

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.448 of 2015 (O&M)
Date of decision:February 24, 2016**

Sham Sunder Khanna

.....Appellant

**Commissioner of Income Tax, Aayakar Bhawan, Rishi Nagar,
Ludhiana, Punjab.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? YES
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajiv Sharma, Advocate with
Mr. Gagandeep Singh, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 6.7.2015, Annexure A.6 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in ITA No.1177/CHD/2013 for the assessment year 2006-07, claiming following substantial questions of law:-

"A. Whether under the facts and circumstances of the case, the ITAT is not justified in confirming the part of commodity loss of ₹ 4,20,824/- out of ₹ 7,16,617/- (Annexure A.7) arising from genuine and regular dealings all through account payee cheques (Annexure A.8) and for which contract notes/difference in bills produced with registered broker M/s Anand Commodities Trading Services Pvt. Limited (Annexure A.7) whom the Assessing Officer failed to summon as requested by the appellant that Assessing Officer to summon the said

representative under section 131 of the Income Tax Act, 1961 which is against trite law that in case on the request of the assessee the Assessing Officer fails to summon the creditors or other concerned person than in that case, no addition can be made on this basis which is against the law laid down in the judgment of this Hon'ble High Court in the case of ITA No.685 of 2008 as decided on 17.2.2009 and as reported in 28 DTR 118 (P&H)?

B. Whether under the facts and circumstances of the case, the Income tax Appellate Tribunal and the authorities below are justified in confirming disallowance of commodity loss on the ground that the appellant has not produced any evidence ignoring the account books, complete correspondence with M/s Anand Commodity Services Pvt. Limited a registered broker in the shape of ledger account, contract details, difference in bills, commodity wise, date wise and amount wise (Annexure A.7) and the payments by the appellant and the transactions being through banking channels (Annexure A.8) which is perverse findings of fact against sufficient evidences/material produced and on record therein?

C. Whether under the facts and circumstances of the case, the order passed by Income Tax Appellate Tribunal, and the authorities below confirming the impugned additions without adhering to various contentions, evidences filed in its true prospective is perverse and illegal?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a stock broker. He filed return of income for the assessment year 2006-07 declaring income at ₹ 19,26,586/-. He is dealing in equity and derivatives trading for his clients and for himself as proprietor of M/s SMS and Co. The commodities trading was done by the appellant through M/s Anand

Commodities Services limited during the assessment year 2006-07 from 2.5.2005 to 24.2.2006 and also in various other years. He used to deal through other brokers also. The appellant received notice under section 143 (2) of the Act in response to which he appeared and submitted reply. During the assessment proceedings, the Assessing Officer raised objection regarding trading liability amounting to ₹ 3,95,614/- which was later on deleted by the Tribunal and also regarding commodity loss of ₹ 7,16,617/- incurred by the appellant out of which ₹ 3,16,697/- was for and on behalf of his clients and which was recovered from them while the balance loss of ₹ 4,20,824/- was on account of his own commodity trading loss which was disallowed by the Assessing Officer, vide order dated 4.12.2008, Annexure A.1. Against the said order, the appellant filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] which was partly allowed vide order dated 26.2.2009, Annexure A.2 holding that the addition could be made if there was positive evidence to show that such an entry was an ingenuine entry and that the same was on account of some ingenuine loss and it was adjustment entry to reduce the profit of business of the appellant. The revenue filed appeal against the order dated 26.2.2009, Annexure A.2. Vide order dated 26.6.2009, Annexure A.3, the Tribunal remanded the issue to the Assessing Officer. During the remand proceedings, contract notes and difference bills which were in possession of the appellant were produced before the Assessing Officer. However, the Assessing Officer vide order dated 13.12.2010, Annexure A.4 held that there was no concrete evidence and therefore confirmed its previous order. Aggrieved thereby, the appellant filed appeal before the CIT(A). The appellant filed copies of

