

Reserved on: 04.01.2019
Delivered on: 17.01.2019

Court No. - 35

Case :- INCOME TAX APPEAL No. - 284 of 2017

Appellant :- Principal Commissioner Of Income-Tax Meerut

Respondent :- M/S Meerut Roller Flour Mills (P) Ltd.

Counsel for Appellant :- Manu Ghildyal

Counsel for Respondent :- Suyash Agarwal

Hon'ble Bharati Sapru, J.

Hon'ble Piyush Agrawal, J.

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

The present appeal has been filed under section 260-A of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') against the judgment and order dated 13.04.2017 passed in Income Tax Appeal No. 3895/Del/2013 (Assessment Year 2009-10) by the Income Tax Appellate Tribunal, Delhi, Bench 'E', New Delhi (hereinafter referred to as, 'the Tribunal').

On 04.10.2017, the present appeal was admitted by this Court on the following questions of law:

"A. Whether on the facts and circumstances of the case, the ITAT has erred in law and fact by not setting aside the issue of addition of Rs. 3,38,72,852/- on non-genuine purchases to the file of the CIT(A) while the learned ITAT quashed the direction of CIT(A) on the same especially in view of the fact that the ITAT is the ultimate fact finding authority, it should have either settled the issue on the basis of material on record or set aside the matter to the CIT(A) for deciding within the powers vested

in it?"

The facts of the case are that the assessee – respondent is engaged in the business of manufacture and sale of wheat products, like *maida*, *suji*, *aata* and bread. For the year under consideration, the respondent – assessee filed return of income on 25.09.2009 declaring income of Rs. 47,26,344/- in the status of a Company. The return was processed under section 143(1) of the Act and later on, the case was selected under the scrutiny with the approval of Chief Commissioner of Income Tax, Ghaziabad. On 23.09.2010, notice under section 143(2) of the Act was issued fixing the date of hearing as 28.09.2010. The notice was duly served. Thereafter, notice under section 142(1) of the Act was issued along with the questionnaire dated 12.02.2011 fixing the date of hearing as 23.02.2011. In response to the said notice, details were furnished by the respondent – assessee. In order to verify the genuineness of purchase declared by the assessee – respondent, notices under section 133(6) of the Act were issued to 19 parties, out of which, notices upon two parties, namely, Mohit Trading Company, A-1/307, Sector – 6, Rohini, Delhi – 85 and Surana Brothers, C – 106, MP Enclave, Pitampura, Delhi – 34, were returned back unserved. The total purchase of the said two

parties were declared to the tune of Rs. 3,38,72,852/-. The Assessing Authority, while framing the assessment order, has observed as under:-

“Since both the addresses were of residential colonies in Delhi, where possibility of existence of any such entity that could supply the material worth crores without maintaining and godowns was not there, the field verifications were made. It was found that at both these addresses, no such companies existed. Vide order sheet entry dated 28.12.2011, this fact of their non-existence at the address provided was brought to the knowledge of the assessee. Since the parties have not been found at the address provided by the assessee, assessee has also not filed their confirmed copy of the account, these purchases of Rs. 3,38,72,852/- are not treated as genuine. Accordingly, they are being added to the income of the assessee as non-genuine purchases.”

Being aggrieved by the aforesaid order, the respondent – assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Meerut, who by its order dated 28.03.2013 partly allowed the appeal of the assessee. While allowing the said appeal, the Commissioner has observed as follows:-

“Never the less, the assessee was requested to ascertain why the enquiry letters issued to the two parties had been returned unserved. It now transpires that both the parties are the concerns of a single individual Shri Chagganlal Jain, who has given a letter saying that he had closed his business and for this reason, the enquiry letters issued by the Department had been

returned unserved. Never the less, keeping in view the quantum of disallowance and as a measure of abundant caution, the AO is directed to conduct enquiry with the AO having jurisdiction over the PAN of this party and ascertain whether return of income had been filed for the relevant year by this party and if so, he had disclosed turnover of business in such return, in excess of the amount of purchases, shown by the assessee as having made from the said party. If the result of such verification is negative, the addition is confirmed. Otherwise, the AO is directed to delete the addition.”

