In the High Court for the States of Punjab and Haryana at Chandigarh

…

ITA No.263 of 2007

Date of decision:8.4.2008

Raj Kumar Mangla.. .. Appellant

Versus

Assistant Commissioner of Income Tax ,Gurgaon

.. Respondent

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr.Justice Rakesh Kumar Garg

Present: Mr.Anand Chhibber Advocate
for the appellant/Assessee.

Rakesh Kumar Garg,J

A search under section 132(1) of the Income Tax Act,1961(for short "the Act") was carried out at the residential premises of the assessee/appellant on 20.1.1988 and a sum of Rs.1,25,000/- was surrendered by the assessee/appellant having been invested in shares of Indian Companies, which were not declared in the income tax returns during the preceding assessment years.

The assessee/appellant filed return of income relevant to the assessment year 1988-89 showing a total income of Rs.51,378/-. As shown in the statement of assessable income, the assessee/appellant has earned the above income from several sources, namely, salary, business, house property and other sources. During the assessment year, the assessee/appellant was

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employed with M/s Ravi Trading Company, Gurgaon, a proprietary concern of appellant's wife. He had shown an income of Rs.54,000/- earned as salary from this concern and had claimed deduction under section 16(1) of the Act under the head “Income from Salaries”. He had also received commission amounting to Rs.19,400/- from employment contract. The assessee/appellant claimed an ad hoc deduction of Rs.5000/- against the said receipts. He had also claimed deduction under Section 80C of the Act for a sum of Rs.10000/- paid under self financing scheme to Rajasthan Housing Board. The Assessee had also shown a business loss of Rs.54000/- on the ground that he had incurred loss on account of investment in the purchase of shares. The assessee had also purchased a Maruti Car on 28.3.1988 for a sum of Rs.95000/-. The assessee claimed that he used this vehicle as taxi in the last three days of the year under consideration,i.e., 28.3.1988 to 31.3.1988 and received an income of Rs.715/- as taxi charges. The assessee also claimed expenses incurred on petrol for running the vehicle and depreciation against the said vehicle.

The Assessing officer vide his order dated 9.3.1990 assessed the appellant while making assessment. The income of Rs.19400/- on account of commission, deduction claimed under section 80C(2)(h)(ii) of the Act on payment of house loan, business loss ofRs.54,000/- and the income/expenditure and depreciation claimed on the car was disallowed by the Assessing Officer. The deduction on account of business loss of Rs.54000/- was also disallowed by the Assessing Officer holding the same as a

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speculative loss. The Assessing Officer observed that the primary fact for claiming depreciation was to off set or liquidate the surrendered amount of Rs.125000/- at the time of the search and accordingly the Assessing Officer neither included the alleged income of Rs.715/- for running the car as taxi in the income of the assessee nor allowed depreciation claim.

The Assessee filed an appeal before the Commissioner of Income Tax(Appeals), Faridabad(for short the "CIT(A)") challenging the said order of the Assessing Officer. The CIT(A), Faridabad vide his order dated 19.1.1993 allowed the appeal of the assessee partly giving a relief of Rs. 3904/- to the assessee,

Still not satisfied with the said order, the assessee filed an appeal before the Income Tax Appellate Tribunal, Delhi Bench"D", New Delhi(for short the "Tribunal"). The Tribunal partly allowed the appeal filed by the assessee and held that the assessee is entitled to claim deduction under section 80C in respect of instalment paid for allotment of house under self financing scheme and directed to allow deduction to the assessee for Rs.10000/- in this regard. Similarly, the Tribunal found that there was no justification for the Assessing Officer in holding that the loss of Rs.50000/- from share business was speculative as the genuineness of purchase and sale of shares was not in doubt. Thus, the Tribunal directed the Assessing Officer to allow the loss of Rs.50000/- as a normal business loss of the assessee on account of share business. However, the claim of the assessee with regard to income of Rs.19,400/- received as a commission and an ad hoc deduction for expenses of Rs.5000/- for

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earning this income was rejected. In view of the judgment of the Hon'ble Supreme Court of India in the case of Gestetnor Duplicators Pvt. Ltd. Vs.CIT 117 ITR 1 wherein it was held that the appellant has got salary and commission under the contract of employment, therefore, the commission income so received was assessee's income from salary and the assessee has been given standard deduction under the head “Income from salaries” and therefore, he is not entitled to the claim of expenses of Rs.5000/- made over and above the standard deduction permissible under the statute. The Tribunal also rejected the claim of the assessee on account of income of Rs.715/- earned from taxi business and expenses incurred by the assessee on petrol and depreciation of the car. While rejecting the claim of the appellant, the Tribunal found that the assessee has not challenged the exclusion of receipts as taxi charges from his income by the Assessing Officer and is only disputing the disallowance of claim of expenses like petrol, payment of salary to the Driver and depreciation. The Tribunal also found that the claim of the assessee remained unsubstantiated in this regard.

