Court No. - 35

Case :- INCOME TAX APPEAL No. - 34 of 2016

Appellant :- M/S Prem Castings (P) Ltd.
Respondent :- Commissioner Of Income Tax (Appeals)
Counsel for Appellant :- Rahul Agarwal
Counsel for Respondent :- S.C.,S.S.C. I.T.

Hon'ble Bharati Sapru,J.
Hon'ble Saumitra Dayal Singh,J.

Heard Sri Rahul Agarwal, learned counsel for the appellant and Sri Praveen Kumar, learned counsel for the revenue.

This appeal has been filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') against the order of the Income Tax Appellate Tribunal, Delhi dated 11.09.2015 for the Assessment Year 2007-08. It has been admitted on the following question of law:

> *"Whether the Assessing Officer was justified in making the addition under Section 68 of the Income Tax Act?"*

Admittedly, the assessee is a private limited company engaged in the manufacture and sale of Iron and Steel products. For the Assessment Year 2007-08 it filed it's return of income disclosing book profits Rs. 21,77,195/-. The assessment was taken as a scrutiny case under Section 143(3) of the Act. In the course of the assessment proceedings amongst others the Assessing Officer doubted the genuineness of the cash credit entries Rs. 3,46,00,000/- that had been recorded against share capital subscribed by 37 persons, being 23 corporate entities and 14 individuals. The assessee provided the names, addresses and other details of the investors who it claimed, had made investment of Rs. 3.46 crores. The assessee further claimed to have provided the PAN details, date of transactions, etc.

According to the Assessing Officer these details had been provided with some delay. The Assessing Officer then randomly picked up 9 of the aforesaid 37 persons and adopted process under Section 133(6) of the Act with respect to those 9 persons. Also, the Assessing Officer obtained the opinion of the handwriting expert to examine the signatures of the alleged investors on the basis of the documents supplied by the assessee. The PAN details were also sought to be verified.

Out of 9 persons to whom notices were sent under Section 133(6) of the Act, 7 addressees/alleged investors could not be located at such addresses. The remaining inquiry in respect of two persons went to a common address to two corporate entities. It was alleged one Sardar Surender Pal Singh was found at that address who claimed to have remained a director of those two companies till March, 2006 only. He further disclosed that the said companies had closed down in March, 2006. The statement of the said Sardar Surender Pal Singh was recorded and extracted in the assessment order.

In short, the Assessing Officer reasoned that no person was found existing at any of the address disclosed by the assessee. The conclusion drawn by the Assessing Officer with regard to the handwriting expert opinion are not being referred to here because in the order passed by the Tribunal giving rise to the present appeal the Tribunal has chosen not to rely on that opinion of the handwriting expert. The inquiries with regard to PAN details also resulted in negative confirmation inasmuch as Assessee Information System (in short AIS) database of the department did not support/confirm the claim made by the assessee with regard to the identity of the persons who the assessee claimed had made the investment. Thus, the Assessing Officer disbelieved the explanation furnished by the assessee in support of cash credit entries amounting to Rs. 3.46 crores found recorded in the books of account of the assessee and consequently he made an addition of that amount to the income of the assessee.

Upon appeal, the CIT (Appeals) however, accepted the explanation furnished by the assessee and allowed the appeal.

Being aggrieved, the revenue carried the matter to the Tribunal. While considering the case of the parties before it, the Tribunal noted in paragraph 38 of its order that the assessee, being a private limited company had admitted in its correspondence with the Assessing Officer that the investors in question were close friends and business associates of the assessee. This position of fact as recorded by the Tribunal is not disputed by the assessee in the present appeal.

The Tribunal thereafter found that the genuineness of the transactions had not been established by the assessee inasmuch the inquiries made under Section 133(6) of the Act resulted in negative confirmation of the details given by the assessee and also the AIS database had similarly resulted in a negative confirmation of the information furnished by the assessee as to the identity of the alleged investors.

Then, the Tribunal further held that the burden to establish the identity of the investors and the genuineness of the transaction rested on the assessee which, according to the Tribunal was never discharged. On such reasoning, the Tribunal has set aside the order of the CIT (Appeals) and confirmed the assessment order.

In the present appeal, Sri Rahul Agarwal, learned counsel for the assessee submits that in so far as the assessee is concerned, it is undisputedly a company. The cash credit entries in respect of which the addition has been made were admittedly entries reflecting subscription made to the share capital of the company. That investment having been made by the third parties, the assessee was not in a position to offer any further details other than that which was available with it. According to him, if such details had been found to be false or wrong, it was for the department to make additions at the hands of the persons who had subscribed to the share capital of the assessee and not at the hands of the company itself.

Opposing the submission so made by the learned counsel for the assessee, Sri Praveen Kumar, learned counsel for the department submits that the assessee is not a public company and no subscription document was issued by the assessee to invite subscription to it's share capital. In fact, as noted by the Tribunal the alleged investment was made by persons who according to the assessee were close friends and business associates. He therefore, submits, once the assessee a private limited company, admitted that the alleged investors were close friends and business associates of the directors and/or the share holders of the assessee company, the burden to establish their identity and genuineness of the transaction rested strictly on the assessee. It was not open to the assessee to thereafter submit that it cannot be burdened to lead any further evidence to establish the identity of the investors or the genuineness of the transactions. According to him, the order of the Tribunal is wholly just. In any case, the said order records a finding of fact based on appraisal of evidence and therefore, warrants no interference by this Court.

