Court No. - 35

Case :- INCOME TAX APPEAL No. - 142 of 2016

Appellant :- M/S Janki Mahal Hotel Pvt. Ltd.
Respondent :- The Commissioner Of Income Tax
Counsel for Appellant :- Suyash Agarwal
Counsel for Respondent :- S.C.,Shubham Agarwal

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

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 13.01.2016 for the assessment year 2008-09. The questions of law sought to be answered are as under:

"Whether the finding of ITAT that A.O. has not carried out inquiry on issue of fresh capital introduction of Rs.50 lacs during the year are not perverse and contrary to evidence on record when such amounts were not found credited in books of the previous year and could not be added as income u/s 68?"

It is the case of the assessee that during original assessment proceedings for the assessment year 2008-09 a query had been made by the Assessing Officer on 29.07.2010 to the following effect:

"9. Details of share application money/share capital raised during the year giving complete address & asstt. Particulars of the previous concerned. Please also furnish confirmed copies of A/cs there from. Also give details of shares allotted, if any. Please also furnish evidences regarding identity, genuineness and creditworthiness of new share application creditors and sources of amounts given by them."

The assessee further claims that in response to the query made which had been explained by a written reply wherein the assessee had explained that the share capital of Rs.50 lacs had been credited in the books of account during the previous relevant to Assessment Year 2007-08 and 2008-09.

Apparently, no finding was recorded on the said issue either adverse or in favour of the assessee. Subsequently, on 15.02.2013 the Commissioner of Income Tax initiated a proceedings under Section 263 of the Income Tax Act, 1961 wherein amongst others the Commissioner was of the opinion that share capital introduced during the assessment year had not been properly examined by the Assessing Officer while *making the original assessment.*

Again in reply to the aforesaid show-cause notice the assessee filed its written reply on 05.03.2013 along with the evidence wherein he submitted as hereunder:

"In this regard, we humbly submit that during the year under consideration the authorized, issued, subscribed and paid up capital of the assessee company was increased from Rs. 50,00,000/- (50 lac) to Rs. 1,00,00,000/- (1 crore). The contention of your goodself that the Ld. A.O. did not raise any query for the same is not correct. The Ld. A.O. has raised a query during assessment proceedings regarding the authenticity of the increase in authorized, issued subscribed and paid up capital of the assessee company vide order sheet entry dated 16 November 2010, wherein, the details regarding the issuance of share capital were sought to be filed. In response to the said query the assessee vide reply dated 23.11.2010 and 07.12.2010 (copy of the replies are enclosed herewith as Annexure 3), filed copy of form 2, list giving names and adress of all shareholders along-with the confirmations from all the shareholders regarding the purchase of shares by them. It was also apparent from the balance sheet as well as from the submission dated 07.12.2010 that the fresh capital was issued against the share application money of rs. 54,00,000/- already received during earlier years and only a sum of Rs. 10,000/- was received as fresh amount during the year. The details of Rs. 54,00,000/- being opening balance as on 01.04.2007 were apparent on records. Ledger accounts of the same for year ending 31.03.2008 and a copy of the detail showing the share application money received during year ending 31.03.2007 are enclosed herewith as Annexure 4 for your ready reference. Copies of following documents are being filed before your good-self to prove the authenticity and genuineness of the issued share capital issued during the year.

a) Copy of the Form 5 and Form 2 as filed with the Registrar of Companies (Annexure 5).

b) The detail showing the names of the people/entities to which shares were issued along-with the confirmation from all the shareholders as to number of shares held by them (Annexure 6). All the shareholders except Shri Roop Ram Singh are assessed to Income Tax and their PAN were submitted on record.

From the above, it is clear that the share capital issued, subscribed and paid-up is authentic and genuine and has been verified by the Ld. A.O. before accepting the same. It is also worth submitting that as the total amount except Rs. 10,000/- was received during earlier year, no adverse view could have been taken by the Ld. A.O. during the year under reference.

In light of above, we wish to submit that the AO's order cannot be regarded as being erroneous and prejudicial to the interest of the Revenue. Hence no action is required to be taken by your good-self on this issue."

