RESERVED

Court No. - 33

Case :- INCOME TAX APPEAL No. - 415 of 2011

(ASSESSMENT YEAR 2004-05)

Appellant :- The Commissioner Of Income Tax-Ii And Another
Respondent :- M/S T.C. Ice And Cold Storage Pvt. Ltd.
Counsel for Appellant :- A.N. Mahajan, Sr. S.C.,R.K. Upadhya
Counsel for Respondent :- Krishna Agrawal

Hon'ble Tarun Agarwala,J.
Hon'ble Dr. Satish Chandra,J.

(PER HON'BLE DR. SATISH CHANDRA, J)
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The present appeal is filed by the Department under Section 260A of the Income Tax Act, 1961 against the impugned order dated 30.06.2011 passed by Income Tax Appellate Tribunal, Agra in I.T.A. No. 273/Agr/2009 for the assessment year 2004-05.

On 25.03.2014, a coordinate Bench has admitted the appeal on the following substantial questions of law :

> *(a) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in confirming the order of the CIT (A) deleting the addition of Rs.82,12,000/- made by the A.O. by invoking the provisions of Section 68 of the Act on account of unexplained share application money and loans by ignoring the fact that the credit worthiness of the persons who deposited the share application money and advanced loans could not be proved before the A.O.?*
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> *(b) Whether on the facts and in the circumstances of the case, the Tribunal and the CIT (A) are justified*

in law in not taking into consideration the material available on record such as bank account of the Directors, family member and their HUF which reveal that immediately prior to the issue of cheque to the assessee on account of share application money there were unverifiable cash deposits?

(c) Whether on the facts and in the circumstances of the case, the Tribunal and CIT (A) are justified in law in not taking into consideration the fact that unsecured loans have been advanced to the assessee by those persons who were having annual income in the range of Rs.40,000/- as per the Ration Card?

The brief facts of the case are that the assessee is a private limited company and derives the income from cold storage, which was constructed and installed during the year itself. During the course of assessment proceedings u/s 143(3) of the Act, the assessee was required to furnish details of investment in the cold storage, source of share capital and genuineness of loans. The assessee has filed some details, but did not file the complete documentary evidence as required by the A.O., so the A.O. has made the addition under Section 68 of the Act. Both the Appellate Authorities have deleted the said addition. Being aggrieved, the Department has filed the present appeal.

With this background Shri R.K. Upadhyay, the learned counsel for the appellant-Department has justified the order passed by the A.O. He submits that on scrutiny of the documents, it was noticed that share applicants and loan creditors are mainly agriculturists and their main source of income is agriculture and their annual income is in the range of Rs. 40,000/- per annum. Almost all have family consisting 4 to 6 persons. Out of such income, it is not possible to save an amount after meeting house hold expenses and other expenses. He further submits that in the bank account, the cash was deposited after issuing the cheques for share application. The depositors were not having the capacity to invest the money, infact, it is unaccounted money of the assessee, which was shown in the name of agriculturists. He also submits that the agriculturists have claimed that they kept the cash in their houses for long period, though they were maintaining bank accounts. He submits that it is unbelievable story. Lastly, he justified the addition made by the A.O.

On the other hand, Shri Krishna Agrawal, the learned counsel for the assessee relied on the orders of the appellate authorities. He submits that it is the money of the agriculturists and they were at liberty to keep the money with themselves in cash for a long period or to deposit in the Bank Accounts. Just before issuing the cheques, they deposited the money in the Bank as cash deposit with the share application was not permitted. He also submitted that the assessee company raised a share capital of Rs. 75 lacs from 15 shareholders; Rs. 64 lacs from 4 Directors; and Rs. 11 lacs from other 11 shareholders. All the shareholders were from same family having agricultural background with substantial land holdings. To meet the financial needs for construction activities, the assessee also raised the loan of Rs. 34,45,000/- from 19 persons who too were having the agricultural background. The assessee has furnished the necessary details before the A.O., however, the A.O. considered Rs. 27,33,000/- out of share capital, as explained and added remaining amount of Rs. 82,12,000/-(Rs. 47,67,000/- out of share capital and Rs. 34,45,000/- of unsecured loans) as income from unexplained sources.

It is also a submission of the learned counsel that transfer of the funds through the Bank Accounts of the shareholders or depositors were their own funds generated from the agricultural activities and cannot have any adverse impact on the case of the assessee company. The shareholders were agriculturists and having substantial land holdings for which evidence in the form of Khasra Khatauni, and certificates from the Gram Pradhan as well as Block Pramukh were submitted. The potatoes grown by the shareholders were kept in the cold storage. So, the contribution towards the share capital stands proved.

Lastly, he made a request to dismiss the appeal filed by the Department.

We heard both the parties at length and gone through the material available on record. From the records, it appears that the assessee has shown receipt of share money amounting to Rs. 75 lacs from 15 persons which includes Rs. 64 lacs from 4 Directors of the assessee company and balance amount of Rs. 11 lacs was received from 11 persons (1 lakh each). Apart from the said amount, the assessee has also shown receipt of Rs. 34,45,000/- by way of unsecured loans from 19 agriculturists. The A.O. has observed in his order that the Directors have sold their agricultural land in the year 2003 and out of such sale-proceedings, share application money was paid. In support, 11 sale-deeds amounting to Rs. 19,55,000/- were furnished and the same were accepted by the A.O. So, he made the addition of (Rs. 64,00,000-Rs.19,5000) Rs. 44,45,000/- as unexplained income on account of share application money. The A.O. further accepted the amount of Rs. 7,78,000/- representing capitalization of land for the cold storage, and for the remaining amount, he made the addition under Section 68 of the Act. The First Appellate Authority has partly allowed the appeal of the assessee and deleted the addition in dispute and the same was confirmed by the Tribunal.

From the records, it appears that the Tribunal has passed the impugned order in the absence of the learned Departmental Representative (DR), who in his written submission states that even if Khatauni have been provided, there is no reconciliation/record of land, no sale-deed record owned by the person in whose names sale of potatoes have been credited. There is also no proof of cultivation of potatoes or storage of such potatoes in the cold storage.

Further, in the instant case, the mystery pertaining to the creditworthiness remained unsolved.

In these circumstances, we deem it fit to set aside the impugned order passed by the Tribunal and remand the same for denovo adjudication. It is expected that the Tribunal shall crystallize the facts and take a fresh decision. If, need be, the Tribunal can examine the entire records itself in the interest of justice. When the matter is remanded to the Tribunal, it is not necessary to answer to the substantial questions of law.

In the result, the appeal filed by the Department is **allowed** for statistical purpose.

Order Date :- 09.09.2014

Anurag/-

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)