IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 282 of 2007

DATE OF DECISION: 7.9.2007

Subhash Chander Gupta

…Appellant

Versus

The Income Tax Officer, Ward-1, Hoshiarpur

…Respondent

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

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. K.L. Goyal, Advocate,
for the assessee-appellant.

M.M. KUMAR, J.

The assessee-appellant has approached this Court by filing instant appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 6.10.2006, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') in ITA No. 173 (ASR) 2003, in respect of assessment year 1998-99. It has been claimed that the following substantive questions of law would arise for determination of this Court:-

"(i) Whether there are any reasonable legal basis to justify the observation of the ITAT that purchases made by the assessee from M/s Prem Chand & Co. are not genuine purchases?

(ii) Whether on the facts and in the circumstances of the case, the findings of the ITAT, upholding the addition of Rs. 2,12,306/- in the total income of

the appellant-assessee is not based on objective appreciation of facts and perverse in character?

(iii) Whether on the facts and in the circumstances of the case, the ITAT is justified to uphold the action of authorities below to disallow the purchases and making additions to total income, instead of applying Gross Profit Rate?

(iv) Whether on the facts and in the circumstances of the case, the ITAT was justified in upholding the additions made by lower authorities when it was explained that the cash was available for making such purchases and if sales are not ingenuine, the corresponding purchases can also not be disallowed?

(v) Whether the ITAT is justified in upholding the addition of Rs. 34,000/- made by the Assessing Officer in an arbitrary manner, when the issue was satisfactorily explained? Whether the judgment given on the issue as such is perverse in nature and liable to be quashed?

Facts of the case may first be noticed. The assessee-appellant derives income from the business of manufacturing and sale of ayurvedic and veterinary medicines. He filed his return of income alongwith profit & loss account and balance sheet on 30.10.1998, declaring an income of Rs. 1,80,830/- in respect of assessment year 1998-99. The return was processed under Section 143(1)(a) of the Act and after issuance of notices dated 28.9.1999, under Section 142

(1)/143(2) of the Act, the Assessing Officer framed the assessment. The Assessing Officer after detailed discussion of various statements and verification of record, vide his order dated 12.3.2001 (A-1), concluded that the assessee-appellant effected bogus purchases to the tune of Rs. 2,28,182/- and the same was added to his income. Some more additions on other counts were also made. The total income was assessed at Rs. 6,43,584/- and penalty proceedings under Section 271(1)(c) of the Act were initiated for concealing income and furnishing inaccurate particulars of income. It was also held that the assessee was liable to pay interest under Section 234 A/B/C of the Act.

The assessee-appellant then filed an appeal before the CIT(A), Jalandhar, challenging the aforementioned additions. The CIT(A) while upholding the additions of Rs. 2,12,306/- and 34,000/-, partly allowed the appeal granting relief of Rs. 1,92,368/- to the assessee-appellant.

On further appeal by the assessee-appellant, the Tribunal also upheld aforementioned additions, vide order dated 6.10.2006. The findings have been recorded by the Tribunal in paras 15, 16, 17 and 18. It has been held that the taxing authorities cannot be said to have erred in arriving at the conclusion that the entire affairs of M/s. Prem Chand & Co. were controlled by the assessee. Shri Prem Chand was found to maintain no office. He was not having any Sales-tax Number, nor any phone or any bill books were maintained. Also, he was having poor eye-sight. All this has been taken to record a finding that he was incapable of doing any business. His statement was recorded, which was riddled with discrepancies. The purchases made

by Shri Prem Chand were not verified. His bank account was introduced by the assessee himself. As many as seven deposits and withdrawals stand evidently made on the same date. No business was carried on. Even the consumption of raw material was not verifiable. The onus of proving the existence of M/s. Prem Chand & Co. was on the assessee, which was not discharged.

The addition was also made on the basis that the prices with regard to Shri Prem Chand were higher than those with regard to other parties. In this regard, the learned counsel has, referring to page 63 of the APB, pointed out that in these bills examined by the Inspector, the items were different, which was not appreciated, resulting in a non maintainable addition. Even if this argument of the assessee is accepted, it could not be denied that these items, i.e., Hing, Supari Choora and Kali Mirch Kutra, do not find mention in the list of formulations, as submitted by the assessee before the A.O. Rather, as mentioned therein, Hing, Supari nuts and Kali Mirch and that too, at rates which they were claimed to have been purchased from M/s. Prem Chand & Co. The Tribunal observed that the CIT(A) cannot be said to have erred in concluding that the first mentioned items were not used in the manufacture of medicines, particularly in face of the fact that no printed formula was required in the assessee's business. Moreover, many contradictions were found in the purchase bill of DCP. For example, no name was found in the purchase bill of DCP. This purchase was again in the name of M/s. Prem Chand & Co. The assessee's further claim that M/s. Prem Chand & Co. was a supplier not only to the assessee but to the other parties also, which has been belied from the fact that in the assessment years 1995-96

and 1996-97, the entire purchases were made by the assessee, whereas for the assessment year 1997-98, out of total purchases of Rs. 2,27,683/-, purchase to the tune of Rs. 2,12,400/- were made by the assessee. Therefore, the Tribunal refused to interfere in the aforementioned finding.

The Assessing Officer also made addition of Rs. 34,000/- being payments made by the assessee to M/s. Bhagat Ram Om Parkash not recorded in the books of account. This addition was also confirmed by the learned CIT(A). The facts in this regards are that the assessee made cash payment of Rs. 34,000/- (Rs. 5,000/-, Rs. 9,000/- and Rs. 20,000/-) to M/s. Bhagat Ram Om Parkash & Co., Hoshiarpur. The income of the assessee remained unexplained income as the assessee could not furnish any explanation with regard to this amount before Assessing Officer. It was observed that both of these accounts did not tally. The party had shown the aforesaid cash payment from the assessee and these payments were not recorded by the assessee in its books of account. The stand of the assessee was rejected by the Assessing Officer and CIT (A) that these payments were against purchases made from the said party and were made out of the funds available, the gross agricultural income/savings of the assessee and his family members, but the same could not be adjusted in the books of account. The assessee had filed cash flow statement in the case of his wife. In the remand report, the Assessing Officer observed that the explanation offered by the assessee was not believable, since the assessee had not shown any kind of loan in the name of his wife in the books of account. The whole stand was

considered after thought and it remained unsubstantiated. Therefore, the Tribunal confirmed the additions.

After hearing learned counsel for the assessee-appellant and perusal of the orders passed by the Assessing Officer, CIT (A) as well as the Tribunal, we find no merit in the instant appeal because categorical findings of fact have been recorded against the assessee-appellant. We are further of the view that the questions of law sought to be raised would not arise as those questions are based on presumptions, which are contrary to the findings recorded by the Tribunal. The whole efforts of learned counsel for the assessee-appellant has been to refer to one statement or the other or to one document or the other to persuade us to delete the additions made. But it would result in re-appreciation of evidence which cannot constitute a basis for reversing the findings recorded by the CIT (A) and the Tribunal. Therefore, the appeal does not warrant admission and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 7, 2007
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