Court No. - 35

Case :- INCOME TAX APPEAL No. - 212 of 2016

Appellant :- Pr. Commissioner Of Income Tax Varanasi
Respondent :- Rupesh Kumar And Brothers
Counsel for Appellant :- S.S.C. I.T.,Ashish Agrawal
Counsel for Respondent :- Suyash Agarwal

Hon'ble Bharati Sapru,J.
Hon'ble Piyush Agrawal,J.

(Delivered by Hon'ble Piyush Agrawal, J.)

Heard Mr. Ashish Agrawal, learned counsel for the appellant and Mr. Suyash Agarwal, learned counsel for the respondents.

The present appeal has been filed against the order dated 25.02.2016 in ITA No. 238/Alld/2012 for the Assessment Year 2010-11, passed by Income Tax Appellate Tribunal, Allahabad Bench, Allahabad.

The aforesaid appeal was admitted on 20.8.2016 and following questions of law were framed by the Court, which read as follows:-

"(A) Whether on the facts and circumstances of the case and in law the ITAT was correct and justified in deleting the addition of Rs. 2,70,77,374/- made towards undisclosed stock in complete disregard of physical stock and records found during search action?

(B) Whether on the facts and circumstances of the case and in law the ITAT was correct and justified in deleting the addition of Rs. 4,70,282/- as unexplained cash in complete disregard of relevant documents found during the search action?

(C) Whether the ITAT has erred in law and facts in deleting the addition of Rs. 7,80,200/- made on protective basis related to unexplained stock found at the premises of M/s Ram Chandra Hanuman Prasad without considering the situation that the Commissioner of Income Tax (Appeals) has deleted the above said addition in M/s Ram Chandra Hanuman Prasad on substantive basis?"

Brief facts which arise in the present appeal are that the respondent is engaged in the business of manufacture and export of handmade woolen carpets. The business premises of the respondents were searched on 30.03.2010 and 31.03.2010. During the course of search various documents, cash, jewellery etc. were found and seized. The computerised hard disk were also seized in which it was alleged that the accounts of the firm was being maintained but in the said disk the accounts were not up to date.

Thereafter, assessment proceedings were initiated. The assessing authority while framing the assessment order in the year under dispute, issued notice and same was replied by the respondents. The assessing authority, on the basis of materials found during the search and after verification of book & account rejected the same under Section 145(3) of the Income Tax on three counts-

(i) that no books of account were found during the course of search and seizure operation;

(ii) most of the manufacture expenses and carpet purchases were done in cash and outstanding liabilities towards weaving charges through self made vouchers; and

(iii) lastly, that the respondents did not maintain any stock register.

Further, the Assessing Officer made an addition of Rs. 2,70,77,374/- on account of undisclosed stocks, Rs. 4,70,282/- was found in cash at the time of search and Rs. 7,80,200/- unexplained stock investment in dies and chemicals which were made on protective basis.

Against the aforesaid assessment order dated 30.12.2011 the respondent had filed an appeal before the Commissioner of Income Tax (appeals), Varanasi, who, vide its order dated 2.4.2012 allowed the appeal and deleted all additions made by the Assessing Officer.

Feeling aggrieved by the aforesaid order, the Revenue preferred an appeal before Income Tax Appellate Tribunal, Allahabad Bench, Allahabad. The Tribunal by the impugned order has dismissed the appeal of the Revenue. Hence, the present appeal.

A perusal of the record, shows that the CIT (Appeals) and Tribunal had recorded a concurrent finding of fact in favour of the respondent and once the finding of fact recorded in favour of the assessee with regard to correctness of the books of account maintained by the assessee, no adverse inference can illegally be drawn against him.

The CIT (Appeals) while deleting the addition of Rs. 2,70,77,374/- in para 8 of the order dated 2.4.2012 has observed as follows:-

"8. As regards the addition of Rs. 2,70,77,374/- as undisclosed stock, it is seen that physical stock found in the business premises of the assessee was valued at Rs. 4,39,94,860/-. After assuming 25% stock with the weavers and weaving centres worth Rs. 89,86,339/- the total stock was inventorised by the Search Party at Rs. 4,49,31,695/-. However, the A.O. has inferred that the exported goods of Rs. 2,08.91,764/- and stock of carpet of Rs. 52,48,775/- sold locally were not recorded on computer and thus according to her, the difference of Rs. 2,70,77,374/-, between stock inventorized by search party at Rs. 4,49,31,695/- and the Book Stock found during search at Rs. 4,39,94,860/- minus stock of Rs. 2,61,40,539/- not recorded on computer, is undisclosed stock. The appellant on the other hand has contended the data on computer was not update in as much the computer has been showing the stock of Rs. 3,59,45,356/- since December, 2009 till the date of search on 30.03.2010. It was further contended that the annual account of the assessee as on 31.03.2010 shows closing stock at Rs. 6,29,62,463/-. Since there was no any new development in stock in a single day after search, its stock was greater than the stock inventorized by the Search Party at Rs. 4,49,31,695/-. The Search Party took the data from computer which according to assessee was not updated on the day of search. However, it was duty of the A.O. to consider assessee's submission when assessee filed reconciliation statement during assessment proceedings and produced the Purchase register in conformity with the final audited accounts filed along with the return of income. The following chart will show how different treatment has been given on

the stock by the Search Party and Assessing Officer:"

The Tribunal being last court of fact has confirmed the order of CIT (Appeals) in para 12 as under:-

"12. We heard the rival submissions and carefully considered the same along with the order of the Tax authorities below. Learned DR even though vehemently relied upon the order of the Assessing Officer but could not pin point mistakes in the working of the CIT(A). The CIT(A) has given a finding of fact and after verifying the working of the assessee. He took the view that since the assessee has shown more stock; therefore, no addition can be made on the basis of the undisclosed stock. We, therefore, confirm the order of the CIT(A). Thus the ground no. 4 stand dismissed."

Once a finding of fact has been recorded in favour of the assessee by the two authorities for deleting the said amount, there is no good ground to interfere in such finding until and unless they are preserves.

Similar is the case of deletion of Rs. 4,70,282/- and 7,80,200/- once the proceeding has been dropped under Section 145(3) of the Act which goes to show that the books of accounts of the assessee has been accepted and the same is not under challenge in the present appeal, therefore, the aforesaid addition cannot be sustained.

In view of the above facts and circumstances of the case, the present appeal lacks merit and is, accordingly, **dismissed**.

The questions of law are answered in favour of the assessee and against the Revenue.

Order Date :- 7.2.2019

SY