

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

Sr. No. 205

ITA-382-2015 (O&M)

Pronounced on : 27th September, 2016

Naresh Kumar

..... Appellant

VERSUS

Commissioner of Income Tax, Patiala

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Divya Suri, Advocate, for the appellant.

Mr.Zora Singh Klar, Advocate, for the respondent.

DEEPAK SIBAL J.

The present appeal under Section 260A of the Income Tax Act, 1961 (for short the 'Act') has been preferred by the assessee to challenge therein order dated 15.07.2015, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short the 'Tribunal').

The appeal pertains to the assessment year 2008-09.

According to the appellant, the present appeal raises the following substantial questions of law: -

“1. Whether under the facts & circumstances of the case, the 'presumptive charge' of income u/s 44AF is distinguishable from arriving at 'chargeable income' u/s 29 of the Income Tax Act, 1961?

2. Whether on facts and in circumstances of the case, the decision of the Tribunal is against the ratio laid down by the

Hon'ble Court in the case of **CIT vs. Surinder Pal Anand (2010) 48 DTR 135 (P&H)** and hence violative of judicial discipline?"

The relevant facts which need to be noticed for adjudicating upon the present appeal are that the assessee is in the business of retail trading of wooden furniture and operates in the name and style of M/s Shiva Furniture House, Gole Market, Mandi Gobindgarh, Punjab. On 03.09.2008, for the assessment year in question, the assessee filed his return declaring therein an income of Rs.1,17,622/- which was assessed under Section 143(1) of the Act. However, the assessing officer having reasons to believe that the income of the assessee had escaped assessment, after recording reasons, issued notice to the assessee under Section 148 of the Act as to why the income of the assessee may not be re-assessed. In response to such notice, the assessee filed his return, reiterating the income declared by him in his original return. Statutory notice under Sections 142(1)/143(2) of the Act, dated 31.10.2013, alongwith a questionnaire was issued and served upon the assessee in response to which the authorised representative of the assessee appeared and filed the required information. The assessee maintained that he was a retailer having a total turn-over of less than rupees forty lakhs and was filing his return of income under Section 44AF of the Act. Thus, no books of accounts were being maintained by him. He, therefore, sought the re-assessment proceedings to be dropped.

The assessing officer went through the record before him, particularly the statement of the the assessee's savings account maintained by him with the Central Bank of India, Mandi Gobindgarh. The details of

the same pertaining to the relevant assessment year as borne out from the record are as under: -

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Value Date	Post Date	Details	Chq Debit No.	Credit	Balance
		BROUGHT FORWARD			0.00
16.06.07	16.06.07	DMINTA 000 DJ			
30.06.07	30.06.07	BY INTT		1,817.00	1,05,618.00 Cr
13.08.07	13.08.07	BY CASH		49,500.00	1,55,118.00 Cr
14.08.07	14.08.07	BY CASH		49,500.00	2,04,618.00 Cr
16.08.07	16.08.07	BY CASH		49,500.00	2,54,118.00 Cr
17.08.07	17.08.07	BY CASH		49,500.00	3,03,618.00 Cr
18.08.07	18.08.07	BY CASH		49,500.00	3,53,118.00 Cr
20.08.07	20.08.07	BY CASH		49,500.00	4,02,618.00 Cr
22.08.07	22.08.07	BY CASH		49,500.00	4,52,118.00 Cr
27.08.07	27.08.07	BY CASH		49,500.00	5,01,618.00 Cr
28.08.07	28.08.07	BY CASH		49,500.00	5,51,118.00 Cr
30.08.07	30.08.07	BY CASH		49,500.00	6,00,618.00 Cr
27.09.07	27.09.07	BY CASH		49,500.00	6,50,118.00 Cr
28.09.07	28.09.07	BY CASH		49,500.00	6,99,618.00 Cr
01.10.07	01.10.07	BY CASH		49,500.00	7,49,118.00 Cr
04.10.07	04.10.07	BY CASH		49,500.00	7,98,618.00 Cr
05.10.07	05.10.07	BY CASH		49,500.00	8,48,118.00 Cr
08.10.07	08.10.07	BY CASH		49,500.00	8,97,618.00 Cr
09.10.07	09.10.07	BY CASH		49,500.00	9,47,118.00 Cr
10.10.07	10.10.07	BY CASH		49,500.00	9,96,618.00 Cr
11.10.07	11.10.07	BY CASH		49,500.00	10,46,118.00 Cr
30.10.07	30.10.07	BY CASH		49,500.00	10,95,618.00 Cr
31.10.07	31.10.07	BY CASH		49,500.00	11,45,118.00 Cr
01.11.07	01.11.07	BY CASH		49,500.00	11,94,618.00 Cr
02.11.07	02.11.07	BY CASH		49,500.00	12,44,118.00 Cr
05.11.07	05.11.07	BY CASH		49,500.00	12,93,618.00 Cr
06.11.07	06.11.07	BY CASH		49,500.00	13,43,118.00 Cr
07.11.07	07.11.07	BY CASH		49,500.00	13,92,618.00 Cr
08.11.07	08.11.07	BY CASH		49,500.00	14,42,118.00 Cr
10.11.07	10.11.07	BY CASH		49,500.00	14,91,618.00 Cr
16.11.07	16.11.07	BY CASH		49,500.00	15,41,118.00 Cr
26.11.07	26.11.07	BY CASH		49,500.00	15,90,618.00 Cr
28.11.07	28.11.07	BY CASH		49,500.00	16,40,118.00 Cr
01.12.07	01.12.07	BY CASH		49,500.00	16,89,618.00 Cr
03.12.07	03.12.07	BY CASH		49,500.00	17,39,118.00 Cr
04.12.07	04.12.07	BY CASH		49,500.00	17,88,618.00 Cr
		CARRIED FORWARD			17,88,618.00 Cr
		BROUGHT FORWARD			17,88,618.00 Cr
06.12.07	06.12.07	BY CASH		49,500.00	18,38,118.00 Cr
07.12.07	07.12.07	BY CASH		49,500.00	18,87,618.00 Cr
08.12.07	08.12.07	BY CASH		49,500.00	19,37,118.00 Cr
31.12.07	31.12.07	BY INTT		15,275.00	19,52,393.00 Cr
02.02.08	02.02.08	TO SELF	1,50,000.00		18,02,393.00 Cr
		Paid to SELF-3804			
13.02.08	13.02.08	TO SELF	2,00,000.00		16,02,393.00 Cr
		Paid to SELF-3810-1”			

