



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 138/2003

CHANDERPAL SINGH Appellant.
Through Mr. S.S. Dahiya, Adv.

versus

INCOME TAX OFFICER Respondent
Through Mr. J.R. Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE D.K. JAIN

HON'BLE MR. JUSTICE MADAN B. LOKUR

ORDER

27.11.2003

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This appeal by the assessee under Section 260A of the Income-tax Act, 1961 is directed against an order dated 27 September 2002, passed by the Income-tax Appellate Tribunal, New Delhi (for short 'the Tribunal) in ITA No.6694/(Del)/1995, pertaining to the assessment year 1989-90. According to the appellant the following substantial questions of law arise from the impugned order:

"1. Whether on the facts and in the circumstances of the case the Tribunal should have held that when the creditors had confirmed the loans, explained their source of income, personally on oath the statement of creditors were recorded when they were produced before the Assessing Officer, and the Assessing Officer in the cross examination or otherwise did not raise any objection with regard to the creditors genuineness and no further investigation was sought by the Assessing Officer from the creditors and since it was not done, the impugned addition was not justified?"

"2. Whether the assessee/appellant has rightly discharged the onus which the law has bestowed upon him after producing the creditors and established their identity, and shown the capacity to advance the loan?"

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“(3) Whether the Tribunal was justified in observing that the respondent representative stated that the CIT (Appeals) appeared to have admitted additional evidence without giving any opportunity to the assessing officer, further the Tribunal observed that the department was given numerous opportunity to produce the record to substantiate the aforesaid submission, but the said record was never produced before the Tribunal, and whether the Tribunal was wrong in remanding the case, when the respondent had nothing to rebut with regard to the appellant submission and whether remanding the case to CIT (Appeals) by the Tribunal is not paradoxical to its own findings ?”

“(4) Whether the statements recorded in the A.Y. 1990-91 on oath by the Assessing Officer is relevant for consideration in A.Y. 1989-90 when the re-assessment under Section 147/148 was opened on the basis of finding the guidelines of creditors, as the recorded statement was to be considered in that Assessment Year?”

To say the least, the questions proposed are not even questions of law, much less substantial questions of law, falling within the ambit of section 260A of the Act.

From a bare reading of the impugned order it is clear that while accepting the appeal preferred by the Revenue against the order passed by the Commissioner of Income-tax (Appeals), deleting the addition of Rs.8,35,000/- made by the Assessing Officer on account of unexplained cash credits, the Tribunal has found that the evidence produced by the assessee in support of the loan, allegedly advanced by one Subhash Chand was not enough to show that Subhash Chand had the capacity to advance the amount in question (Rs.2,10,200/-) after meeting his personal expenses. Having come to this conclusion, instead of reversing the decision of the Commissioner, the Tribunal



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has considered it proper to restore the matter back to the file of the Commissioner for de novo adjudication on merits, after giving reasonable opportunities to the assessee as also the Assessing Officer to explain their respective stands.

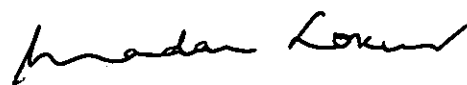
We do not find any substance in the contention of Mr. Dahiya, learned counsel for the appellant that the Tribunal has failed to record any finding on the evidence adduced by the assessee to prove the genuineness of the loan reflected in his books of accounts. The stand of learned counsel is that the assessee had discharged the initial onus which lay on him to prove the genuineness of the loans. It is asserted that the Assessing Officer had failed to rebut the evidence adduced by the assessee.

As noted supra, having observed that sufficient evidence had not been adduced by the assessee to prove the genuineness of the cash credits, the Tribunal has not committed any error of law in remitting the matter back to the Commissioner for a fresh adjudication.

In our opinion, the impugned order does not involve any substantial question of law. Accordingly, we decline to entertain the appeal.

Dismissed.


D.K. JAIN, J.


MADAN B. LOKUR, J

NOVEMBER 27, 2003

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