

(2016) 02 P&H CK 0465

In the Punjab And Haryana At Chandigarh

Case No : I.T.A. Nos. 396 and 407 of 2015 (O&M)

Gurdev Agro Engineers

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Income Tax Act, 1961 — Section 133A

Citation : (2016) 387 ITR 218

Hon'ble Judges : Mr. Ajay Kumar Mittal and Mrs. Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Mr. Divya Suri, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of two appeals bearing ITA Nos. 396 and 407 of 2015 as according to learned counsel for the appellant :- the issue involved therein is identical. For brevity, the facts are being extracted from I.T.A. No. 396 of 2015.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 17.9.2014 (Annexure A-10) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in I.T.A. No. 781/CHD/2009 for the assessment year 2006-07 claiming the following substantial questions of law:-

I. Whether under the facts and circumstances of the case, the Tribunal order is sustainable, whereby the inferences drawn relying on the uncorroborated and unilateral statement recorded during survey u/s 133A, can it form the only basis for bringing to "charge" (u/s 5) the amount as "income"?

II. Whether under the facts and circumstances of the case, there is abuse and mis-utilization of the powers and jurisdiction u/s 133A(3)(iii) r.w. 132(4) Section 292C [inserted by Finance Act, 2007 w.e.f. 01.10.1975] and provisions of Section

164 of Cr.P.C. and in pursuance to CBDT Instruction No. 286/2/2003-IT(Inv.) dated 10.3.2003 while obtaining the statement and the subsequent utilisation thereof while arriving at the chargeable income to tax?

III. Whether under the facts and circumstances of the case on examination of the provisions u/s 29, 44AA, 44AB, 139(1), 145 of the Income Tax Act, 1961, the chargeable income is sustainable on the basis of the statement recorded in survey which is contradictory to the records of the return of income accepted by the respondent department?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is a partnership firm and is engaged in the business of manufacturing and selling of agricultural implements. The method of accounting is mercantile whereby the financial statements are being compiled on the basis of cash book, ledger as required under Section 44AA of the Act which is supported with vouchers and necessary evidences to substantiate the same. A survey under Section 133A of the Act was conducted on 27.9.2005 at the business premises of the assessee and the statements of Shri Gurvinder Singh and Shri Gurdev Singh (partner), Annexure A-1, was recorded. A retraction letter dated 6.1.2006 (Annexure A-2) was addressed to the Assessing Officer, i.e., Income Tax Officer, Sangrur, prior to the commencement of the assessment proceedings. In pursuance to the initiation of the assessment proceedings, the assessee filed return of income on 31.10.2006 declaring nil income and subsequently on 27.7.2007 a notice under Section 143(2) of the Act was issued to the assessee. The Assessing Officer vide order dated 31.10.2008 (Annexure A-3) framed the assessment under Section 144 of the Act and made various additions amounting to ` 28,89,527/-. Feeling aggrieved, the assessee filed an appeal on 20.11.2008 (Annexure P-4) before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. The assessee filed written pleadings dated 10.12.2008 (Annexure A-5). The CIT(A) vide order dated 29.6.2009 (Annexure A-7) upheld the order of the Assessing Officer and dismissed the appeal. The assessee assailed the order, Annexure A-7, before the Tribunal by way of an appeal on 23.7.2009 (Annexure A-8). The assessee also filed written submissions dated 7.8.2014 (Annexure A-9) before the Tribunal. The Tribunal vide order dated 17.9.2014 (Annexure A-10) affirmed the findings of the CIT(A) and dismissed the appeal which gave rise to the assessee to approach this Court by way of instant appeal.

4. Learned counsel for the assessee-appellant relied upon the judgment of the Madras High Court reported as Commissioner of Income Tax v. S. Khader Khan son, (2008) 300 ITR 157 and the circular of the Central Board of Direct Taxes dated 10.3.2003 as discussed in the said judgment (Annexure A-11). It was submitted that since the assessee had retracted from the statement on 6.1.2006 whereas the addition has been sustained only on the basis of the confessional statement/surrender made before the authorities during the survey on 27.9.2005, the addition was unsustainable. On the strength of circular dated

10.3.2003 and the notification dated 18.12.2014, it was urged that the admissions of undisclosed income under coercion/ pressure during search/survey is not to be acted upon.

5. After hearing learned counsel for the appellant :- we do not find any substance in the said contention. The Tribunal has noticed that admittedly the evidence found against the assessee could not be explained by the assessee and the surrender of ` 20 lacs was made. Once the assessee was unable to offer any plausible explanation for the sum surrendered during survey merely by relying on the retraction made on a later date, it does not absolve the assessee from its liability. Further, the CIT(A) while upholding the order of the Assessing Officer had recorded a finding that the surrender was made by the assessee based on the material alleged to be in the possession of the Assessing Officer collected during the course of the survey and the said surrender was made voluntarily. Even the bills, cash and supporting documents were found with the assessee which established that the assessee was in possession of assets over and above the assets declared in the books of account against which the surrender in question was made. Furthermore, the retraction is made after more than three months for which no satisfactory explanation has been furnished by the assessee. Retraction to be effective has to be made at the earliest opportunity when the pressure or coercion or undue influence on the person making confession ceases to be operative. Whenever there is delay in retracting from the concessional statement, the onus lies upon the person retracting to show the circumstances that existed for him not to retract earlier.

6. The Assessing Officer, the CIT(A) and the Tribunal had concurrently adjudicated the issues against the assessee on appreciation of material on record. No illegality or perversity could be demonstrated in the findings of fact recorded by the authorities below warranting interference by this Court.

7. Adverting to the judgment in Khader Khan Son's case (supra), circular dated 10.3.2003 and notification dated 18.12.1014 suffice it to observe that in view of the factual matrix as noticed hereinbefore in the present case, they do not advance the case of the assessee-appellant.

8. In view of the above, there is no merit in the appeals and the same are hereby dismissed.

9. There is a delay of 128 days in filing the appeal. CM No. 23038-CII of 2015 in I.T.A. No. 396 of 2015 has been filed for condonation of 128 days" delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.