Court No. - 35

Case :- INCOME TAX APPEAL No. - 58 of 2017

Appellant :- Pr. Commissioner Of Income Tax-I Kanpur
Respondent :- M/S Kushal Foods Pvt. Ltd. Kanpur
Counsel for Appellant :- Ashish Agarwal,Ashish A
Counsel for Respondent :- Ashish Bansal

Hon'ble Bharati Sapru,J.
Hon'ble Piyush Agrawal,J.

(Delivered by Hon'ble Piyush Agrawal, J.)

The present appeal has been preferred under section 260 (A) of the Income Tax Act, 1961 against the judgement & order dated 27.07.2016/19.09.2016 passed by the Income Tax Appellate Tribunal, Lucknow Bench "A", Lucknow (hereinafter referred to as, 'the Tribunal') in Income Tax Appeal No. 840/LKW/2014 for the Assessment Year 2009-10.

The present appeal was admitted by this Court on 09.01.2018 on the following question of law:

> *"**(I)** Whether, the learned ITAT is justified in law and on facts in deleting the addition of Rs. 4,19,94,000/- made by the Assessing Officer on account of bogus purchases without taking into consideration the facts and circumstances of the case and all the material on record?"*

The facts of the case are that the respondent –

assessee is running a roller flour mill unit for manufacturing & trading of *Aatta, Maida* and *Suji* and also, running manufacturing unit of biscuits on job work basis for Parle Biscuit Private Limited, Mumbai.

On 26.10.2012, the respondent – assessee filed its income tax returns showing income of Rs. 1,07,12,440/-. On 23.08.2011, the assessment was completed under section 143(3) of the Income Tax Act, 1961 at a total income of Rs. 1,10,64,630/-.

Thereafter, information was received from ADIT-3, Kanpur that one Shri Har Narayan Gupta, the Proprietor of M/s Annapurna Trading Company, Kanpur, has stated during the course of statement under section 131(1-A) of the Income Tax Act that during the relevant period, he had raised bills to the respondent – assessee without any actual sale and received commission.

On the said statement, proceedings under section 147 of the Income Tax Act were initiated. On 10.10.2012, notice was issued under section 148 of the

Income Tax Act for making reassessment. In the said process, the respondent – assessee was required to produce certain tax details to verify the facts that purchases, shown to the extent of Rs. 4,19,94,000/-, were not bogus purchases.

On 21.02.2014, summons were issued under section 131 of the Income Tax Act to Shri Har Narayan Gupta, the Proprietor of M/s Annapurna Trading Company to produce certain documents and to cross-examine the matter. Thereafter, order dated 28.02.2014 under sections 147/148 of the Income Tax Act was passed and addition of Rs. 4,19,94,000/- was made in the income of the respondent – assessee making total taxable income of Rs. 5,30,58,630/-.

The assessment order was assailed before the Commissioner of Income Tax (Appeals), who by order dated 25.08.2014, partly allowed the appeal of the respondent – assessee. The order of the Commissioner of Income Tax (Appeals) was further assailed by the

Revenue as well as by the respondent – assessee before the Tribunal. The Tribunal, by the impugned order, has dismissed the appeal.

We have heard learned counsel for the parties and perused the records of the case.

The proceedings under sections 147/148 of the Income Tax Act have been initiated against the respondent – assessee on the basis of information received from ADIT-3 and statement of Shri Har Narayan Gupta, the Proprietor of M/s Annapurna Trading Company, was recorded to the effect that he has only received commission from the respondent – assessee without there being any actual sale. In turn, the purchases of Rs. 4,19,94,000/- shown by the respondent – assessee were bogus and only a bogus purchase entry was made to reduce actual tax liabilities.

In pursuance of the summons and on cross-examination of Shri Har Narayan Gupta, he has clearly and categorically denied that he indulged in any kind of mal-practice. He also denied to make any statement that he was only getting commission for issuing bills with actual sale to respondent – assessee.

In view of the categorical findings of fact recorded by the Commissioner of Income Tax in favour of the respondent – assessee in appeal and confirmed by the Tribunal vide impugned order, no question of law arises in the present appeal.

Moreover, the authorities below have recorded that M/s Annapurna Trading Company has produced its books of account in the reassessment proceedings and the same were verified by the Assessing Authority. The quantity and details, furnished by the respondent – assessee, were neither disturbed nor rejected. Moreover, the respondent – assessee has shown purchases from 13 parties, including M/s Annapurna Trading Company, and none of the parties, from whom purchases have been shown by the respondent – assessee, was found bogus purchases by the Assessing

Authority. The payments have been made through cheques and all the entries were duly made in the books of account and the same were verified.

In view of the findings of fact recorded in favour of the respondent – assessee, that the purchases were being made from M/s Annapurna Trading Company, no substantial question of law arises in the present appeal. The present appeal lacks merits and it is hereby dismissed.

The question of law is answered, accordingly, in favour of the respondent - assessee and against the Revenue.

Order Date :-18.02.2019
Amit Mishra