
(2008) 12 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 318 of 2008

Surinder Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2008) 12 P&H CK 0046

Hon'ble Judges : L.N. Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : R.L. Gupta, for the Appellant; Savita Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 against the order of the income tax Appellate Tribunal, Amritsar Bench, Amritsar passed in ITA No. 255 (Asr.)/2007, dated 8-2-2008, proposing to raise following substantial question of law:- i) Whether the income tax authorities having rejected the books of account while determining income from business should not have relied on the same books of account for the purpose of making the additions towards cash credits of the depositors in the facts and circumstance of the case?

ii) Whether on the facts and circumstances of the case, income tax authorities are right in holding the addition on account of the cash creditors and interest thereon in the facts and circumstances of the case and more so in the face of their findings having rejected the books of account?

While making assessment, the Assessing Officer rejected the books of account of the assessee and computed gross profit by applying flat rate on the total turnover. The Commissioner (Appeals) substantially upheld the order of assessment except to an extent as mentioned therein. The Tribunal also substantially upheld the order of assessment except to an extent indicated. The

Tribunal held as under:-

24. We have heard both the parties and considered the rival contentions, examined the facts, evidence and material placed on record. We have already sustained the trading addition of Rs. 2,28,960 made by the Assessing Officer. We have also upheld the additions of Rs. 1,64,000 made on account of unexplained credits. Besides, the addition of Rs. 71,000 made in respect of squared up accounts has also been upheld in principle subject to working out the addition on the basis of peak credits. The basis and rationale behind sustaining the addition on account of unexplained credits is that money belongs to the assessee and the same has been introduced in the books of account. However, the fact remains that the assessee has been carrying on business and the money generated represents income of assessee from such business. Therefore, if trading addition of Rs. 2,28,960 made by the Assessing Officer is confirmed, the assessee would be entitled to claim benefit of the same against the addition on account of cash credits. Reliance in this regard is placed on the judgment of Hon''ble Supreme Court in the case of Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, , where the Hon''ble Apex Court has observed that the intangible addition made to the book profits during an assessment proceeding, is as much a part of his real income as that disclosed in the books of account. Therefore, the assessee can avail benefit of such addition for explaining the source of investments or of cash credits. Similarly, in the case of Shiv Charan Dass Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Prem Chand Jain, 0 the Hon''ble High Court has held that the assessee would be entitled to claim the benefit of telescoping of the addition for explaining the source of investment or of cash credit. Thus, the action of Commissioner (Appeals) is in conformity with the ratio of the aforesaid judgments of the Hon''ble Apex Court and the jurisdictional High Court. Thus, we do not find any justification to interfere with the order of the Commissioner (Appeals). The same is upheld and this ground of appeal is dismissed.

2. We have heard learned counsel for the parties.

3. The substantial questions of law proposed cannot be held to be questions of law, as there is no inflexible rule that books of account must either be accepted or rejected. In view of infirmity found, result shown in books of account having not been accepted, for making best judgment assessment, entries in books of account could be looked into by the Assessing Officer. Making of assessment differs from case to case and there cannot be any rigid principle.

4. No substantial question of law arises. The appeal is dismissed.