

A.F.R.**Court No. - 35****Case :-** INCOME TAX APPEAL No. - 338 of 2016**Appellant :-** Sh. Rajnish Jain**Respondent :-** Commissioner Of Income Tax & Another**Counsel for Appellant :-** Suyash Agrawal**Counsel for Respondent :-** Krishna Agarwal**Hon'ble Bharati Sapru, J.****Hon'ble Saumitra Dayal Singh, J.****Delivered by Hon'ble Saumitra Dayal Singh, J.**

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against the order of the Income Tax Appellate Tribunal, Delhi Bench, New Delhi dated 19.06.2009 for the Assessment Year 1998-99 raising the following questions of law:-

“(A) Whether on the facts and circumstances of the case, the ITAT was correct to confirm the proceedings u/s 148 of the Act against the appellant?”

“(B) Whether the assessee have ignored the mode of purchase of 3500 shares of M/s KRS Financial Limited through M/s S.K. Garg and Company Delhi per contract note dated 05.04.1996 and Bill No. M-85 dated 15.04.1996 as well as the letter of K.R.S. Financial Limited dated 28.08.1996 regarding transfer of shares in the name of the appellant and also corresponding the contract note dated 30.05.1997 of Surinder Singh Mehta for sale of shares by Bill No. 272 dated 20.06.1997, the I.T.A.T. rightly held the sale of 3500 shares was bogus one?”

“(C) Whether the ITAT rightly made addition of Rs. 6,06,069/- in hands of the appellant specially when the burden of purchase and sale of 3500 shares of M/s K.R.S. Financial was discharged by the Department relying statement of M/s S.K. Garg and Company and M/s Surinder Singh Mehta which were not corroborated written any evidence?”

“(D) Whether the ITAT was legally justified in affirming reassessment order passed by A.O. u/s 147/143(3) of the Act when there was no reason to believe nor any

tangible material with A.O. to form opinion that income of the assessee has escaped assessment?

(E) Whether the ITAT was legally justified in affirming reassessment order passed by A.O. u/s 147/143(3) of the Act ignoring the fact that A.O. framed assessment u/s 147 without carrying out any inquiry and without affording opportunity to assessee to cross examine the witness?"

At the very outset Sri Suyash Agarwal, learned counsel for the assessee stated he would be pressing questions of law namely A, D and E only. The assessee declared to have derived his income for the previous year relevant to Assessment Year 1998-99 from salary payment, interest and capital gains.

In respect of capital gains claimed by the assessee had disclosed purchase of 3,500 shares of M/s KRS Financial Ltd. @ Rs. 21 per share aggregating to Rs. 74,235/- from a broker M/s S.K. Garg & Company vide it's bill dated 15.04.1996. The shares were claimed to have transferred in the name of assessee on 13.06.1996. The said shares were then claimed to have been sold through another broker S.S. Mehta on 30.05.1997 @ Rs. 175 per share. While the assessee had disclosed the purchase of aforesaid shares through cash payment, it received the sale proceeds amounting to Rs. 6,06,069/-, through cheque.

It then appears that reassessment proceedings were initiated against the assessee under Section 147 of the Act on the basis of reasons to believe recorded in pursuance of information received by the Assessing Officer from the DDIT (Inv, Gurgaon) dated 10.03.2003. According to that information, the broker S.S. Mehta had been investigated in

certain other proceedings wherein he allegedly made a statement of having provided accommodation entries against payment of commission.

It is also on record that before assessing authority, the assessee submitted a letter dated 10.03.2004 by which it offered to surrender the entire amount of Rs. 6,06,069/- subject to non-initiation of the penalty proceedings under Section 271(1)(c) of the Act.

In the consequential reassessment order, Rs. 6,06,069/- was added to the undisclosed income of the assessee disbelieving the claim of capital gains.

Against the assessment order, the assessee filed first an appeal that came to be decided by the CIT(Appeals), Ghaziabad vide its order dated 16.03.2005.

The CIT (Appeals) held that the additions made on the basis of information furnished by the DDIT, Gurgaon could not be sustained inasmuch as according to the CIT (Appeals) the broker S.S. Mehta had at no stage stated or admitted to have provided any accommodation entry to the assessee as alleged by the Assessing Officer. The CIT (Appeals) dealt with the letter dated 10.03.2004 written by the assessee and held that the assessee could not be bound by the surrender made in that letter because the revenue had chosen to initiate penalty proceedings against the assessee.

At the same time, the CIT (Appeals) upheld the jurisdiction of the Assessing Officer to initiate reassessment proceedings against the assessee. The revenue carried the matter to the Tribunal. The Tribunal after considering the

entire material and facts on record first made observations and recorded findings disbelieving the claim of purchase and sale of shares in question in absence of cogent and reliable evidence to establish genuineness of the transaction. Then, the Tribunal further found that the assessee had himself surrendered the amount of Rs. 6,06,069/- during the course of the assessment proceedings and therefore it did not remain open to the assessee to dispute the correctness of the addition made by the Assessing Officer.

Sri Suyash Agarwal, learned counsel for the assessee submits that the CIT (Appeals) had categorically found that the broker S.S. Mehta had never stated that he had provided any accommodation entry to the assessee. Therefore, in his submission, the addition could not have been sustained merely on the admission made by the assessee which in any case was conditional and not binding on the assessee in view of the penalty proceedings initiated against him.

Opposing the aforesaid submission, Sri Krishna Agarwal, learned counsel for the revenue submits, the addition had been sustained by the Tribunal on twin reasoning given by the assessing authority. First, the assessing officer had relied on the statement made by broker S.S. Mehta and the admission made by the assessee. Then, according to learned counsel for the revenue, the Tribunal has sustained the addition on the twin reasoning given by the assessing officer. Therefore, the order of the Tribunal does not suffer from any infirmity.

Having considered the arguments so advanced by learned counsel for the parties, we find that in the first place, the validity of the reassessment proceedings was not an issue raised by the assessee before the Tribunal. That issue had been decided against the assessee by the CIT (Appeals) which part of the order was not challenged in appeal before the Tribunal. Then, as to the addition made on merits, we find that the assessee had himself admitted to have written to the assessing officer on 10.03.2004 and surrendered the disputed amount. It is true that the offer made by the assessee in the said letter was worded as being subject to a condition that the penalty proceedings may not be initiated against him.

We find, the fact that the surrender had been made with the condition to by peace may be relevant to and may be considered in the penalty proceedings. The present proceedings being the quantum proceedings we do not find any error in the order of the Tribunal in so far as the Tribunal has sustained the addition not only on the ground of surrender made by the assessee but also after disbelieving the genuineness of the transaction of purchase and sale of shares. In view of the matter, we do not find any error in the order of the Tribunal. Accordingly, question nos. A and E are answered in affirmative i.e. in favour of the revenue and against the assessee.

As to question no. D, the same pertains to validity of initiation of reassessment proceedings. That ground of appeal was decided against the assessee by the CIT (Appeals). It

was not dealt with or decided by the Tribunal. Hence the question as framed does not arise in this appeal.

In view of the above, the instant appeal lacks merit and is **dismissed**.

Order Date :- 1.12.2017

A. Singh