Feeling not satisfied with the order of the Tribunal, the assessee has filed the present appeal challenging the order of the Tribunal dated 13.1.2006 passed by the Income Tax Appellate Tribunal, Delhi Bench”D”, New Delhi in Income Tax Appeal No.2301/Del/1993 relevant to the assessment year 1988-89 raising the following substantial questions of law:-

i)Whether the Assessing Officer had any jurisdiction to not to include any income defined in sections 16 to 65 of

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the Income Tax Act, 1961 when duly shown in the Statement of Assessable income filed along with the return of income by the petitioner?

ii) Whether the Assessing Officer was justified in denying petitioner claim from the business of hiring of car as Taxi on the ground that the assessee earned salary income and claimed standard deduction and as such depreciation can not be allowed?

iii)Whether the Commissioner of Income Tax(Appeals), Faridabad was right in law in disallowing petitioner claim despite the fact that the witnesses not only submitted affidavits, audited balance sheets, books of accounts and answered questions raised by the Commissioner of Income Tax(Appeals), while invoking provision u/s 131 of the Income Tax Act,1961 ?

iv) Whether the Income Tax Appellate Tribunal was right in law in not granting permission to the petitioner to not to amend revised ground No.4 dated 13.9.2002 despite there was no order of the Appellate Tribunal asking the petitioner to file revised ground or revised ground having been allowed prior to final date of hearing on 21.12.2005 ?

v) Whether the Income Tax Appellate Tribunal was right in law in denying relief in respect of expenses ofRs.5000/- from commission income despite having been allowed in preceding and succeeding assessment

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years relying upon Gestetnor Duplicators Pvt. Ltd. Vs. CIT 117 I.T.R. 1 (S.C.) despite no specific agreement/contract in petitioner's case ?

vi) Whether the Income Tax Appellate Tribunal was right in law in disallowing petitioner claim in respect of revised ground of appeal No.4 dated 13.9.2002 on the guise that the claim of not including income from hiring of car as taxi as well as expenses and depreciation has not been challenged before them despite the fact that the petitioner had challenged the same before the Appellate Tribunal in the original ground No.5 of the memo. Of appeal dated 16.4.1993 as well as ground No.7 of the concised grounds of appeal dated 23.2.1994 ?

We have heard Shri Anand Chhibbar, Advocate, learned counsel for the assessee/appellant and perused the record. Although as many as six questions have been raised by the appellant in his memo. of appeal. However, Mr.Chhibbar has addressed his arguments only on question No.2,i.e., with regard to the rejection of the claim of the appellant on account of expenses and depreciation for running of taxi by the appellant. He has very fairly stated that the other questions of law as raised by the appellant does not arises from the order of the Tribunal. He has vehemently argued that the vehicle was admittedly purchased and brought into business operation during the year under appeal and the statute did not bar the appellant from earning under more than one head of income and therefore, the claim of the appellant has been wrongly rejected by the

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respondent/authorities.

We find no force in the contention raised by the counsel for the appellant. Admittedly, the Car was purchased on 28.3.1988 for Rs.95000/- and a temporary registration number was allotted to it. The assessee has claimed that he used this vehicle as taxi in the last 3 days of the year under consideration and received the income of Rs.715/- from three persons. The assessee has claimed that for earning this income, he has incurred expenses on petrol and salary of the Driver and therefore, he is entitled to the deduction of these expenses. The assessee also claimed depreciation of the Car from his income. However, a pure finding of fact has been recorded by the Tribunal and other revenue authorities to the effect that the appellant did not have any permission to ply the vehicle as a taxi and that vehicle bearing temporary number could not be used as a taxi. Besides this, it has also been found as a matter of fact that the payment of salary to the Driver has not been proved. Moreover, the assessee has not disputed the exclusion of income of Rs.715/- received as taxi charges from the computation of income by the appellate authority. On the basis of these facts, the Tribunal has given a pure finding of fact that claim of the assessee in this regard remained unsubstantiated. The authorities below have found that the primary fact for claiming depreciation by the assessee in this regard was to off set or liquidate the surrendered amount of Rs.1,25,000/- at the time of search.

In view of the above said finding of fact, we are not

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inclined to entertain the present appeal. No substantial questions of law arises for our determination in the present appeal, the same is hereby dismissed.

(RAKESH KUMAR GARG)
JUDGE

April 8,2008
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(SATISH KUMAR MITTAL)
JUDGE

HIGH COURT OF PUNJAB AND HARYANA
सत्यमेव जयते

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