While passing the order under Section 263 of the Act on 22.03.2013, it appears that the Commissioner of Income Tax was of the opinion that there were certain unexplained cash credits and considering that issue along with the issue of introduction of share capital, a finding has been recorded to the following effect:

"As regards (b) one of the main reasons for selection of the case for scrutiny was fresh

introduction of share capital of Rs. 50 lakhs there also the situation remained almost similar or identical or what has been stated in above para related to alleged unsecured loans:

Gaurav Kumar HUF 1,75,000 (share capital introduction)

GTI 115090/-

Bank A/c Balance 145000/- (10.3.2008)

In case of Kusum situation is almost same and heavy onus lies on the assessee solely to explain all kinds of credits appearing in its books failing which the same are liable to be added under section 68 of the Incometax Act, 1961 as unexplained cash credits. Reliance is placed on the following judgments:

(i) CIT Vs. La Medica (2001) 250 ITR -575 (Delhi)

(ii) Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (Alld.)

(iii) CIT Vs. United Commercial and Industrial Co.(199) 187 ITR 596 Cal.

(iv) CIT Vs Precision Finance Pvt. Ltd. (Cal) 208 ITR 465

(v) CIT v/s Korlay Trading Co. Ltd. (Cal.) 232 ITR 820

(vi) Krishan Kumar Jhanb v/s ITO and Anr (Punjab & Haryana) 17 DTR 249

(vii) M/s Sejai International Ltd v/s CIT Meerut (All.) Appeal No. 306 of 2010

(viii) CIT Vs Durga Prasad More, 82 ITR 540 (SC)

(ix) CIT Vs P. Mohnakala, 291 ITR 278 (SC)

(x) CIT Vs Sumati Dayal, 214, ITR 801 (SC)

(xi) ITO Vs Diza Holdings Pvt. Ltd. 255 ITR 573 (Kerla)

(xii) CIT Vs Nova Promoters and Finlease Pvt. Ltd. 18 Taxmann 217"

However, a specific objection had been raised by the assessee that the share capital of Rs.50 lacs had been credited in its books of account was for the year earlier to the previous year relevant to the assessment year 2008-09 and the same has not been considered at all.

Before the Tribunal, by the ground no.1(e) the assessee challenged the findings of the Commissioner on the ground of ambiguity on the issue of introduction of share capital.

The Tribunal again appears to have committed the same mistake as the Commissioner, and has not returned its finding on the objection raised by the assessee that the amount of share capital of Rs.50 lacs had been introduced in the books of account a year earlier to the previous year relevant to the assessment year 2008-09.

We have heard Shri Suyash Agrawal, learned counsel for the appellant and Shri Shubham Agrawal, learned counsel for the department and have also perused the record.

It has not been disputed that the objection or explanation filed by the assessee in response to the notice under Section 263 of the Act has not been considered at all by both the authorities i.e. Commissioner of Income Tax as well as by the Tribunal in the light in which it had been made by the assessee. The Tribunal has not recorded a clear finding on this aspect of the matter.

The relevant part of Section 68 of the Income Tax Act, 1961 reads as hereunder:

"Cash Credits- Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

This Court in the case of **Commissioner of Income Tax and another Vs. Surendra Singh Malhotra, in Income Tax Appeal No. 284 of 2012** decided on 16.5.2012 held as under:

"*.....The matter was carried in appeal by the assessee. The appellate authority/CIT(A) found that those cash credits were related to the earlier previous year and have nothing to do with the relevant previous year. It was also found that the account books of the assessee was not rejected by the Assessing Officer. In this view of the matter, the appeal was allowed and the additions made were deleted.*

.....On a plain reading of Section 68 of Act, it is difficult to accept the aforesaid contention of the Department. Section 68 provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.
The phrase "previous year" is very relevant. This indicates that the cash credits which has not been found satisfactorily explained can be added in the income of the assessee of that previous year in which those cash credits were recorded in the account books. "

Therefore, it appears to us that it was necessary for the Commissioner and the Tribunal to have examined the issue in this light and to reach their conclusion based on the objections so raised and evidence led by the parties as to whether the amount of Rs.50 lacs in respect of which additions had been made required to be made under Section 68 of the Act, had been found credited in the books of the account of the assessee in the previous year relevant to the assessment year 2008-09.

No such finding having been recorded either by the Commissioner or by the Tribunal, the matter requires to be reconsidered in the light of the objections raised and evidence on record and a clear finding is required to be recorded before a direction could be issued to make such an addition.

We, therefore, allow the appeal and remand the matter to the Tribunal to reconsider the matter. The matter on remand may be reconsidered within a period of three months from the date of production of a certified copy of the order before the authority concerned. A certified copy of the order may be placed before the authority concerned within next 15 days.

The question of law as raised is, therefore, answered accordingly.

The appeal stands disposed of.

Order Date :- 21.2.2017
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