

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Income Tax Appeal No. 5 of 2013

Crescent Control Pvt. Ltd.Appellant.

Versus.

The Assistant Commissioner
of Income Tax.Respondent.

Present:

Shri P.R. Mullick, learned counsel for the appellant.

Shri H.M. Bhatia, learned counsel for respondent.

Coram: Hon'ble Ravi Malimath, ACJ.
Hon'ble Narayan Singh Dhanik, J.

Hon'ble Ravi Malimath, ACJ. (Oral)

1. The appellant is a manufacturer of electromagnetic equipment used for environmental testing of vibrations. It filed an income tax return on 30.11.2006 for the financial year 2005 – 06 along with audited balance sheet and statement of accounts. A notice was issued under section 143 (2) of the Income Tax Act, 1961. Thereafter, the appellant was directed to furnish certain details with regard to balance confirmation of creditors with closing balance above Rs. 50,000/-. The same was complied with. However, the balance confirmation in respect of M/s B.K. Vinod & Co. Pvt. Ltd, Delhi for an amount of Rs. 48,690/-, M/s Chuni Lal Keval Krishna, Delhi for an amount of Rs. 24,960/-, M/s S.K. Engg. Works, Ghaziabad for an amount of Rs. 23,142/- and M/s S.R. Electricals, Delhi for an amount of Rs. 42,178/-, aggregating to Rs. 1,38,452/-, were disallowed, under section 68 of the Income Tax Act, 1961. After making additions to the income for Rs. 1,38,452/-, a demand notice for Rs. 72,999/- was issued to

the appellant. Aggrieved by the same, the appellant filed a first appeal before the Commissioner of Income Tax and the same was dismissed. Thereafter, the appellant filed a second appeal under Section 253 of the Income Tax Act, 1961 before the Income Tax Appellate Tribunal. The second appeal was also dismissed. Hence, the instant appeal.

2. The appeal was admitted on 20.03.2013 on the question – whether the appellant has discharged the obligation to satisfy the genuineness of the creditors in terms of section 68 of the Income Tax Act, 1961.

3. Shri P.R. Mullick, learned counsel for the appellant contends that the assessing officer has committed an error in disallowing the same. Sufficient material existed in order to indicate that all the purchases were genuine. Even otherwise, the genuineness of the transactions has not been disputed. In support whereof he relies on the bills so far as these four accounts are concerned which have been produced herein. They pertain to M/s B.K. Vinod & Co. Pvt. Ltd, Delhi for an amount of Rs. 48,690/-, M/s Chuni Lal Keval Krishna, Delhi for an amount of Rs. 24,960/-, M/s S.K. Engg. Works, Ghaziabad for an amount of Rs. 23,142/- and M/s S.R. Electricals, Delhi for an amount of Rs. 42,178/-. He also placed reliance on the ledger accounts to indicate that all the material have been produced. The genuineness of the transactions has also been proved.

4. The same is disputed by learned counsel for the revenue. He submits that the appellant having failed to satisfy the authority with regard to the genuineness of the transactions cannot now contend to the contrary.

5. However, on considering the contentions, we are of the view that the assessing officer should have considered the material produced before him, which have also been enclosed herein. On a specific question being asked to the learned counsel for the revenue - whether the bills referred to hereinabove have been produced before the assessing officer, it is submitted that he does not have complete information with regard to the same.

6. On considering these four bills, we are of the view that if the same were placed for consideration before the assessing officer, then he may have come to a different conclusion than what he has arrived at. We also do not notice that the assessing officer has referred to any of these bills, as produced by the appellant. Hence, we are of the view that it would be just and appropriate to direct the assessing officer to reconsider the matter afresh by considering these four bills, which are produced herein by the appellant as well as the material already placed before the assessing officer for consideration.

7. Hence, for all these reasons, the appeal is allowed. The order dated 28.09.2012 passed by the Income Tax Appellate Tribunal, New Delhi in ITA No. 2614/Del/2012 (AY 2006-07) is set aside. The matter is remanded back to the assessing officer to reconsider the matter afresh, in the light of the aforesaid four bills produced herein and thereafter, pass a fresh assessment order, in accordance with law.

(N.S.Dhanik, J.)

(Ravi Malimath, ACJ.)

07.08.2020