(2010) 01 P&H CK 0207

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

S. Harjit Singh — RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Evidence Act, 1872 — Section 114, 144
Income Tax Act, 1961 — Section 260A

Citation : (2010) 192 TAXMAN 290

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The revenue has filed the instant appeal u/s 260A of the Income Tax Act, 1961 (for brevity the Act) challenging order dated 30-6-2009 passed by the Tribunal, Chandigarh Bench, Chandigarh in ITA No. 488/Chd/2008. It has claimed that two substantive questions of law would emerge from the order of the Tribunal which are as under:

(i) Whether the Tribunal is justified in upholding the order of the Commissioner (Appeals), ignoring that the assessee having failed to maintain and on demand produce before the assessing officer, the details pertaining to the receipts of the business, which he was legally obliged to the assessing officer, u/s 114 of the Indian Evidence Act, was justified in taking an adverse view?

(ii) Whether the Tribunal is justified in upholding the order of the Commissioner (Appeals) ignoring the estimate made by the assessing officer, which was more scientific being based on the finding of the ITSC for the assessment years 1993-94 to 1995-96, as against the mere guesswork of the Commissioner (Appeals)?

2. The assessee had filed his return in respect of assessment year 2001-02. On scrutiny, assessment was completed on 16-1-2004 by the assessing officer u/s 144 of The Act. The income of the assessee-respondent was estimated at Rs.

87,655 by making the order dated 2-9-2002 passed by the Settlement Commission for the assessment years 1993-94 to 1995-96. The assessing officer had also allowed depreciation, hire charges and interest out of the same. The assessee filed appeal before the Commissioner (Appeals) and vide his order dated 1-11-2004, he estimated the income per truck at Rs. 22,000. Feeling aggrieved, the revenue filed further appeal and the Tribunal, vide its order dated 30-3-2006, set aside the order of the assessing officer and restored the issue on the file of the Commissioner (Appeals) for passing a speaking order. On remand, the Commissioner (Appeals), vide its order dated 20-3-2008, assessed the income per truck at Rs. 45,000. Both assessee as well as the revenue challenged the order of the Commissioner (Appeals) before the Tribunal against the order dated 20-3-2008. The Tribunal dismissed both sets of appeals by observing that in the absence of books of accounts, there cannot be any cut and dry formula to estimate the income per truck. Accordingly, the order passed by the Commissioner (Appeals) was upheld.

3. We have heard Ms. Urvashi Dhugga, learned counsel for the revenue at a considerable length and find that no question of law much less a substantive question of law u/s 260A would arise for determination of this Court. In respect of the assessee-respondent, the Commissioner (Appeals) has observed while referring to the application filed before the Settlement Commission that assessee used to declare additional income from all sources although main source of his income has been from trucks. The following sources have been mentioned by the Commissioner (Appeals) in its order, namely:

(i) The efforts to arrange finance to the other transporters/truck owner.

(ii) By helping the other transporters to procure route permits.

(iii) To extend help to the other transporters for running transportation business.

4. The Commissioner (Appeals) has further noticed that assessee has been doing the business of plying of truck for a number of years and had gained rich experience. It did not bifurcate the gross income declared before the Settlement Commissions head-wise by including income from his main business of plying of trucks. The Settlement Commission concluded that keeping in view the past history of the case, nature of assessees business, income offered by the assessee before the Settlement Commission and income declared from truck business by other family members of the assessee the only basis for ascertaining his income would be a fair estimation of income per truck. Naturally, there could not have been any mathematical formula with the assessing officer nor the appellate authority could arrive at the estimation of. income per truck especially when there are no books of accounts maintained by the assessee. Commissioner(Appeal) then proceeded to conclude as under:

10. After considering the facts of the case, and further that assessee has not given any bifurcation of headwise receipts as declared before the Hon''ble Commission it would be fair if the receipts are taken at Rs. 45,000 each in

respect of 50 trucks. However, in respect of 2 trucks the receipts are taken by the assessee himself at Rs. 1,50,000 each. Thus the total receipts would workout to Rs. 25,50,000 i.e., (Rs. 45,000 x 50) + (1,50,000 x 2). However, depreciation and interest including hire charges have to be allowed. The assessing officer is directed to work out the total receipts accordingly.

11. It may be submitted that two other family members of the assessee namely S/Shri Kesar Singh and Fateh Singh were also in the same business i.e., the business of plying of trucks/transportation. The average receipts in respect of 42 trucks in the case of Shri Kesar Singhand 34 trucks in the name of Shri Fateh Singh has been adopted @ Rs. 55,000 each. However from the figure of depreciation claimed by these two persons (Rs. 13,29,244 in the case of Kesar Singh and Rs. 6,90,825in the case of Fateh Singh) it appears that the trucks owned by these two family members of the assessee were comparatively of lower age as in the case of the assessee as the assessee has claimed depreciation of Rs. 3,99,240 in respect of total 52 trucks. This shows that the vehicles owned by the assessee were old as compared to the vehicles owned by the other two family members of the assessee named above. And this is a basis considered for adopting the average truck receipts @ Rs. 45,000 pertruck in respect of 50 trucks in the present case.

5. The revenue approached the Tribunal against the aforesaid view of the Commissioner(Appeal). The appeal of the revenue has been dismissed by holding that when there is an estimation of income because of absence of books of accounts then a difference in opinion is liable to result. In order to put an end to the litigation, the Tribunal upheld the order of the Commissioner (Appeals) and dismissed the appeal filed by the revenue namely ITA No. 488/Chd/2008 in respect of assessment year 2001-02. The basic reason is that the matter had already been remanded and the Commissioner (Appeals) had almost estimated double amount of income per truck as compared to the amount worked out earlier.

6. The only argument raised by learned counsel for the revenue is that the rate of income per truck worked out by the Settlement Commission should have been made the basis as was done by the assessing officer. The aforesaid argument overlooks the fact that the assessee used to declare additional income from all other sources apart from income from main source i.e., plying of trucks. In that regard, reference has been made by the Commissioner (Appeals) to the application filed by the assessee which shows that income from three other sources also used to be claimed namely, income from consultation services to the other transporters/truck owners, income from other transporters for the help rendered to procure route permits and income from the help rendered to other transporters for running transportation business. It was on the basis of the aforesaid factors that the total income worked out by the Settlement Commission was not taken into account and, therefore, the argument raised by the revenue is devoid of merit. In a case of this nature, there cannot be any legal formula for

working out the income and the Tribunal has taken correct view by adopting the opinion expressed by the Commissioner (Appeals).

7. We find that no substantive question of law would arise warranting admission of the appeal.

Accordingly, the appeal fails and the same is dismissed.

