

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

ITA No. 98 of 2017

Date of decision: 16.03.2017

Principal Commissioner of Income Tax, Bathinda

.....Appellant

Vs.

Sh. Daljit Singh Sra Prop M/s Sra Construction Co. Bathinda

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

Ajay Kumar Mittal, J.

1. The present appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 02.08.2016, Annexure A.5, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No. 125(Asr)/2014, for the assessment year 2007-08, claiming following substantial questions of law:-

- (i) "Whether on the facts and circumstances of the case and in law, ITAT has erred in directing the CIT(A) to admit additional evidence without appreciating that no circumstances specified under Rule 46A(1) of the Rules existed and a clear finding in this regard was recorded by the CIT(A) and the ITAT?
- (ii) Whether on the facts and circumstances of the case and in law, the ITAT erred in failing to appreciate that under rule 29 of the Income Tax Appellate Tribunal Rules, 1963, the parties to the appeal should not be entitled to produce additional evidence unless the Tribunal, for reasons recorded, may allow such

documents to be produced for any substantial cause and that no such reasons have been recorded by the ITAT?

- (iii) Whether on the facts and circumstances of the case and in law, the ITAT erred in setting aside the order of the CIT(A) by directing to admit additional evidence to assess the real income of the assessee without pointing out any defect in the assessment order as upheld by the CIT(A)?
- (iv) Whether on the facts and in the circumstances of the case and in law, the ITAT erred in holding that real income of the assessee be assessed in the delivery of justice even though the ITAT itself held that the assessee did not cooperate with the Assessing Officer in completion of assessment proceedings and natural justice already stood delivered?
- (v) Whether on the facts and in the circumstances of the case and in law, the ITAT erred in not taking into consideration the judgment of Hon'ble High Court of Allahabad in the case of Ram Prashad Sharma Vs. CIT, 119 ITR 867 wherein, it was held that the powers of the Tribunal to admit additional evidence under Rule 29 were limited and the Tribunal had a discretion which of course, must be exercised reasonably and that in the instant case discretion was not exercised reasonably?
- (vi) Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in directing the CIT(A) to admit additional evidence even though the learned ITAT itself gave clear finding "that no doubt assessee did not cooperate with the Assessing Officer in completion of assessment proceedings", ignoring that the assessee's case did not fall under any of the conditions to be met by an application made under Section 250 of the Income Tax Act, 1961?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. A survey under Section 133A of the Act was carried out at the business premises of the assessee on 07.03.2007. The assessee surrendered additional income of ₹ 40,00,000/- .

The assessee filed his return of income on 30.10.2007 declaring an income of ₹ 39,52,746/-. The case was taken up for scrutiny and was assessed under Section 144 of the Act, vide order dated 11.12.2009 at an income of ₹ 1,16,40,700/- plus agricultural income of ₹ 3,90,000/- . During the course of assessment proceedings, the assessee failed to produce books of account, bills and vouchers for examination inspite of being given various opportunities to do so. The Assessing Officer made assessment under Section 144 of the Act and adopted net profit rate of 7.47% on gross turnover of the assessee i.e. the rate which was declared by the assessee in the immediate preceding previous year. The Assessing Officer observed that the assessee leased out his 13 acres of agricultural land at the rate of ₹ 30,000/- per acre per year and the amount was credited to his capital account. Hence, the Assessing Officer added the agricultural income of ₹ 3,90,000/- to the returned income for rate purposes. Further, deduction of ₹ 1,00,000/- claimed by the assessee under Chapter VIA of the Act was disallowed in the absence of any evidence. Aggrieved, thereby, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee also filed an application under Section 250 of the Act read with Rule 46A of the Income Tax Rules, 1962 (in short, “the Rules). The said application was not admitted by the CIT(A) holding that the assessee was given various opportunities to produce books of account and thus his case was not covered under Rule 46A of the Rules. Vide order dated 22.03.2013, Annexure A.2, the CIT(A) dismissed the appeal. Still not satisfied, the assessee filed an appeal before the Tribunal. Vide order dated 23.05.2014, Annexure A.3, the Tribunal dismissed the appeal filed by the assessee being defective one. Thereafter, the assessee filed a miscellaneous application before the Tribunal. The Tribunal recalled its previous order vide order

