(2014) 01 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 264 of 2013 (O&M)

Rajesh Kumar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 131, 131(1) (d), 133(6), 143(1), 143(3)

Citation : (2014) 01 P&H CK 0061

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Pankaj Jain and Divya Suri, Advocates for the Appellant; Savita Saxena, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—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 29.4.2013, Annexure A.11 passed by the Income Tax Appellate Tribunal, Chandigarh Bench ''A'' (in short, "the Tribunal") in ITA No. 195/CHD/2011 for the assessment year 2007-08, claiming following substantial questions of law:-

"i) Whether under the facts and circumstances of the case, the Tribunal''s order is sustainable while making purchase additions, overlooking the provisions of section 145, and returning unreasonable findings being de hors to the ''material facts'' containing ''material particulars''?

ii) Whether under the facts and circumstances of the case, the Tribunal''s conclusions are unreasonable, while passing ''such orders'' under section 254(1) without exhibiting the ''application of mind'' to the ''material on record'' and being even opposite to the assessment order and CIT(A) order?

2. A few facts relevant for the decision of the controversy as narrated in the appeal may be noticed. The assessee is engaged in the business of trading of bye-products of rice, phak and nakku. The income tax return was filed at an income of Rs. 1,17,680/- which was processed under Section 143(1) of the Act.

The assessee made purchases during the period from 15.2.2006 to 3.2.2007 from M/s. Luxmi Industries, Saroop Singh Wala Road, Guru Harsahai, District Ferozepur. In consequence of the initiation of the assessment proceedings under section 143(3) of the Act, notice under section 133(6) of the Act was issued on 25.8.2009 through speed post to Luxmi Industries, Ferozepur for explaining the transaction. The said notice was received back with the remarks "Refused to receive" and on 9.9.2009, order sheet entry was made requiring the assessee to produce the creditor with books of account for an amount of Rs. 43,15,660/- namely Luxmi Industries. Commission under section 131(1) (d) of the Act was issued through letter No.ITO/W-3/PTA/2009-10/463 to Assistant Commissioner of Income Tax Circle III, Ferozepur requiring verification of the aforesaid amount of liability. Reply was given by the assessee to the effect that Luxmi Industries had been closed since last 6-7 years and therefore no business was done. Second notice issued to M/s. Luxmi Industries was also received back with the remarks ''refused to take delivery''. The statement of the assessee was recorded in consequence to the notice of final opportunity issued on 20.11.2009 wherein assessee furnished copy of account for the subsequent year ending 31.3.2008. The summons under Section 131 of the Act issued through speed post to Dashmesh Transport Company, Guru Harsahai, calling for books, GR, Book Register for verification were received back with the remarks ''there is no such transport company''. The assessment was completed through order under Section 143(3) of the Act making therein addition for purchases amounting to Rs. 43,15,660/- and for Rs. 1,95,925/- towards the freight charges. Aggrieved by the order dated 21.12.2009, Annexure A.3, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 31.12.2010, Annexure A.9, the appeal was allowed. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 29.4.2013, Annexure A.11, the appeal was allowed upholding the assessment order and reversing the findings recorded by the CIT(A). Hence the present appeal by the assessee.

3. Learned counsel for the appellant-assessee submitted following three arguments:-

(i)M/s. Luxmi Industries had paid the tax on the said transaction;

(ii)Notices were sent to M/s. Luxmi Industries but they refused to accept. Therefore, the said firm was in existence; and

(iii)Payments had been made to M/s. Luxmi Industries through cheques.

4. On the other hand, learned counsel for the respondent relied upon decision of this Court in M/s. J.R. Solvent Industries (P) Limited, Sangrur v. CIT, Patiala, ITR No. 105 of 1997, decided on 16.4.2012 to submit that it was a pure finding of fact that no purchases were made from Luxmi Industries, as claimed and, therefore, no substantial question of law arises.

5. After hearing learned counsel for the parties, we do not find any merit in the

appeal.

6. It would be apposite to refer to the relevant findings recorded by the Assessing Officer and the Tribunal.

7. The Assessing Officer while framing assessment vide order dated 21.12.2009, Annexure A.3, noticed as under:-

"2.5. From the above, it is emerged that the purchase invoices issued by M/s. Luxmi Industries, Guru Harsahai, in continuous serial numbers after a gap ranging between one to nine days, on different dates, are not the genuine purchases. Similarly, the GRs issued by M/s. Dashmesh Transport Co., Guru Harsahai in continuous serial numbers after a gap of days ranging between 1 to 9 days are not the genuine one. It may not be out of place to mention here that summons under Section 131 of the Income Tax Act, 1961, dated 3.12.2009 were also issued through speed post to M/s. Dashmesh Transport Company, Guru Harsahai, calling for their books of account, GR books and booking register, for verification, fixing the case for 10.12.2009. However, the said envelop has returned back with the postal authorities remarks ''there is no such transport company''.

Accordingly, an attempt has been made on random basis to check the genuineness of the truck numbers mentioned in the GRs through which the goods have purportedly been transported. Accordingly, information has been called for under section 133(6) of the Income Tax Act, 1961, from district Transport Officer, Sangrur, in respect of the truck numbers pertaining to that station. However, it is noticed that the following Registration Numbers are not of trucks but are the registration number of other vehicles, the detail of which is given as under:-

From the above, it has become very much clear that the GRs issued for carrying the goods are also not genuine as besides having continuous serial numbers, the vehicle numbers mentioned therein are also not of trucks but of some other vehicles."

8. Further, in addition to the aforesaid findings, the Tribunal vide order dated 29.4.2013, Annexure A.11 observed as under:-

"We have heard the rival submissions carefully. The CIT (A) has given his findings vide para 4.4. which is as under:-

''In view of the facts and circumstances of the case and rival submissions of both the Assessing Officer in his remand report and the counsel in his written submissions it is seen that the appellant has to a large extent discharged the onus cast on him for showing the genuineness of the purchases made. The appellant has given plausible and reasonable explanation and has aptly stated that he is not responsible for third party''s acts which are subsequent to the transaction done in the year under consideration. The appellant has fairly explained from the books of account and all necessary vouchers produced before the Assessing Officer regarding the genuineness of the purchases. He has made all possible efforts to produce the necessary evidence to discharge the onus cast upon him to prove the entries in his books of account. In view of the categorical reply of the appellant which has not been rebutted by the Assessing Officer there is no ground to make the impugned addition. No material has been brought on record by the Assessing Officer to show that these are of purchase vouchers not being continuous or GR receipts of transporter not being in order. There has been no conclusive evidence before the Assessing Officer to doubt the genuineness of purchases and treat the same as sham. The Assessing Officer himself has accepted the subsequent payments made by the appellant to the third party in the following Assessing years either in cash or in cheques whereby this liability has been discharged. In view of all the averments of the learned counsel there is no scope left but to treat these purchases as genuinely recorded in the books of account. The addition is, therefore, directed to be deleted.''

A reading of above show that the learned CIT(A) has allowed relief on general observations without meeting the specific points raised by the Assessing Officer. First of all the Assessing Officer categorically gave specific opportunities to the assessee to produce the party i.e. M/s. Luxmi Industries to prove the genuineness of the liability which was not availed by the assessee. Thereafter the Assessing Officer sent enquiry letter under Section 133(6) through speed post which was returned by the postal authorities with the comments ''refused to receive''. The assessee had challenged this fact before the learned CIT(A) without providing any evidence and simply raising the issue that there was no evidence to show that M/s. Luxmi Industries has refused to receive the letter. We are of the opinion that remark of the postal authorities would definitely constitute a good evidence. In any case the Assessing Officer has taken the caution by appointing the commission through ACIT, Circle 3, Ferozepur vide letter NO.ITO/W-3/PTA/2009-10/463 dated 16.9.2009. The comments of the CIT, Circle 3, Ferozepur has been extracted at page 2 of the assessment order:-

''In this regard, an effort was made to call for the books of account by issue of summons under section 131 dated 17.9.2009. The summons could not be served on the said assessee and it was reported by the special messenger of this office that the premises M/s. Luxmi Industries (A Rice Sheller) is stated to have been closed down since last 6-7 years and no business is done there. Another notice sent through speed post has been received back with the comments ''Refused to take delivery''. Then I alongwith my Inspector personally visited Guru Harsahai and found that the premises of M/s. Luxmi Industries, Guru Harsahai is in dilapidated condition and no business is being done there. Local enquiries made revealed that the Rice Sheller has been closed down since long about 5-6 years back. Therefore, in the given circumstances, the information required to be verified could not be verified. This is for your information and necessary action. It is also informed that the jurisdiction over this case vests with ITO, Ward III (1) Ferozepur.