There is nothing on the record to show that the assessee was maintaining any other bank account.

Since the above deposits were made by the assessee in cash, the assessing officer asked him to explain the source thereof. The assessee submitted that the above deposits were the result of sales effected by him. A few bills were produced. After considering the entire matter, the assessing officer found that the source of the afore-detailed cash deposits had not been satisfactorily explained by the assessee. Complete sale/purchase bills had not been produced. Photocopies of few bills which had been produced were those which had been issued during the current year only. The account details further did not show any withdrawals made by the assessee till February, 2008. The assessee failed to tell the names of the parties from whom he purchased the material/furniture for sale. Accordingly, invoking the provisions of Section 69A of the Act, cash amounting to Rs.18,31,500/- deposited by the assessee, in his bank account, was ordered to be added to his income.

The assessee challenged the re-assessment order by filing an appeal before the Commissioner, Income Tax (Appeals), Patiala (for short the 'Commissioner'), who rejected the plea of the assessee with regard to the challenge to the very initiation of the re-assessment proceedings. The assessee had raised a ground that the assessing officer had not recorded any reasons but the Commissioner found the same to be duly recorded. The Commissioner further held that the assessee declared his income under Section 44AF of the Act and, thus, was not required to maintain books of accounts and explain each entry. After relying upon a judgment of this Court in **CIT vs. Surinder Pal Anand (2010) 48 DTR 135 (P&H)**, the

Commissioner allowed the assessee's appeal and ordered deletion of the amount of Rs.18,31,500/- as ordered to be added to his income by the assessing officer.

The order of the Commissioner led to the filing of the cross-appeals before the Tribunal. After considering the record and the orders passed by the assessing officer as also the Commissioner, the Tribunal decided the issues raised before it against the assessee. It was held that when the assessing officer had sought from the assessee the source of the cash deposits to the tune of Rs.18,31,500/- made by him in his bank account, virtually no documentary proof regarding purchases/sale of furniture was submitted by him. Photocopies of only a few of the bills which were produced pertained to the current year only. The names of the parties from whom the assessee had purchased the material were not disclosed. The Tribunal noted that throughout the year, on different dates the assessee had made deposits of identical amounts of Rs.49,500/- and it was only at the fag end of the financial year i.e. on 02.02.2008 and 13.02.2008 that the assessee had made withdrawals of Rs.1,50,000/- and Rs.2,00,000/-. The assessee was also found to have failed to prove any purchases made by him from his withdrawals especially when these withdrawals were made only in February, 2008 i.e. at the fag end of the financial year. The Tribunal further noted that in his return, the assessee had shown sales of Rs.18,82,800/- with net profit of Rs.1,08,000/- and with this low profit margin, without making purchases no sale could have possibly been effected by the assessee. Thus, the cash deposited by the assessee in his bank account was not believed to be from sales effected by him.

The assessee's plea that he usually purchased furniture on credit

basis was also considered and rejected as no evidence of making any purchases on credit had been filed by him before any of the authorities. The assessee was also found to have established no nexus with the receipts/turn over and the deposited cash in his bank account. Link evidence to show that the sales were directly related to the cash deposits made by him in his bank account, was also found missing by the Tribunal.

In view of the afore-referred facts, the Tribunal held that the assessee's case was distinguishable from Surinder Pal Anand's case (supra). Accordingly, the appeal of the revenue was allowed and the addition made by the assessing officer was restored.

After going through the order of the Tribunal, we find that the Tribunal has essentially decided questions of fact and while doing so it has arrived at views which could have possibly be taken. The order of the Tribunal, thus, cannot be termed as perverse or absurd. No question of law much less any substantial question of law arise in the present appeal. Thus, the same is dismissed.

[S.J. VAZIFDAR]
CHIEF JUSTICE

27th September, 2016

shamsher

[DEEPAK SIBAL]
JUDGE

Whether reasoned/speaking : Yes / No
Whether reportable : Yes / No