contract note/difference bills alongwith reply dated 21.3.2013. To verify the genuineness of alleged commodity transactions made by the assessee, a letter dated 3.4.2013 was written by the CIT(A) to the Manager, LSE Commodities Trading Services Limited. However, Ludhiana Commodities Trading Services Limited in reply dated 8.4.2013 intimated that no client as M/s SMS and Company as a client of M/s Anand Commodities Services Limited in the year 2005-06 was existing. After considering the reply dated 30.8.2013, the appellant was directed to present authorized representative of M/s Anand Commodities Trading Services Pvt. Limited for cross examination. The appellant requested for summoning of the concerned persons under section 131 of the Act. However, no action was taken. The appeal was dismissed vide order dated 11.11.2013, Annexure A.5 holding that the appellant failed to lead any evidence in order to prove the genuineness of the transactions. The appellant filed appeal before the Tribunal which was partly allowed vide order dated 6.7.2015, Annexure A.6 upholding the addition of ₹ 4,20,824/-. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant-assessee and do not find any weight in the contentions raised by him.

4. Learned counsel for the appellant-assessee submitted that the Assessing Officer had failed to summon authorised representatives of M/s Anand Commodities Trading Services to prove the genuineness of the transactions undertaken by the appellant and therefore, the findings against the appellant are vitiated. Reliance was placed on judgment of this Court in ITA No.685 of 2008 decided on 17.2.2009 (*Commissioner of Income Tax,*

Faridabad vs. Shri Brij Pal Sharma).

5. From the perusal of the findings recorded by the authorities below, we find that the onus was upon the assessee to prove the genuineness of the transactions by producing the relevant evidence and the material on record which he failed to do. He was unable to produce the authorised representatives of M/s Anand Commodities Trading Services as the initial onus was upon him to establish genuineness of the loss. Opportunity was given to the appellant in this regard. The evidence collected from Ludhiana Stock Exchange and confronted to the assessee proved that the commodity transaction was not actually carried out but was merely accommodation entries. Further, Ludhiana Commodities Trading Services Limited in reply dated 8.4.2013 to the query dated 3.4.2013 by CIT(A) intimated that M/s SMS and Company Prop. Shri Sham Sunder Khanna was not registered as a client with M/s Anand Commodities Services Limited in the year 2015-16. The assessee-appellant was prima facie required to prove the validity of the transaction. The assessee having failed to do so, no right accrues in his favour on account of non-summoning of the witness under Section 131 of the Act by the Assessing Officer. It has been categorically recorded by the Tribunal in its order dated 6.7.2015 that the assessee merely produced copies of notes from M/s Anand Commodity Services that he suffered genuine loss. Even the Tribunal while remanding the matter to the Assessing Officer directed the assessee to produce the requisite material and evidence to prove the genuineness of the loss in question. The assessee failed to produce any material. Thus, the authorities were justified in maintaining the addition of ₹ 4,20,824/-. The relevant findings recorded by the Tribunal

read thus:-

“11. As regards the loss of commodity is concerned, the enquiries from Ludhiana Stock Exchange revealed that claim of loss on account of commodity transaction was not a genuine claim. The assessee merely produced copy of notes from M/s Anand Commodity Services, would not prove that assessee suffered genuine loss. The evidences collected from Ludhaina Stock exchange and confronted to the assessee clearly proved that the commodity transaction was not actually carried out but was merely accommodation entries. Earlier the Tribunal, while restoring the matter to the file of Assessing Officer directed the assessee to produce the requisite material and evidence to prove the genuineness of the loss in question. The assessee however, failed to produce any requisite material and evidence before Assessing Officer in set aside proceedings to prove the genuineness of the loss in question. Therefore, authorities below were justified in maintaining the addition of ₹ 4,20,824/-. This ground of appeal of the assessee is accordingly, dismissed.”

6. Learned counsel for the appellant was unable to show any material to controvert the findings recorded by the authorities below. The judgment cited by the learned counsel for the appellant-assessee in *Shri Brij Pal Sharma's* case (supra) was based on individual fact situation involved therein. Thus, the appellant cannot derive any advantage from the said decision. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 24, 2016
'gs'

(Raj Rahul Garg)
Judge