Yours faithfully,

sd/- (Sukhdev Singh) Assistant Commissioner of Income Tax Circle III, Ferozepur.''

We fail to understand why the ACIT Ferozepur would show that Rice Mill has been closed if the same was still in business. This clearly shows that M/s. Luxmi Industries was not functioning at all. This is further verified that the assessee was given final opportunity and the assessee appeared in person on 25.11.2009. In response to Q.No.7 and answer, read as under:

''Q.No.7. In the balance sheet for the financial year 2006-07 relevant for the assessment year 2007-08 a liability of Rs. 43,15,660/- has been shown in the name of M/s. Luxmi Industry, Guru Harsahai (Ferozepur). In this regard, you were required to produce the creditor alongwith his books of account. However, you have failed to produce the creditor. Since the onus to prove the genuineness of liability lies upon you, which you have failed, why the liability of Rs. 43,15,660/- should not be treated as unexplained, please clarify the same?

Answer: In this regard, it is stated that we have purchased phuck and nakoo from M/s. Luxmi Industries, Saroop Singh Wala Road, Guru Harsahai (Ferozepur) during the financial year 2006-07 in bulk. We have tried to locate the said party but it is gathered from the local persons that the said party has closed its business and the whereabouts of the party are not known. As such we are unable to produce the party for verification before you.''

The above clearly show that the assessee had categorically admitted before the Assessing Officer that the said party had closed its business and whereabouts of the party were not known. However, before us, the learned counsel had pointed out to pages 1 and 2 of the paper book which are copies of the accounts of the assessee in the books of M/s. Luxmi Industries in their letter heads. When it was clearly stated that whereabouts of M/s. Luxmi Industries were not traceable then how the assessee was able to obtain these copies of accounts. We fail to understand how the assessee could take a contradictory stand without explaining the reasons for such contradictory stand. Even before us, no plausible explanation was offered to show that how before the Assessing Officer it was stated that M/s. Luxmi Industries was not traceable and whereabouts were not know then how later they were found and some information was obtained from them. We further find that the assessee had shown discharge of liability mainly through cash and cheques of Rs. 7.60 lakhs were paid. All these facts clearly show that infact no purchases were made and it is a case of bogus liability."

It was further observed as under:-

"10. In addition to above the Assessing office has also noticed that M/s. Luxmi Industries had issued bills in a seriatim and the details had been noted at pages 3 and 4 of the assessment order which are as under:-

From above it is clear that the bills from 216 to 236 between the period of one month with gap of 4-5 days in between were issued to the assessee. If M/s. Luxmi Industries was continuously selling the goods then how the bills can be issued to the assessee only. Though it may be correct that sales tax barrier report may pertain to the goods carried out of the State and therefore, would not contain the names of the assessee but at the same time endorsement made at various tax barriers in the form of ''radhari'' are also conspicuously missing from the GRs issued by M/s. Dashmesh Transport Co. (Refer GR at page 12 of the paper book). In these circumstances, we are of the opinion that the learned CIT(A) has wrongly accepted the liability as genuine without giving any reason. Accordingly we set aside the order of the learned CIT(A) and restore that of the Assessing Officer."

9. A perusal of the impugned order shows that the Tribunal after considering the arguments made on behalf of the assessee had rejected the same. No material had been produced to substantiate that payments were made by cheque to M/s. Luxmi Industries. The onus was upon the assessee to have produced the material to establish that the purchases were made from M/s. Luxmi Industries. As noticed by the Assessing Officer, the vehicles on which the alleged goods were said to have been transported were either scooters or tractors and none of them related to the trucks as claimed by the assessee and moreover M/s. Dashmesh Transport Company through whom the goods were said to have been transferred was a non existent entity. The findings of fact recorded by the Tribunal cannot be faulted. In view of the aforesaid pure findings of fact, no interference is called for. No substantial question of law arises.

10. Accordingly, the appeal stands dismissed.

