In the High Court of Punjab and Haryana, Chandigarh

I.T.A. No. 432 of 2006

Date of Decision: 15.01.2007

M/s Surjit Motors

…Appellant

Versus

The Income Tax Officer, Ward-1, Pathankot

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. K.L. Goyal, Advocate,
for the Appellant.

JUDGMENT

M.M. KUMAR, J.

The assessee has invoked the jurisdiction of this Court under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act') by challenging order dated 13.1.2006 (A-11), passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in I.T.A. No. 369(ASR)/2003, for assessment year 1996-97. The assessee has claimed that the following substantial questions of law would arise for our determination:-

"(i) Whether on the facts and circumstances of the case, the order of the Ld. ITAT is perverse to the extent that on the one hand addition is being made on account of unexplained investments in unaccounted purchases and on the other hand, claim of such purchases is not being allowed while calculating the total income?

(ii) Whether on the facts and circumstances of the case, the Ld. ITAT is justified in upholding the addition of Rs. 3,56,231/- in the total income of the assessee on the ground that there are unaccounted purchases when the gross profit rate has been applied on the total sale and no sales have been found made, which are not entered in books of accounts?"

The assessee is a partnership firm doing its business of sale/purchase of motor parts at Pathankot. It had filed its return on 13.1.1998 in respect of the assessment year 1996-97 showing an income of Rs. 13,010/-. The aforementioned income was in addition to salary and interest paid to partners, amounting to Rs. 75,766/- + Rs. 35,381/-, which is assessable directly in the hands of the petitioner. Subsequently, proceedings of assessment under Section 143(2) of the Act were initiated and the Assessing Officer applied Gross Profit at the rate of 7.73% as against the declared by the assessee at 6.8% and accordingly, made an addition of Rs. 38,000/- in

the total income in the final assessment order was passed on 14.12.1998. The Commissioner of Income Tax after initiating proceedings under Section 263 of the Act, set aside the order of the Assessing Officer and remanded the matter to him, vide order dated 27.3.2001 (A-5) expressing the view that certain addition was called for on account of some extra stock available with the assessee. No appeal was filed by the assessee against the order of remand. The Assessing Officer, vide order dated 28.3.2002 (A-9) passed the assessment order by adding an amount of Rs. 459401.19P. to the taxable income of the assessee being the investment made in unaccounted purchases out of undisclosed sources. Further, the Assessing Officer added a sum of Rs. 71,081/- on account of application Gross Profit rate of 7.75% and initiated proceedings under Section 271(1)(c) of the Act as no voucher in respect of expense claimed by the assessee were produced. The assessee had agreed to enhance its taxable income by Rs. 10,000/- on that issue.

The order of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals), vide his order dated 19.5.2003 (A-10), except with the modification that an amount of Rs. 1,84,248/- was deleted out of the addition made by the Assessing Officer on account of unaccounted purchases of Rs. 4,59,401/-. The Tribunal, upheld the additions in respect of unexplained and unaccounted purchases by citing the reason that the order dated 27.3.2001 (A-5), passed under Section 263 of the Act, was not challenged. The Tribunal also upheld the additions of Rs. 2,75,153/-

and Rs. 71,081/- on account of working out the profit on unaccounted sales realised from unexplained investments made in the purchases. It was, therefore, held that there was no need to make separate addition on account of disallowance of expenditure and accordingly the addition of Rs. 10,000/- was deleted.

After hearing learned counsel, we are of the considered view that no question of law much less a substantial question of law would arise for determination of this Court because the finding of fact that purchases have been made outside the books of accounts and the sale would also be outside the books of accounts, has not been shown to be without any basis. The books of accounts have not been produced and negative stocks have been found by the Assessing Officer as upheld by the CIT (A) and the Tribunal. These findings cannot be set aside in the appellate jurisdiction under Section 260A of the Act, as it is well settled position in law. Therefore, we dismiss the appeal and uphold the order passed by the Tribunal.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

January 15, 2007

Pkapoor