(2016) 11 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : I.T.A. No. 342 of 2016 (O&M)

Swarn Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Citation : (2017) 391 ITR 135

Hon'ble Judges : Mr. S.J. Vazifdar, CJ. and Deepak Sibal, J.

Bench : Division Bench

Advocate : Mr. Sachin Bhardwaj, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Deepak Sibal, J. - Invoking Section 260-A of the Income Tax Act, 1961 (for short "the Act"), the assessee has filed the present appeal, which pertains to the Assessment Year 2009-10 and seeks to raise therein the following substantial questions of law :-

"I. Whether under the fact & circumstances of the case, the Tribunal order is unreasonable while overlooking & neither returning any findings on the ''fact and direct evidence u/s 32 of Indian Evidence Act, 1872 qua the existence of the payee to the capital account transactions u/s 2(14) of the Income Tax Act, 1961 ?

II. Whether under the fact & circumstances of the case, pursuant to the Provisions of Section 2(14), 45(1) r.w Section 51, the advance money arising out of agreement to sell shall be deducted from the ''cost of asset'' and (or) the whole amount is ''chargeable'' to tax u/s 5 as ''revenue receipt'' ?"

2. In the income of the assessee, as filed in his return, additions were made by the Assessing Officer to the tune of Rs. 28.50 lacs on account of unexplained deposits made by him in his bank accounts. On being questioned by the Assessing Officer, the assessee sought to explain the aforesaid deposits by stating that he had received cash on the sale of Plot No. 9, Bhogla Road, Rajpura

(for short ? the Plot) and Shop No.2, Village Chhura (for short ? the Shop). As per the assessee, in pursuance to the agreement to sell the Plot, he had received Rs. 9.50 lacs on 29.01.2009 and Rs. 13.50 lacs on 02.02.2009 from S/Shri Sanjay Kumar, Harbilas and Subhash Kumar. Such cash was deposited by him on the same date in his account but since the deal could not mature, the agreement to sell was cancelled and the amount of Rs. 12 lacs was repaid by the assessee on 02.03.2009. The balance amount was repaid in the Assessment Year 2011-12. So far as the Shop is concerned, it was the case of the assessee that as per the agreement to sell, the assessee had received Rs. 5 lacs from Shri Bhoop Narayan, which was deposited by him in his bank account.

3. On being asked, the assessee could not produce S/Shri Sanjay Kumar and Harbilas, who allegedly along with Shri Subhash Kumar had paid cash to him to the tune of Rs. 23 lacs. Shri Subhash Kumar was produced but he could not explain the source of the cash allegedly given by him to the assessee. He also denied having knowledge of the whereabouts of S/Shri Sanjay Kumar and Harbilas, who incidently, along with him, were also a party to the agreement to sell the Plot. The agreement to sell produced by him was not on judicial paper. As per the address given on the agreement of S/Shri Sanjay Kumar and Harbilas, the Assessing Officer issues notices to them under Section 131 of the Act. However, the summons were received back in the office with the remarks that at the given address of Shri Sanjay Kumar, no such person was found and that the father''s name of Shri Harbilas was not correct. In spite of final opportunity granted to the assessee, he failed to produce the above said two persons.

4. So far as the assessee''s explanation with regard to the receipt of Rs. 5 lacs from one Shri Bhoop Narayan, in pursuance to the agreement to sell of the Shop was concerned, on summons having been issued, Shri Bhoop Narayan appeared but his explanation with regard to the sources of funds was found to be unsatisfactory.

5. In view of the aforesaid facts, the Assessing Officer rejected the explanation of the assessee and ordered the addition of Rs. 23 lacs and Rs. 5 lacs to his income.

6. In addition to the above, a cash deposit entry of Rs. 50,000/- in the bank account of the assessee was found, for which no explanation was furnished by him. The assessee had also received interest of Rs. 22,317/- in his bank accounts, which was not disclosed by him in his income tax returns. The Assessing Officer ordered the addition of these amounts also to the income of the assessee.

7. The challenge made to the aforesaid additions by the assessee before the Commissioner of Income Tax (Appeals) (for short ? the Commissioner) was rejected. The Commissioner confirmed all the aforesaid additions by returning a finding of fact that it was improbable that the advances were received by the assessee from the alleged persons, as sought to be explained by him. No reliance was placed on the agreement to sell produced by Shri Subhash Kumar as the

same was on a plain paper. S/Shri Harbilas and Sanjay Kumar, who, along with Shri Subhash Kumar had allegedly paid advances to the assessee, in spite of repeated opportunities granted to the assessee, were not produced and they remained untraceable. The story set up by Shri Bhoop Narayan was also rejected by the Commissioner as according to him, the same was also improbable. So far as the deposit of Rs. 50,000/- by the assessee in his bank account was concerned, no evidence was found to have been furnished by him to explain the same.

