

Court No. - 32

Case :- INCOME TAX APPEAL No. - 66 of 2011

Petitioner :- The Commissioner Of Income Tax,Allahabad And Another

Respondent :- Kanhaiya Lal Jaiswal,Prop:-Uma Ann Bhandar

Petitioner Counsel :- Dhananjai Awasthi

Respondent Counsel :- Krishna Agarwal

Hon'ble Sunil Ambwani,J.

Hon'ble Aditya Nath Mittal,J.

We have heard Shri Dhananjay Awasthi, learned counsel for the income tax department. Shri Krishna Ji Agrawal appears for the respondent.

This income tax appeal under Section 260-A of the Income Tax Act, 1961 has been filed on the following questions of law:-

"(1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in deleting the addition of Rs.11,39,000/- made by the A.O. on account of loan creditors despite the fact that in the audit report filed along with the returned no such creditors were shown?"

"(2) 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.68,484/- made by the A.O. by applying a higher rate of gross profit on estimated sale of Rs.20,00, 000/-?"

The Income Tax Officer, in respect of the assessment year 2005-06 did not accept the books of account. He added Rs.11,39,000/- as unexplained increase of cash credit in the balance sheet, and also added the extra profit of Rs.68,484/-.

The assessee challenged the order of the Income Tax Officer dated 10.12.2007 making additions on the returned income. He objected that the Assessing Officer has not considered the explanation of the assessee while adding the cash credits, under Section 68 of the Income Tax Act, 1961 (the Act) and the excess profit. The appellate authority found that the explanation submitted by the assessee was satisfactory. The creditworthiness of the creditors was explained, in as much as the credit entry in respect of Ram Kali Devi, the wife of the petitioner of Rs.6,10,000/- and Rs.5 lacs of Mohit Agencies as well as Rs.29,300/- on the liability side of the balance sheet was sufficiently explained.

The appellate authority found that the genuineness of the transactions and identity and creditworthiness of Smt. Ram Kali Devi was well established during selections of assessment

proceeding, which is quite evident from the final query letter dated 29.11.2007. So far as entry of Rs.5 lacs relating to M/s Mohit Agency is concerned, the appellate authority found that the appellant had appointed M/s Mohit Agency for its stocking business on receipt of draft of Rs.5 lacs in favour of M/s Mohan Bakers Pvt. Ltd., Calcutta (the consigner). A copy of the account of M/s Mohit Agency along with account of M/s Mohan Bakers was submitted before the Assessing Officer during the course of assessment proceedings to prove the transfer. No cash credit was credited in the books of the assessee. The copies of the certificate issued by the Bank of Baroda, Bans Mandi Branch, Allahabad verifying the draft was also enclosed with the written submissions.

With regard to addition of Rs.24,000/- the appellate authority found that the assessee was carrying on consigning business on large scale and shown sale and purchase of more than Rs.2 crores under the head C and F. For the purposes of stocking the goods expenditure incurred for hiring of godowns was genuine business expenditure for which the assessee had made in his books of accounts.

The ITO filed appeal against the appellate order dated 3.2.2010. The Tribunal did not find any error of law in the findings recorded by the appellate authority and reiterated the findings that the ingredients of Section 68 of the Act, were not satisfied. The additions were made only for the sake of addition without stating that the assessee had failed to prove the identity and creditworthiness of Smt. Ram Kali Devi. The Tribunal also confirmed the findings with regard to entries of the demand draft in respect of M/s Mohit Agency.

Section 68 of the Act provides that where any sums are 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.

We do not find any error in the findings recorded by the appellate authority as confirmed by the Tribunal that the Assessing Officer did not record any finding regarding the explanation offered by the assessee. He did not record that the explanation was not found to be satisfactory.

We also find substance in the contention of Shri Krishna Ji

Agrawal that the books of accounts were not rejected. Only additions were made without considering the explanation, which were found to be sufficient by the appellate authority.

In our opinion, the questions raised do not arise for consideration. The findings recorded by the appellate authority and the Tribunal are findings of fact, which do not raise any question of law to be considered by the High Court.

The income tax appeal is **dismissed**.

Order Date :- 13.7.2012

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