Feeling aggrieved by the aforesaid order, cross-appeals were filed before the Tribunal. The Tribunal has quoted the grounds of appeal taken by the Revenue at internal page 2 of its judgment. Ground nos. 2 and 3 are quoted below:-

“2. Whether in the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 3,38,72,852/- made by the AO on account of unproved purchases, subject to verification of the PAN, assessment status of the suppliers from the concerned AOs, ignoring that the same were unproved purchases, which are liable to be added in the income as the assessee had failed to prove the genuineness of transactions and even notices sent to the suppliers u/s133(6) of the IT Act, 1961 were returned back unserved.

3. Whether in the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 2,06,85,086/- made by the AO without appreciating the fact that addition was made on account of inflated purchase where notices sent to the suppliers were returned back unserved despite which the AO had made a very reasonable addition of mere 10% of total purchases.”

The Tribunal, in the impugned order, has set aside the direction of the Commissioner of Income Tax (Appeal) to conduct an inquiry by the Assessing Officer.

We have heard Shri Manu Ghildyal, learned counsel for the appellant and Shri R.R. Agrawal, learned senior counsel assisted by Shri Suyash Agrawal, learned counsel for the respondent – assessee.

On 29.12.2011, the assessment was completed under section 143(3) of the I.T. Act on the total income of Rs. 6.25 crores. The Assessing Officer has made an addition of Rs. 3,38,72,852/- in respect of certain purchases made by the respondent – assessee from Mohit Trading Company (amounting to Rs. 2.10 crores) and Surana Brothers (amounting to Rs. 1.28 crores).

Feeling aggrieved by the aforesaid assessment order, the respondent – assessee preferred an appeal before the Commissioner of Income Tax (Appeal), who by order dated 28.03.2013, has observed that both, during the course of assessment as well as remand proceedings, the enquiry letters issued to the aforesaid two parties, had been returned unserved and the assessee could not produce the said two identities

before the Assessing Officer. The Commissioner of Income Tax (Appeal) directed Assessing Officer to conduct an inquiry with the Assessing Officer having jurisdiction over the PAN of the said parties and ascertain whether return of income has been filed for the relevant year by the party and if so, he had disclosed the turnover of business in such return, in excess of amount of purchases, shown by the assessee, as have been made from the said party.

The respondent – assessee preferred a writ petition before this Court against the order dated 28.03.2013 passed by the Commissioner of Income Tax (Appeal). The said writ petition was disposed by a learned Single Judge of this Court on 16.05.2013 on the ground of availability of alternative remedy.

In pursuance of the direction dated 28.03.2013, the Assessing Authority passed an order dated 24.02.2014 in exercise of powers under section 251 of the Act. In the said assessment, it was brought on record that the returns were not filed by the respective parties and therefore, the said amounts, disclosed by the respondent – assessee, were non-genuine purchases.

Against the said assessment order dated 24.02.2014, the

assessee preferred Writ Tax No. 163 of 2014. The order dated 24.02.2014 was set aside by this Court on the ground of violation of principles of natural justice. However, this Court has clarified that the Assessing Officer was not precluded from passing a fresh order in accordance with law after due notice to the assessee – respondent.

Thereafter, again, an order dated 08.08.2014 was passed by the Assessing Officer and it was again brought on record that there was neither information regarding filing of return of income of the said party, i.e., Shri Chhaggan Lal Jain, Proprietor of M/s Mohit Trading Company & M/s Surana Brothers, nor has been furnished by the said assessee. This information is vital for verification of purchases made by the assessee from the said party as per direction given by the Commissioner of Income Tax (Appeal), Meerut in his order dated 28.03.2013.

The aforesaid information was also provided to the respondent – assessee, but no contrary material was brought on record to show that the returns of income were filed by the said party and therefore, the purchase of Rs. 3,38,72,852/- was confirmed as non-genuine.

The Tribunal, being the last court of fact and law, ought to have considered the materials on record, especially, when it has come on record that the said party has not filed the return of income. The Tribunal was swayed away by the contention of the respondent – assessee, but lost sight of the fact that the Revenue has also raised the issue of addition of Rs. 3,38,72,852/- to be non-genuine purchases.

In view of the aforesaid facts and circumstances of the case, the impugned judgment and order dated 13.04.2017 passed in Income Tax Appeal No. 3895/Del/2013 by the Income Tax Appellate Tribunal, Delhi, Bench 'E', New Delhi cannot be sustained and it is set aside to that extent.

The appeal succeeds and is allowed. The matter is remanded back to the Tribunal concerned to re-hear the matter afresh and decide the appeal on merits.

The question of law is answered in favour of the Revenue and against the respondent – assessee.

Order Date :-17.01.2019
Amit Mishra