Court No. - 35

Case :- INCOME TAX APPEAL No. - 121 of 2016

Appellant :- Ashok Pachauri (Huf)
Respondent :- Commissioner Of Income Tax (Appeals)-I
Counsel for Appellant :- Rahul Agarwal
Counsel for Respondent :- Manish Goyal,S.S.C. I.T.

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

Heard Sri Rahul Agarwal, learned counsel for the appellant and Sri Manish Goyal, learned counsel for the revenue.

This appeal has been filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') arising against the order of the Income Tax Appellate Tribunal, Agra Bench, Agra dated 6.11.2015 for the Assessment Year 2003-04. The appeal had been entertained on the following reframed question of law:-

> *"Whether the Tribunal was legally justified in sustaining the addition of Rs. 55,05,259/- without recording any reason to differ from or disregard the finding of the Commissioner of Income Tax (Appeals) that the net gain to the appellant was only Rs. 15,90,259/- and without considering the fact that no gain accrued to the assessee on the amount of Rs. 43,55,000/- which was only rotated through different parties in a series of transactions"?*

By the assessment order dated 21.12.2009 for the Assessment Year 2003-04, the assessing officer had made an addition under Section 68 of the Act to the tune of Rs. 49,05,249/-. The addition had been made on account of certain cash credit entries found recorded of the assessee's books of account.

Against the aforesaid assessment order, the assessee had filed an appeal before the CIT (Appeals), Agra. By the order dated 30.3.2013, the CIT (Appeals) partly allowed the assessee's appeal against addition made under Section 68 of the Act. Against an addition of Rs. 49,05.249/- made by the assessing officer, the CIT (Appeals) sustained those additions, to the extent of Rs.15,90,249/-. The remaining amount of the addition was deleted by the CIT (Appeals) on the reasoning that the same represented the money of the assessee itself that had been recirculated through a devise using three others entities namely M/s Khalilabad Steels Pvt. Ltd; M/s Gurukul Technologies Ltd and; M/s Ayushi Stock Brokers Pvt. Ltd.

The CIT (Appeals) had in the appeal proceedings called for two remand reports from the assessing officer. Having considered those remand reports, the CIT (Appeals) concluded that the amount of Rs. 15,00,000/- that was paid by the assessee to M/s Ayushi Stock Brokers Pvt. Ltd on 13.9.2002 was returned back to the assessee in two installments of Rs. 10,00,000/- and 5,00,000/- each. Again on 19.9.2002 the assessee paid Rs. 15,00,000/- to M/s Khalilabad Steels Pvt. through cheque which money was then paid to M/s Khalilabad Steels Pvt. Ltd. who paid it to M/s Gurukul Technologies Ltd. again through cheque. It passed on the money to M/s Ayushi Stock Brokers Pvt. Ltd. Again M/s Ayushi Stock Brokers Pvt. Ltd paid back money of Rs. 15,00,000/- to the assessee. The same exercise is stated to have been repeated two more times.

The CIT (Appeals) relied on the aforesaid remand reports to conclude that the persons who were operating the bank account to the aforesaid three others entities were common and in such circumstances the CIT (Appeals) concluded that the money was only being recirculated by the assessee and that each instance/occasion when the assessee came into receipt of Rs. 15,00,000/- (upon such money be recirculated), it did not give rise to a fresh cash credit.

Consequently, the CIT (Appeals) sustained the addition in part and deleted the other part which treated to be a mere recirculation of the money on which addition was once made under Section 68 of the Act.

Upon the revenue's appeal before the Tribunal, the Tribunal has reversed the order of the CIT (Appeals) and confirmed the assessment order. According to the Tribunal, out of Rs. 59,05,249/- and Rs. 43,55,000/- represented unexplained cash credit while the balance of Rs. 15,90,249/- was the alleged long term capital gains. That too was disbelieved for the reason that according to the Tribunal the assessee had neither purchased the shares of M/s Khalilabad Steels Pvt. Ltd nor he had been able to prove sale of the same to M/s Ayushi Stock Brokers Pvt. Ltd.

