(2013) 09 P&H CK 0284

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 522 of 2009 (O and M)

Nirpal Singh — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 266 CTR 108 : (2013) 359 ITR 398

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Ravish Sood, for the Appellant; Vivek Sethi, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 (in short, "the Act"), against the order dated November 28, 2008, annexure A 4, passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal"), in I.T.A. No. 405 (ASR)/2008, for the assessment year 2005-06, claiming the following substantial questions of law: 1. Whether the Tribunal had misdirected itself in law and on facts of the case, by failing to appreciate that the Assessing Officer without rejecting the books of account wherein the investment towards construction of the petrol pump stood duly recorded, nor referring to any material/evidence/information on the basis of which it could be said that the investment reflected by the assessee was understated or suppressed, had therein erred in making a reference to the Departmental Valuation Officer by invoking the provisions of section 142A?

2. Whether the Tribunal is right in law and facts of the case in making an addition of Rs. 5,79,586 in the hands of the assessee-appellant on the basis of the report of the Departmental Valuation Officer, as an unexplained investment u/s 69 of the income tax Act, 1961?

3. Whether the Tribunal is right in law and facts of the case in sustaining the entire addition of Rs. 5,79,586 so made by the Assessing Officer in the hands of the assessee-appellant in the assessment year 2005-06?

Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the appeal, may be noticed. The appellant is an individual. He is running a petrol pump under the name and style of M/s. Aujla Filling Station at Village, Daburji, Kartarpur Road, Kapurthala. During the year under consideration, the assessee filed his income tax return declaring an income of Rs. 1,28,010. The case of the appellant was picked up for scrutiny u/s 143(2) of the Act. The appellant had made investment towards the construction of the aforesaid petrol pump which stood recorded by him in his books of account under the head "building account", "plant and machinery account" and "furniture and fixture account" duly supported by purchase bills/expenses vouchers, etc. The Assessing Officer referred the valuation of the said investment to the Assistant Valuation Officer, income tax Department, Jalandhar. The Assistant Valuation Officer, vide his report dated November 21, 2007, estimated the valuation of the petrol pump building on the basis of which the Assessing Officer made an addition of an amount of Rs. 5,84,586 and thereafter framed assessment u/s 143(3) of the Act at an amount of Rs. 27,16,399, vide order dated December 19, 2007, annexure A1. Aggrieved by the order, the assessee filed appeal before the Commissioner of income tax (Appeals) (CIT(A)). Vide order dated March 27, 2008, annexure A2, the Commissioner of income tax (Appeals) allowed the appeal. Not satisfied with the order, the Revenue filed an appeal before the Tribunal. Vide order dated November 28, 2008, annexure A-4 partly allowed the appeal whereby addition of Rs. 5,79,586 made by the Assessing Officer as unexplained investment u/s 69 of the Act was sustained. Hence, the present appeal by the assessee.

2. Learned counsel for the assessee submitted that the assessee was maintaining books of account with respect to the cost of construction and the Assessing Officer in spite of the same, without rejecting the books of account, had referred the matter to the Departmental Valuation Officer (DVO). It was urged that in view of the judgment of the apex court in Sargam Cinema v. CIT [2010] 328 ITR 513 (SC) this court in Commissioner of Income Tax Vs. Chohan Resorts the Gujarat High Court in Goodluck Automobiles (P) Ltd. Vs. Assistant Commissioner of Income Tax, and the Allahabad High Court in Commissioner of Income Tax Vs. Lucknow Public Educational Society the action in referring the matter to the DVO was bad.

3. On the other hand, the learned counsel for the Revenue supported the order passed by the Tribunal.

4. After hearing learned counsel for the parties, we find merit in the submission made by the learned counsel for the assessee.

5. It was not disputed by the learned counsel for the Revenue that the books of account produced by the assessee were never rejected. The apex court in Sargam Cinema''s case (supra) held that the assessing authority could not have referred the matter to the Departmental Valuation Officer when there was no rejection of books of account maintained by the assessee. It was observed as

under (page 514 of 328 ITR):

In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the Departmental Valuation Officer (DVO) without the books of account being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the Departmental Valuation Officer was misconceived.

6. A similar view was taken in Chohan Resorts, Goodluck Automobiles (P.) Ltd. and Lucknow Public Educational Society''s cases (supra). In view of the above, the substantial questions of law are answered in favour of the assessee and against the Revenue. Accordingly, the appeal is allowed.