8. The matter was then carried by the assessee before the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short ? the Tribunal). The matter was considered and to the afore-referred concurrent findings arrived at by the Assessing Officer and the Commissioner, the Tribunal also put its stamp of approval. It was found that the assessee had not satisfactorily explained the cash deposits made by him. At least two of the four persons, who had allegedly paid advances to him, were untraceable. The statements of the other two, who did appear before the Assessing Officer, were considered and disbelieved. The alleged agreement to sell with regard to the Plot, on the basis of which, the assessee allegedly had received Rs. 23 lacs, was considered and rejected. It was found that the assessee had failed to prove the genuineness of the alleged transactions leading to the receipt of advance of Rs. 23 lacs from three persons namely S/Shri Sanjay Kumar, Harbilas and Subhash Kumar. It was further noticed that despite the agreement with Shri Subhash Kumar having been cancelled, the entire advance money was not refunded to him immediately and it was not explained by the assessee as to what happened with regard to the amount refunded on cancellation of the agreement to S/Shri Sanjay Kumar and Harbilas as according to the assessee, amounts had been received by him from them as well. It was still further noted that it was highly unbelievable that the persons, who had given advances to the assessee namely S/Shri Sanjay Kumar, Harbilas and Subhash Kumar had disappeared without seeking refund on the cancellation of the agreement to sell.

9. On the issue of Rs. 50,000/-, as the assessee had produced no evidence, the addition made on that count, was upheld.

10. The findings by the Tribunal read as under :-

"6. ..... In the case of sale of shop No. 2, the assessee allegedly entered into agreement to sell with Shri Bhoop Narain. The advance is stated to have been paid in cash. No transactions have been done through banking channel. The agreement to sell is not recorded on the judicial stamp papers to prove the genuineness of the agreement in the matter. The statement of Shri Bhoop Narain was recorded by the Assessing Officer in which he has explained to have only meager income and has three children. Therefore, he would not have any past savings to make any advance to the assessee. He was not maintaining any bank account. He has explained the source of giving Rs. 5 lacs to the assessee out of past savings of Rs. 1,50,000/- for which no evidence has been furnished.

Considering his meager income and large number of family members and that he did not maintain any bank account, Shri Bhoop Narain failed to prove any past savings with him to advance any money to the assessee. He has further explained that Rs. 2,50,000/-was received by him from his father but he has failed to produce any evidence of taking any amount from his father and also failed to produce any evidence of any land holding and identity of his father. He has further stated that he has received Rs. 1 lac from his two brothers-in-law Shri Rakesh Kumar and Shri Suresh Kumar but they were also having only meager salary income.

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7. As regards the receipt of advance of Rs. 23 lacs from Shri Sanjay Kumar, Shri Harbilas and Shri Subhash Kumar on 29.01.2009 and 02.02.2009, again the position is same because it was a cash transaction. No banking transactions have been done and even the agreement in question was not executed on the judicial stamp papers to prove the genuineness of the agreement in question. The assessee failed to produce Shri Sanjay Kumar and Shri Harbilas before Assessing Officer for examination. The Assessing Officer issued summons against them but it was reported that no person by the name of Sanjay Kumar is residing at the given address and in case of Shri Harbilas, name of his father was found incorrect and he was also not found at the given address. Therefore, in these cases, despite giving several opportunities, assessee failed to prove even their identity, what to say of credit worthiness and genuineness of the transaction in the matter. The assessee, however, produced Shri Subhash Kumar, whose statement was recorded by Assessing Officer but he has failed to produce any agreement to sell of his own house which was stated to have been sold and no particulars of purchaser were given. He was maintaining bank accounts but no amounts have been withdrawn from his bank to give any advance money to the assessee. He was not able to tell even the names of the persons with whom he has entered into agreement for sale of his house. He has not established that he has sold any house and he was having any source to give advance to the assessee. Original agreement was not produced. The agreement in this case was also not on judicial paper. Despite the agreement with Shri Subhash Kumar was cancelled but entire advance money was not refunded immediately to Shri Subhash Kumar. It is not explained as to what happened with regard to the amount refunded on cancellation of agreement to Shri Sanjay Kumar and Shri Harbilas. It is highly unbelievable that the persons who have given advance to the assessee namely Shri Sanjay Kumar and Shri Harbilas, have disappeared and never asked for refund of their amount on cancellation of the agreement in question. Thus, assessee failed to prove credit worthiness and genuineness of the transaction for receipt of advance of Rs. 23 lacs from above persons and even in the case of Shri Sanjay Kumar and Shri Harbilas, assessee failed to prove their identity.

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8. In case of deposit of Rs. 50,000/- in the bank account of the assessee, assessee failed to produce any evidence of past savings and even this issue was not at all addressed before ld. CIT (Appeals) and no evidence have been furnished in this regard. Same is the position before us as the assessee has failed to produce any evidence of deposit of Rs. 50,000/- out of any known sources."

11. It can thus be seen that the present appeal does not raise any question of law, much less a substantial question of law, for our consideration as in the same, purely questions of fact have been decided and that too, concurrently by the Assessing Officer, the Commissioner as also the Tribunal. According to us, the order appealed against takes a view, which is probable and thus, the same is not perverse, warranting no interference on our part.

12. Dismissed.