dated 11.03.2016, Annexure A.4, in miscellaneous application No. 18(Asr)/2015. Thereafter, the Tribunal vide its order dated 02.08.2016, Annexure A.5, in the main appeal directed the CIT(A) to admit additional evidence and decide the case afresh after affording reasonable opportunity to the assessee of being heard by holding that to deliver natural justice despite the non-co-operative attitude of the assessee towards assessment proceedings, real income was to be assessed. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The matter was examined by the Tribunal in detail on the basis of the entire material available on record. It was noticed by the Tribunal that the assessment was completed under Section 144 of the Act as the assessee did not cooperate in assessment proceedings. On account of sickness of the assessee, he wanted to file additional evidence under Rule 46A of the Rules before the CIT(A). In his affidavit dated 04.03.2010, the assessee had even stated that he had undergone heart surgery. In the first week of December, 2009, he got himself examined from the hospital at Mohali where the doctors advised him bed rest. In view of this factual position books of account, bills/vouchers etc could not be produced by the assessee. It has been recorded by the Tribunal that no doubt the assessee did not cooperate with the Assessing Officer in completion of the assessment proceedings and that the books of account etc were not produced inspite of opportunity but the said evidence might have been relevant for the calculation of the real income of the assessee. The Tribunal keeping in view the overall facts and circumstances of the case rightly directed the CIT(A) to admit additional evidence and decide the case afresh after affording reasonable opportunity to

the assessee of being heard. The relevant findings recorded by the Tribunal read thus:-

“We have heard the rival parties and have gone through the material placed on record. We find that it is an undisputed fact that assessment in this case has been completed under Section 144 of the Act as the assessee did not cooperate in assessment proceedings. It is also a fact that before learned CIT(A) the reason for non appearance before the Assessing Officer was explained to be sickness of assessee and assessee wanted to file additional evidence under Rule 46A of the Rules. However, the learned CIT(A) did not agree with the contention of assessee and did not admit the additional evidence by holding as under.

“From the perusal of the assessment order, it is found that the AO at no stage refused to admit any evidence which ought to have been admitted. It is also found that during the period 18-09-2008 to 08-12-2009 eight opportunities were afforded to the appellant for production of books of account and bills/vouchers of expenses but the same were not produced. The contention of the appellant that the details of various accounts were submitted during assessment proceedings has no force because in the absence of books of account, the same could not be verified by the Assessing Officer. In his affidavit dated 04.03.2010, the appellant has stated that about two years back he had undergone heart surgery and in the first week of December, 2009, he again got himself examined from Mohali where the doctors advised him bed rest and for that matter, necessary compliance regarding production of account books and bills/vouchers etc could not be made. This, circumstance also does not help the appellant because even prior to December, 2009, the Assessing Officer had specifically asked him to produce the books of account and other records which he did not comply. In such circumstances, it cannot be said that the appellant was prevented by sufficient cause from producing the evidence which was called upon to produce by the Assessing Officer. Further be that as it may, the appellant could very well ask the Accountant or his counsel or any other A/R for making compliance for producing the account books but he did not do so. Again, the Assessing Officer vide his report No. ACIT/Circle-I/BTI/2010-11/172 dated 03.05.2010 has also objected the admission of additional evidence by the appellant because ample opportunity to produce the account books and other bills/vouchers was afforded during assessment proceedings which was not availed of. The sequence of events and circumstances lead to an irresistible conclusion that the appellant intentionally avoided to produce books of account and other bills/vouchers so that the shortcomings in the accounts may not come to the notice of the Assessing Officer. As

mentioned above, sufficient opportunity was afforded to the appellant but he did not avail of it. In this view of the matter, the application of the appellant under Section 250 of the Act read with Rule 46A of the Income Tax Rules cannot be entertained and the same is rejected.”

In view of the above facts and circumstances, we find that no doubt assessee did not cooperate with the Assessing Officer in completion of assessment proceedings but the fact remains that in the delivery of justice the real income of assessee has to be assessed and that too after hearing the assessee. The learned CIT(A) has not commented upon the nature of evidence filed under Rule 46A of the Act. Such evidence might have been relevant for the calculation of real income of the assessee, therefore, in view of the substantial justice, we direct the learned CIT(A) to admit additional evidence and decide the case afresh after affording a reasonable opportunity to the assessee of being heard.

5. No illegality or perversity has been shown by the learned counsel for the appellant-revenue in the findings of fact recorded by the Tribunal, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed. It is, however, clarified that the Assessing Officer shall complete the assessment expeditiously, preferably within three months from the date of receipt of a certified copy of this order. The assessee shall cooperate with the Assessing Officer.

(Ajay Kumar Mittal)
Judge

March 16, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes