potato business which was evidenced by entries in a diary found during the survey. He also produced other evidence in support of his claim. The Assessing Officer rejected this stand holding that there was a long gap between the statement made originally on March 21, 2003 and retraction of the said statement on May 28, 2003, and the stand taken was an afterthought. Reliance was placed on the judgment of the Allahabad High Court in DR. S.C. GUPTA Vs. COMMISSIONER OF INCOME TAX, . On appeal, the Commissioner of Income Tax (Appeals) upheld the plea of the Assessee that earlier statement was incorrect and the resiled statement was supported by diary recovered during the survey. On further appeal, the Tribunal reversed the view taken by the Commissioner of Income Tax (Appeals). It was held that the burden was on the Assessee to establish that the admission made by him during the survey was wrong. The Assessee had failed to produce the books of account or contemporaneous record of the period during which agricultural income was earned. The statement having not been retracted at the earliest opportunity, voluntary statement made in the presence of family members was an important piece of evidence which could not be brushed aside. It was held that the statement of the Assessee was material during survey and could be basis of assessment when the Assessee had not maintained regular books of account, as held by this Court in Surinder Kumar Charanjit Kumar Vs. Commissioner of Income Tax, .

3. We have heard learned Counsel for the Appellant-Assessee.

4. Learned Counsel for the Assessee vehemently submitted that the statement made during the survey could be retracted and could be proved to be wrong. It was also submitted that the said statement was not at par with the statement made u/s 132(4) of the Act on oath. Reliance has been placed on the judgment of the hon''ble Supreme Court in Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and Another, and the judgment of the Delhi High Court in Ester Industries Limited Vs. Commissioner of Income Tax, , in support of the submission that admission wrongly made could be withdrawn. Reliance has also been placed on the judgment of the Madras High Court in The Commissioner of Income Tax Vs. S. Khader Khan Son, , to submit that the statement u/s 133A stands on a different footing from the statement made u/s 132(4) of the Act and had no evidentiary value, per se.

5. We do not find any merit in the submissions made. The Tribunal categorically

held that in the facts and circumstances, the order of the Commissioner of Income Tax (Appeals) could not be upheld as retraction from the statement had to be at the earliest opportunity in the absence of which voluntary statement recorded in the presence of family members was an important material which could be acted upon. The relevant observations are:

It is not the case that the Assessee produced the records, books of account or the Income Tax record of the period when the Assessee claimed to have done potato business by claiming bad debt. As far as the question posed by the learned Commissioner of Income Tax (Appeals) in his order, ''whether the Assessee can retract his statement'' the obvious reply is ''yes'' but that should be at the earliest opportunity when the statement was recorded or at least within a reasonable time, consequently, the voluntary statement that too recorded in the presence of family members and counsel is an important piece of evidence which simply cannot be brushed aside unless and until otherwise is proved. Identical ratio was laid down by the hon''ble jurisdictional High Court in the case of Surinder Kumar Charanjit Kumar Vs. Commissioner of Income Tax, , on surrender of amount during Income Tax survey operation, though on adoption of gross profit rate, the Tribunal was held to be justified. Therefore, under the facts, onus is on the Assessee and not on the Revenue to substantiate its claim. In the light of the aforesaid facts and judicial pronouncements, on the impugned issue, we reverse the order of the learned Commissioner of Income Tax (Appeals) and restore the stand of the learned Assessing Officer.

6. It is not disputed that the statement was made by the Assessee at the time of survey, which was retracted on May 28, 2003, and he did not take any further action for a period of more than two months. In such circumstances, the view taken by the Tribunal that retraction from the earlier statement was not permissible, is definitely a possible view. The mere fact that some entries were made in a diary could not be held to be sufficient and conclusive to hold that the statement earlier made was false. The Assessee failed to produce books of account which may have been maintained during regular course of business or any other authentic contemporaneous evidence of agricultural income. In the circumstances, the statement of the Assessee could certainly be acted upon.

7. As regards the judgments in Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and Another, and Ester Industries Limited Vs. Commissioner of Income Tax, relied upon by the Assessee, even though it may be open to show an earlier statement or an entry to be erroneous, in the present case, the Tribunal was justified in holding that the earlier statement was not proved to be incorrect. As regards the judgment of the Madras High Court in The Commissioner of Income Tax Vs. S. Khader Khan Son, , we are of the view that even if the statement u/s 133A was not at par with the statement u/s 132(4) and did not have that evidentiary value, such statement cannot be held to be irrelevant material so as to be ruled out of consideration in totality of facts, particularly in the absence of regular books of account. The Tribunal rightly followed the observations of the

Allahabad High Court in DR. S.C. GUPTA Vs. COMMISSIONER OF INCOME TAX, and of this Court in Surinder Kumar Charanjit Kumar Vs. Commissioner of Income Tax, . Thus, having regard to the facts and circumstances of the case, the view taken by the Tribunal cannot be held to be perverse or illegal.

8. No substantial question of law arises.

9. The appeal is dismissed.