Having considered the arguments so advanced by learned counsel for the parties, we find that the Tribunal has dealt with the issue elaborately and thereafter recorded its finding on the issues raised by the assessee. In the first place, it found that the investors as disclosed by the assessee did not exist at the addresses disclosed by the assessee. It was then found that two of the investors as disclosed by the assessee effectively denied the fact of having made the investment. The PAN details of the alleged investors also did not establish the identity of such persons. In that view of the matter, the Tribunal recorded its finding that the identity of the investors was not established. The Tribunal disapproved the reasoning given by the CIT (Appeals) to accept the claim of the investment based solely on the fact that the investments had been made through banking channel.

Also, in respect of the bank account of the investors, inquiry had been made by the Assessing Officer and some of the bank account were found to be of persons other than the alleged investors. That notwithstanding, the Tribunal has reasoned that the assessee being a private limited company and it being admitted that the alleged investors were close friends and business associates, the case of the assessee stands on a completely different footing than that of public company that may receive some amount through banking channel from persons completely unknown to its directors. In those cases an argument does arise that even if the identity of the investor is not established, it cannot lead to a consequential addition at the hands of the assessee - a public limited company. The position is materially different in the case of the assessee here, a private limited company. In this case subscription to share capital (as claimed) is made through private invitation and not through public document. Therefore, it was the assessee/company itself that ought to have known the person/s it invited to subscribe to its share capital. The assessee cannot hide behind the shell of a corporate entity to feign ignorance of the real person who may have subscribed to its share capital. This is a special fact known only to the assessee who alone may have been aware of the real identity of such persons. Upon failure to disclose and establish the identity of such a person, an adverse inference and the consequential addition had to be made at the hands of the company itself under section 68 of the Act by disbelieving the cash credit entries found recorded in the books of the assessee a private limited company.

One exception where such addition may not be made at the hands of the private limited company may be where such an addition may be proposed to be made at the hands of a private limited company at the very beginning i.e. at a time when it may not have conducted any business so as to give rise to any income or money to make such an investment. In that case, addition may be warranted at the hands of the directors etc. However, that is not the case here. No other fact has been pleaded or found to exist as may save the assessee in this case from the addition made u/s 68 of the Act.

Also, merely because the cash credit entries have been shown as share capital cannot be cited as a reason to resist the addition under section 68 of the Act on a plea that no company can subscribe to its share capital (as has also been suggested during the course of arguments). Once it is found that the entries itself are bogus and the investors as disclosed are non-existent, the reflection of the amount in the books of account of the assesse is only a tax evasion device or a mere pretence. It is not an entry based on or arising from a real transaction. There being no transaction, the entry is a paper entry or a bogus entry. It cannot upon be relied to create any legal effect when there exists no factual basis for it's existence.

The Tribunal has also reasoned, once the inspector's report in pursuance of the inquiry made under Section 133(6) of the Act resulted in negative confirmation of the claim made by the assessee, the onus shifted back to the assessee to lead evidence in support of it's claim. The assessee having not led any further evidence, it could not derive any benefit from the fact that the Assessing Officer did not allow the assessee any opportunity to cross-examine the bank officials or the hand writing expert.

Thus, we find that it being undisputed that the assessee is a private limited company and it being further admitted to it that the alleged investors were close friends and business associates of its directors and/or share holders, as the case may be, the burden rested squarely on the assessee to disclose true and correct details of the persons it claimed had made the substantial investments of Rs. 3.46 crores. That burden was not discharged. The identity of the alleged investors was never established and the assessee did not discharge its burden to lead evidence on that issue. The finding of the Tribunal is a finding of fact recorded on the basis of evidence and application of the correct principle/rule of evidence. The same calls for no interference by this Court and it is hereby sustained.

Once, the identity of the investors was not established the assessee could not in any case claim to establish either the genuineness of the transaction or the creditworthiness of those persons. Therefore, the objection raised by learned counsel for the assessee as to lack of opportunity to cross-examine the Bank Manager or other witnesses, is largely inconsequential. Even if such opportunity has been granted to the assessee by the Assessing Officer, it would have led to no different result inasmuch as since the assessee failed to establish the identity of the investors, the genuineness of the transaction itself gets disapproved for the reason that for a genuine transaction there must first exist genuine person to perform that transaction. Also, for that reason, the creditworthiness of the investors could never be established once it was found that there was no person existing who may have entered into such a transaction.

In view of the above, we find that the finding recorded by the Tribunal are pure findings of fact recorded by the Tribunal recorded after applying the correct test/principle. They do not warrant any interference by this Court.

The question of law raised in this appeal is answered in affirmative i.e. against the assessee and in favour of the revenue.

The appeal lacks merit and is **dismissed.** No order as to costs.

Order Date :- 29.11.2017
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