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**(2008) 02 P&H CK 0015**  
**In the Punjab And Haryana At Chandigarh**

Mahavir Prasad

APPELLANT

Vs

ITO

RESPONDENT

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**Date of Decision :** 01-02-2008

**Acts Referred:**

Income Tax Act, 1961 — Section 143, 147, 148, 260A, 263

**Citation :** (2010) 327 ITR 178 : (2008) 169 TAXMAN 117

**Hon'ble Judges :** Satish Kumar Mittal, J;Rakesh Kumar Garg, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Satish Kumar Mittal, J.—The assessee has filed this appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order dated 26-10-2007, passed by the Income Tax Appellate Tribunal, Bench Delhi, Delhi (hereinafter referred to as "the Tribunal"), in ITA No. 2597/Del/2005 dated 26-10-2007, pertaining to the assessment of the assessee for the year 1997-98.

2. In this appeal, the assessee has raised the following substantial questions of law:

(i) Whether the order is liable to be set aside as it enhances the income of the assessee?

(ii) Whether the order is liable to be set aside as it tends to subject the income to dual taxation?

(iii) Whether the error in the source of income amounts to concealment of income?

(iv) Whether an assessee can be made liable to pay tax on the money which is not the income of the assessee and where the assessee has merely acted as a post office?

(v) Whether the income can be presumed beyond the accepted statement of

accounts?

(vi) Whether the order is liable to be set aside being in non-appreciation and misreading of the facts?

3. We have heard learned Counsel for the appellant and have gone through the orders passed by the assessing officer, Commissioner, Hisar, as well as the Tribunal.

4. In the present case, the assessee filed his Income Tax return for the assessment year 1997-98 on 2-9-1997, which was processed u/s 143(1) of the Act vide order dated 27-2-1998 and a refund of Rs. 1,380 was granted to him. Later on, on the basis of the information gathered from the file of M/s Om Parkash & Co., Charkhi Dadri, it was revealed that the assessee had deposited a sum of Rs. 4,00,000 with the said firm by cheque drawn on Oriental bank of Commerce, Bhiwani and source of such deposit was not verifiable from the return originally filed by the assessee. As such, due to failure on the part of the assessee to disclose fully and truly the facts necessary for the assessment, the proceedings u/s 147 of the Act were initiated and a notice dated 30-3-2001 u/s 148 of the Act was issued to him. In response to the notice, the assessee filed return showing the same income of Rs. 46,100, which was shown in the return originally filed by him. The assessment was completed by the assessing officer vide his order dated 28-3-2003 by making an addition of Rs. 68,000 being the amount deposited in cash in assessee's bank account and thus, the total income of the assessee was taken as Rs. 1,14,100. Later on, the Commissioner, Hisar, while taking the view that the order of the assessing officer was erroneous and detrimental to the interest of the revenue, issued a notice dated 28-2-2005 to the assessee u/s 263(1) of the Act, requiring him to show cause as to why an appropriate order u/s 263 of the Act be not passed in respect of the aforesaid credit shown in the account of M/s Om Parkash & Co. The Commissioner, after hearing the assessee, came to the conclusion that before the assessing officer, the assessee had taken a categorical stand that four credits were received by him from four different persons, namely Sarvshri Vinod Kumar, Parveen Kumar, Banwari Lal and Sushil Kumar. In support thereof, he placed on record letters of confirmations, affidavits, their statements of income etc. As a matter of fact, it was found by the assessing officer that the said stand taken by the assessee was totally wrong, as the said credits did not flow from the aforesaid four persons. However, it was observed that the alleged credits in the hands of the assessee were received to the extent of Rs. 3.08 lakhs from Sarvshri Surinder Sharma and Dinesh Kumar and the said money was advanced by the assessee to M/s Om Parkash & Co. along with an amount of Rs. 68,000, which was deposited by the assessee in cash. Therefore, on the basis of that reasoning, the assessing officer had made addition of Rs. 68,000. The Commissioner, while considering all these facts, came to the conclusion that the assessing officer has wrongly accepted the explanation with regard to an amount of Rs. 3,08,000 and therefore, vide his order dated 28-3-2005, directed the assessing officer to make an addition of Rs.

3,08,000 being unexplained investment over and above the addition of Rs. 68,000 already made as income from undisclosed sources and further directed to initiate penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

5. Against the aforesaid order of the Commissioner, Hisar, the assessee filed an appeal before the Tribunal, which has been partly allowed to the extent of initiation of penalty proceedings u/s 271(1)(c) of the Act, but the remaining part of the order of the CIT has been upheld, while observing as under:

...The case of the assessee before the assessing officer was that four credits were received from four persons, namely, S/Shri Vinod Kumar, Parveen Kumar, Banwari Lal and Sushil Kumar. In support thereof, letters of confirmations, affidavits, their statements of income etc. were filed. Sections 68, 69 and 69A etc. place initial burden on the assessee to explain the source of credit, investment, money etc. There could be two situations, namely, that- (i) no explanation is furnished, or (ii) the explanation is furnished. In the first eventuality, the sum can be charged to Income Tax without any further enquiry. In the second eventuality, the assessing officer has to examine whether the explanation furnished by the assessee was satisfactory or not. There can be any number of possible explanations, but the assessing officer has to consider the explanation on record, more so when such explanation is backed by substantial evidence filed by the assessee. This examination has to be conducted on an objective basis and not on subjective basis. Nonetheless, it has to be examined by the assessing officer whether the explanation was satisfactory or not. Although the bank informed the assessing officer that the credits were received from S/Shri Surinder Sharma and Dinesh Kumar, the explanation of the assessee was not that the amounts were received from these persons. Thus, on the basis of facts available on record of the assessing officer, the explanation furnished by the assessee was not merely not satisfactory but was also false. Such an evidence cannot be because of oversight or loss of memory because positive action was required on behalf of the assessee and the alleged creditors. In such a situation, the credits having been received from Shri Surinder Sharma and Dinesh Kumar could not have been accepted to be the explanation of the assessee, explaining the deposits in the bank in a satisfactory manner. Therefore, the theory that the assessee was merely a conduit for transfer of money from Shri Surinder Sharma and Shri Dinesh Kumar could not have been accepted by the assessing officer on the facts on record. The fact is that the credits were received from certain persons for which there was no satisfactory explanation furnished by the assessee. Rather, the credits were stated to have been received from totally different persons and evidence, including affidavits was created to show that the credits were received from those persons.

6. After hearing Counsel for appellant and going through the impugned orders, we are of the opinion that on the basis of material evidence available on the record, the CIT has recorded a pure finding of fact and on the basis of said

finding of fact, the assessing officer was directed to add a sum of Rs. 3.08 lakhs to the income of the assessee in respect of the credits, which according to the version of the assessee is received from four persons and the said stand was found to be false. Both the authorities have categorically found that in the facts and circumstances of the case, the assessing officer has wrongly accepted that the said amount was received by the assessee from Surinder Sharma and Dinesh Kumar, because the said fact is totally contrary to the stand taken by the assessee and the evidence and material produced by the assessee himself to show that the said credit was received by him from those four persons. Thus, we are of the view that in this appeal, no substantial question of law is arising from the order of the Tribunal.

Dismissed.