Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 192 of 2014

Appellant :- Asstt. Commissioner Of Income Tax
Respondent :- Ats Promoters And Builders Pvt. Ltd.
Counsel for Appellant :- Dhananjay Awasthi
Counsel for Respondent :- Krishna Agrawal

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice
Hon'ble Pradeep Kumar Singh Baghel,J.

The appeal by the Revenue, under Section 260A of the Income Tax Act, 1961[1], has arisen from an order of the Income Tax Appellate Tribunal[2] dated 31 January 2014. Since the order of the Tribunal is a composite order for several assessment years, for the sake of clarity, it must be noted that the present appeal is in relation to AY 2002-03. The Revenue has framed the following questions of law:

> "(1) Whether the ITAT erred in law in deleting the addition made under Section 2 (22) (e) as deemed dividend ignoring the fact that Directors of both the Companies are same and have more than 20% of share holding in both the Companies and the loan was given interest free, hence are covered under the definition of Section 2 (22) (e) as all the pre-conditions are met.
>
> (2) Whether the ITAT erred in law in giving relief on account of advances from customers to be refunded which were basically unexplained credits which could not be explained by the assessee as per the provisions/language of Section 68.
>
> (3) Whether the Hon'ble ITAT erred in law in deleting

1 Act
2 Tribunal

> the interest chargeable from customers when it is clear that assessee had been charging interest on delayed payments and did not declare it under the head income from other sources.”

At the outset, it has been conceded on behalf of the Revenue that the first question, as framed, does not arise for the AY 2002-03. Hence, the Court has been required to consider the submissions only on the second and third questions, as framed.

Re: Question No.2.

The Assessing Officer made an addition in the amount of Rs.1.75 crores under Section 68 of the Act. This amount was shown in the audited balance-sheet as current liability on account of 'advance from customers to be repaid'. The addition was made under Section 68 of the Act and hence, the short question is whether those provisions were attracted.

Section 68 of the Act, insofar as is relevant, provides as follows:-

> **“68**. 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.”

Section 68 of the Act applies where any sum is found credited in the books of an assessee maintained for any previous year and where the assessee offers no explanation about the nature and source thereof or if the explanation offered by the assessee is not found, by the Assessing Officer, to be satisfactory. In that event, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

In the present case, the CIT (A) examined the original books of account and came to the conclusion that as on 31 March 2001, the advances from customers were in the amount of Rs.20.40 crores, whereas as on 31 March 2002, this amount was shown as nil. The advances from customers to be refunded were shown at Rs.3441 as on 31 March 2001, whereas on 31 March 2002, the corresponding figure was Rs.1.75 crores. The CIT (A) observed, after duly considering the accounts, that the amount of Rs.1.75 crores had been credited in the account of the assessee in earlier years and was not a fresh credit shown for AY 2002-03. This finding has been duly affirmed, after considering the accounts, by the Tribunal.

The Tribunal is correct in the view which has been taken because Section 68 of the Act permits an addition to be made where any sum is found credited in the books of account of the assessee for that year. In the present case, on a plain reading, Section 68 of the Act was not attracted. Hence, no substantial question of law would arise on this ground.

Re: Question No.3.

The Assessing Officer had made an addition of Rs.81.52 lacs. This was on the basis that under the agreement between the assessee and its flat purchasers, the assessee was entitled to charge interest @ 18% per annum on delayed payments. The Assessing Officer took a view that Rs.4.52 crores is receivable from the customers and, accordingly, calculated interest @ 18% on this amount, while making an addition of Rs.81.52 lacs.

In appeal, the CIT (A) noticed note no.5 in Schedule M, containing the notes to accounts, which indicated that interest from customers on delayed payments have been accounted on actual receipt basis, and the assessee does not have a stringent policy for the recovery of interest. The CIT (A) observed that the Assessing Officer did not furnish a reasonable opportunity to the assessee to explain its accounting treatment in regard to interest. Moreover, the CIT (A) accepted the submission that the assessee had adopted the receipt basis as the method of accounting in respect of interest on delayed payments by the customers.

Accordingly, the addition, which was made purely on a notional basis, was deleted by the first appellate authority. The Tribunal has also noted that the Assessing Officer made an addition only on a notional basis. The Tribunal also observed that the Assessing Officer had presumed that the assessee had earned the interest income whereas, the assessee had not received the interest income from its customers, nor was there a right to receive such income as per the accounting policy followed by the assessee. The view of the Tribunal is supported by the records and does not suffer from any error. Hence, no substantial question of law would arise.

For these reasons, the appeal by the Revenue will not give rise to any substantial question of law and is, accordingly, dismissed. There shall be no order as to costs.

Order Date :- 3.11.2014
RKK/-

(P.K.S. Baghel, J) (Dr. D.Y. Chandrachud, CJ)