Reserved on: 21.01.2019
Delivered on:29.01.2019

Court No. - 35

Case :- INCOME TAX APPEAL No. - 183 of 2013

Appellant :- Rajnikant Agrawal Propreitor M/S Rajnikatn And Company
Respondent :- Commissioner Of Income Tax Agra And Another
Counsel for Appellant :- Suyash Agarwal,Suyash Agarwal
Counsel for Respondent :- S.S.C. Income Tax Dep.,Gaurav Mahajan,S.S.C.

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

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

The present appeal has been filed against the judgment & order dated 08.03.2013 passed by the Income Tax Appellate Tribunal, Agra Bench, Agra (hereinafter referred to as, 'the Tribunal') in Income Tax Appeal No. 246/Agr./2012 for the Assessment Year 2007-08.

The present appeal was admitted by this Court on 03.10.2018 on the following questions of law:-

> *"(i) Whether on the facts and circumstances of the case, the ITAT while deciding the appeal was right in not considering with due care all the materials facts and record its finding on the contention raised by the appellant in light of the evidences adduced, its order does not suffer from manifest infirmity?*
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> *(ii) Whether the ITAT was right confirming addition of Rs. 4,00,000/- towards advances and Rs. 3,00,000/- towards loan totalling Rs. 7,00,000/- under section 68 of the Act, when the onus was discharge by the appellant by*

submitting conformity letters, indentity and credit worthiness of the creditors before the A.O., who had not made any further enquiry nor served notice under section 131 of the Act?"

The facts of the case are that the assessee – applicant is a Proprietor of M/s Rajnikant & Company and engaged in the business of silver ornaments, bullion and job work . The appellant filed its return showing an income of Rs. 1,14,875/-. The case of the applicant was selected for scrutiny and notices were issued under section 143(2) of the Income Tax Act, 1961. In response thereto, a detailed reply was filed and hearing was afforded to the applicant's authorized representative.

The Assessing Authority, during the course of the scrutiny proceeding, noticed cash credit entries in the Book, which are as under:-

I. Advances of purchase of silver ornaments from following parties:-

(a) Ambrish Bhai Soni - Rs. 2,00,000/-
(b) Krishna Verma - Rs. 1,00,000/-
(c) Kuldeep Kumar Soni - Rs. 1,00,000/-

II. Loan and deposits:-

(a) Narayan Das - Rs. 2,00,000/-
(b) Nitin Kumar Verma - Rs. 1,00,000/-

The Assessing Authority has found that the appellant could not explain the genuineness of the transactions and credit worthiness of the persons advancing loan and further, the appellant could not also justify the alleged transaction of purchases of silver from the three parties, as mentioned above. Accordingly, the assessment order was passed and addition of Rs. 7 lacs was made.

Feeling aggrieved by the assessment order dated 14.12.2009, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Agra, who, by its order dated 09.01.2012, confirmed the order of the assessment. Still feeling aggrieved by the order of the Commissioner of Income Tax (Appeals), Agra, the appellant preferred appeal before the Tribunal. Before the Tribunal also, the assessee could not discharge the burden of genuineness of the transaction and credit worthiness of the creditor. Hence, the Tribunal has dismissed the appeal of the appellant and confirmed the order of the authorities below by the impugned order. Hence, the present appeal.

We have heard Shri Suyash Agarwal, learned counsel for the appellant and Shri Gaurav Mahajan, learned counsel for the respondents.

Learned counsel for the assessee submits that the assessee is in the business of silver ornaments, bullion and also doing job work. The amounts from the three parties, as mentioned above, were advances being given for purchase of silver ornaments, but due to hike in the price of silver, the transaction could not be materialized. So far as the loan loan given by the two persons as mentioned in the assessment order is concerned, the same was through banking channels and there was no occasion to doubt the genuineness and the credit worthiness of the same.

Learned counsel for the respondents has strongly opposed the contention of the appellant and has relied upon the finding of fact recorded by the Tribunal as well as the judgment and order passed by this Court in Income Tax Appeal No. 184 of 2013 (***Ram Baboo Agrawal Vs. Commissioner of Income Tax, Agra and Another***) decided on 06.11.2017; wherein, the similar controversy has been decided by this Court where the applicant – assessee could not prove the genuineness of the transaction as well as credit worthiness of the creditor/person giving loan.

We find that in the present case, the appellant could not discharge the burden/condition as given in section 68 of the

Income Tax Act, 1961. It was noticed by the Tribunal as well as the lower authorities that the assessee has failed to prove the credit worthiness of the creditor and the genuineness of the transaction. It was also noticed that the assessee has neither before the Commissioner of Income Tax (Appeals), nor before the Tribunal could discharge the burden/condition as prescribed under section 68 of the Income Tax Act, 1961 with regard to credit worthiness and genuineness of the transactions in the matter.

In our opinion, the Tribunal had taken all the relevant facts into consideration and the conclusions arrived at by the Tribunal were not perverse or unreasonable in confirming the order of Commissioner of Income Tax (Appeals).

In view of the aforesaid facts, the case, in hand, is squarely covered by the judgment & order rendered by this Court in the case of ***Ram Baboo Agrawal*** (supra).

The appeal lacks merit and is dismissed, accordingly. It is decided in favour of the Revenue and against the Assessee.

Order Date :- 29.01.2019
Amit Mishra