Assailing the order of the Tribunal, learned counsel for the assessee submits that the detailed findings recorded by the CIT (Appeals) were based on the evidence existing on record in the shape of two remand reports submitted by the assessing officer himself. Before submitting those reports, the assessing officer had full opportunity to make necessary inquiry and thereafter report to the CIT (Appeals) with respect to the transactions. Relying on the said finding, it has been submitted that besides the original entries recorded on the first occasion i.e. on 13.9.2002, all other subsequent entries are only entries representing recirculation of the same money Rs. 15,00,000/-. It has therefore been submitted that the Tribunal has completely misdirected itself and overlooked this vital aspect of the case.

It has also been submitted that by the order of the CIT (Appeals), is well reasoned. The Tribunal has not recorded any reasoning to reverse the finding of fact recorded by the CIT (Appeals) and has merely recorded its different conclusion on the same facts.

Opposing the appeal, learned counsel for the revenue submits that the additions having been made under Section 68 of the Act, the burden to establish the identity of the creditor, the genuineness of the transaction as also the credit worthiness of the creditor rested on the assessee. In this case, the assessee neither got himself examined before the assessing officer nor it made available to the assessing officer, the alleged entities or their representatives inasmuch as neither M/s Khalilabad Steels Pvt. Ltd. nor M/s Gurukul Technologies Ltd. nor M/s Ayushi Stock Brokers Pvt. Ltd or their authorized represented ever appeared before the assessing officer. Thus the assessee neither established the identity of the creditors nor the genuineness of the transaction. Issue of credit worthiness could not be examined in absence of the identity of the creditor or genuineness of the transaction having been established before the assessing officer.

Therefore, it has been submitted on behalf of the revenue that the finding of the CIT (Appeals) were only unacceptable inasmuch as the CIT (Appeals) has only recorded a finding on the basis of partial inquiry reflected in the two remand reports that was submitted by the assessing officer in response to the specific direction issued by the CIT (Appeals).

Learned counsel for the revenue further submits that if CIT (Appeals) had found that the explanation furnished by the assessee was prima facie genuine or bona fide, he ought to have remitted to the matter to the assessing officer to conduct a detailed inquiry and no final conclusion as to the genuineness of the transactions or the identity of the creditor could ever be recorded without four participants to the transaction being first examined by the assessing officer and without having any opportunity to examine further facts that may have emerged from examination of such other entities. In fact, it has been pointed out that before the assessing officer the assessee himself did not appear.

Having considered the argument so advanced by learned counsel for the parties, we find that while at present there is little reason to doubt the correctness of the reasoning adopted by the CIT (Appeals) in so far as that authority has referred to the fact brought to its notice by two remand reports. At the same time it cannot be overlooked that the said facts were only an indication of what the true facts may have been. Till, such time all four entities namely the assessee; M/s Khalilabad Steels Pvt. Ltd; M/s Gurukul Technologies Ltd. and; M/s Ayushi Stock Brokers Pvt. Ltd. had been examined by the assessing officer and they had vouched for the transactions as claimed by the assessee to be a mere circulation or recirculation of the same money, no genuineness or final conclusion could have been recorded by the CIT (Appeals) in favour of the assessee.

Therefore, the order passed by the Tribunal as also the CIT (Appeals) cannot be sustained. The order of the Tribunal dated 6.11.2015 is set aside. The matter is remitted to the assessing officer on the limited aspect of the addition made under Section 68 of the Act. It would be open to the assessee to now appear before the assessing officer and lead such evidence as it may be advised, in respect of its claim as raised before the CIT (Appeals). Needless to say, the assessing officer will pass a fresh order in that regard, in accordance with law, within a period of six months from today. The question of law is answered accordingly.

The appeals is **disposed of.**

Order Date :- 19.12.2017
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