
(2011) 04 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No's. 389 and 390 of 2009

Surinder Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Income Tax Act, 1961 — Section 132(1), 158BC

Citation : (2012) 340 ITR 173

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of I. T. A. Nos. 389 and 390 of 2009 as, according to the learned counsel for the parties, identical questions are involved therein. For brevity, the facts are being extracted from I. T. A. No. 389 of 2009.

2. I. T. A. No. 389 of 2009 was admitted by this court, vide order dated February 17, 2010, for determination of the following substantial questions of law :

1. Whether, on the facts and in the circumstances of the case, the Tribunal acted illegally and perversely in sustaining the addition made by the Assessing Officer on the basis of mathematical and multiplication formula ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in sustaining the addition on account of unaccounted production contrary to the stand of the assessee which stand having been accepted by the Department/Revenue in the assessment years subsequent to the block period ?

3. Briefly stated, the facts necessary for adjudication as pleaded in the appeal are that a search was conducted at the premises of the assessee on March 24, 2000, in pursuance of which u/s 158BC of the income tax Act, 1961 (in short "the Act"), was issued on April 24, 2001, directing the assessee to file returns for

the period from April 1, 1989, to March 24, 2000, relevant to the block period from 1990-91 to 2000-01. The assessee filed his return of income on May 24, 2001, declaring nil income. The assessment was completed at an income of Rs. 2,61,149, vide order dated March 28, 2002. Feeling aggrieved, the assessee filed an appeal before the Commissioner of income tax (Appeals) (hereinafter referred to as "the CIT(A)") who, vide order dated November 15, 2002, while partly allowing the appeal deleted the additions. Against the order of the Commissioner of income tax (Appeals), the Revenue approached the income tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (in short "the Tribunal") who, vide order dated April 25, 2008, partly allowed the appeal. Hence, the present appeal by the assessee.

4. We have heard learned counsel for the parties.

5. The point that arises for consideration in these appeals is whether the Tribunal was right in sustaining the addition which had been made by the Assessing Officer by adopting mathematical and multiplication formula inasmuch as the material which was seized from the assessee relating to 112 days whereas the addition on account of unaccounted production has been made for the entire period during the block period.

6. In the case of the assessee, the Tribunal had applied *mutatis mutandis* the decision in the case of Mohan LaL (IT/SS No. 8/Chandi/2003) being identical on facts. It would be advantageous to refer to the finding of the Tribunal recorded in paragraph 38 of its order (annexure P-3) which reads thus :

The manner in which the addition has been determined by the Assessing Officer has already been noted by us elsewhere in this order and we do not repeat the same for the sake of brevity. The first issue made out by the assessee is that the period for which there is no seized material showing unrecorded sales, no addition should be made for such period. As noted earlier, the search has resulted in unearthing of certain loose papers which contained a record of sales. A portion of the sales admittedly was recorded in the regular books of account. The Assessing Officer has estimated 50 per cent, of the sales recorded in the seized material as being unrecorded sales. Pertinently this aspect has not been disputed by the assessee. The seized material was a set of loose papers running into 162 pages. However, the papers did not contain certain record of transactions of complete 365 days of the year. For instance, for the financial year 1996-97, the loose papers contained the detail of sales of 112 days. The Assessing Officer observed that the record was of different dates and, therefore, for the intervening period the assessee would have made the sales on a similar basis. Hence, his action of extrapolating sales for the entire financial year on the basis of the sales found recorded in the seized material. The Assessing Officer has thus computed the sales for all the financial years comprised in the assessment years relevant to the block period in question. This is disputed by the assessee on the ground that the unrecorded sales be computed only with respect to the available seized material and not on a hypothetical basis. The logic

advanced is that if it is not so done it would mean that income on purely estimated basis is assessed under Chapter XIV-B of the Act, which is impermissible as per law. In our view, this logic is not applicable to the facts of the present case. In paragraph 13 of our order we have referred to two elements which are to be satisfied before an income can be assessed as "undisclosed income" within Chapter XIV-B of the Act. Firstly, income should be such which is undisclosed and, secondly, that such non-disclosure should spring from the search carried out u/s 132(1) of the Act. In the present case, the factum of the assessee making sales outside the books of account stands established on the basis of the material found during the search. Therefore, the income so emerging is liable to be assessed under Chapter XIV-B of the Act. The only issue is that for certain period the material found does not record the sales made outside the books of account. This would not defeat the addition because it is not open to logic that intermittently the assessee was not making sales outside the books of account. Therefore, the resort to the estimation of unrecorded sales for the intervening period is justified. It is noteworthy that the Assessing Officer has not made the addition on this ground for the assessment years comprised in the block period for which there is no seized material at all. Therefore, the objection of the assessee on this count is misplaced.

7. In such cases, some amount of estimate has to be made, however, it should not be unreasonable or arbitrary. The estimate has to have some rational connection with the addition being made. The finding noticed above shows that the Tribunal had adopted a rational basis for determining the unaccounted production for the block period. The view taken by the Tribunal is a plausible and reasonable view in which no perversity could be pointed out.

8. Accordingly, the substantial questions of law are answered in favour of the Revenue and against the assessee. The appeals stand dismissed.