(2009) 07 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

N.W.W. — RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:
Income Tax Act, 1961 — Section 133A, 260A

Citation : (2009) 315 ITR 467

Hon'ble Judges : Daya Chaudhary, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The Revenue has preferred this appeal u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, dated November 27, 2008, passed in I.T.A. No. 109(ASR)/2008 (Deputy Commissioner of Income Tax, Circle-II, Bhatinda v. N.W.W., Bhagat Singh Chowk, Abhor), for the assessment year 2004-05, proposing to raise the following substantial questions of law:

(i) Whether, on the facts and circumstances of the case, the Department is under obligation to accept any amount of surrender income which is not based on the documents found in the survey u/s 133A ?

(ii) On the facts and circumstances of the case whether the learned Income Tax Appellate Tribunal is justified in not giving any finding on the issue of unrecorded sales when the Commissioner of Income Tax (Appeals) order is not a speaking order on this issue, particularly as how returned income of Rs. 2,18,162 is sufficient to cover profit and initial investment of the unrecorded sales of Rs. 38,36,534?

2. A survey was conducted u/s 133A of the Act on December 4, 2003, at the premises of the assessee. In pursuance thereof, the assessee made a surrender with condition that there will be no penalty or prosecution. It has been found by the Commissioner of Income Tax (Appeals) as well as the Tribunal that the

surrender was accepted. However, the Assessing Officer added taxable income over and above the surrendered amount, which was deleted by the Commissioner of Income Tax (Appeals) as well as by the Tribunal.

3. We have heard learned Counsel for the appellant.

4. Learned Counsel for the appellant submits that the finding of the Commissioner of Income Tax (Appeals) as well as the Tribunal is against the record and there was no acceptance of the surrender and the Assessing Officer was justified in making the addition, over and above the surrendered income.

5. We are unable to hold that any substantial question of law arises. There is a concurrent finding of fact that the Department had accepted the surrendered income and if the finding is against the record, the remedy of the appellant is to apply for rectification and not by way of this appeal.

6. The appeal is accordingly dismissed.