Court No. - 35

Case :- INCOME TAX APPEAL No. - 708 of 2012

Appellant :- Commissioner Of Income Tax
Respondent :- Mohd. Sahid Prop. M/S Azim Builders
Counsel for Appellant :- S.S.C. I.T.,Manish Goel
Counsel for Respondent :- Anay Kumar Srivastava,Ajay Kumar Srivastava,Jeet Bahadur Singh,S.S. Chauhan,Sarveshwar Singh

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

Heard learned counsel for the parties.

This appeal under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the Act) has been filed by the revenue against the order of the Income Tax Appellate Tribunal, Agra Bench, Agra dated 13.04.2012 for the Assessment Year 2005-06. By that common order, the Tribunal has decided the revenue's appeal being ITA No. 5/Agr/2011 and the assessee's appeal being ITA No. 460/Agr/2010. The Tribunal has dismissed revenue's appeal and allowed the assessee's appeal. The present appeal has been filed on the following questions of law:

"(1) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in law to hold that the AO had no occupation to invoke Section 145(3)?

(2) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in interpreting the provisions of Section 68 in the way it did in this present case?

(3) Whether the ITAT was justified in deleting the addition made by the AO u/S 68 solely on the grounds that the AO has accepted the claim of the Assessee in

the remand report?

(4) Whether the ITAT had gone beyond its jurisdiction when it deleted the additions made by the A.O. as it amounted to curbing the powers of the A.O. granted by the Legislature u/S 68?

(5) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in law to hold that whatever reasons given by the AO for rejecting the books results of the assessee are not reasonable?

(6) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in law in deleting the addition made by the AO at Rs. 62.95 Lakh by rejecting the books of account under Section 145 of the I.T.Act, 1961?

(7) Whether on the facts and circumstances of the case, the order of the Hon'ble ITAT may be set aside and that CIT (A) and AO be restored?"

At the very outset, learned counsel for the revenue states that the instant appeal is being pressed on questions of law nos. 1, 2 and 6 only. While questions no. 1 and 6 relate to addition made to the income of the assessee on account of valuation of closing stock, question no.2 relates to addition made under Section 68 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

The assessee is an individual engaged in construction and sale of residential flats in the name of M/s Azim Builders. He had filed his return of income for the Assessment Year 2005-06, disclosing income Rs 2,84,940/-. The said return was taken up under scrutiny. Vide assessment order dated 14.12.2007, the assessee was assessed to tax on total income at Rs. 1,02,90,750/-. In that assessment, an addition of Rs. 62,95,813/- was made by way of unexplained investment in closing stock under Section 69 of the Act and another addition of Rs. 37,10,000/- was made on account of unexplained cash credit under Section 68 of the Act. In the appeal to the CIT (Appeals), two remand reports were submitted by the assessing officer especially with respect to the alleged unexplained cash credit under Section 68 of the Act. The Commissioner of Income Tax (Appeal) vide his order dated 25.10.2010 partly allowed the appeal. He restricted the addition made under Section 68 of the Act to Rs 1,70,000/-. However, he upheld addition of Rs. 35,40,000/-. Also, he upheld the entire addition made on account of closing stock.

While, the revenue appealed against the deletion of unexplained cash credit to the extent of Rs. 35,40,000/-, the assessee appealed against the other part of that addition - Rs. 1,70,000/- and the order of the CIT (Appeals) by which he sustained the addition of Rs. 62,95,813/- on account of valuation of closing stock.

The Tribunal while deciding the assessee's appeal on the issue of the valuation of the closing stock found that the cost of construction material purchased by the assessee had not been disputed by the assessing officer. The said purchase was in fact found to be duly supported by the vouchers maintained by the assessee that were also duly signed by the payees/recipients. Then, it found that the consideration of turnover of sale of residential flats made by the assessee at Rs. 1,94,42,000/- did not provide a sound basis to determine the value of closing stock inasmuch as those residential units had been sold by the assessee in different assessment years which fact was found duly verified from the books of account and other evidence including sale-deed found existing on record. The Tribunal, therefore, rejected the foundation/basis for the re-computation of valuation of the closing stock done by the assessing authority. Also, the Tribunal found that the assessee had followed the same method of accounting and had valued its stock in the same manner for the Assessment Years 2004-05, 2006-07 and 2007-08 for which years also the assessee had been subjected to assessment under Section 143(3) of the Act and in those assessment proceedings the value of closing stock disclosed by the assessee had been accepted. The Tribunal, therefore, did not find any reliable or cogent reason to reject the book results of the assessee and to make the addition to the value of closing stock of residential flats. Upon such discussion and reasoning made by the Tribunal in detail and having thus considered the facts and evidence on record, the Tribunal deleted the addition to the closing stock of Rs. 62,95,813/-.

With respect to the additions made under Section 68 of the Act, while the CIT (Appeals) had partly allowed the grounds of appeal raised by the assessee and sustained the additions made under Section 68 of the Act upto Rs. 1,70,000/-, the Tribunal took note of the fact that the CIT (Appeals) had called for two remand reports and reading the same together, the Tribunal found that the entire cash credit found recorded in the assessee's books of account for the previous year relevant to the Assessment Year 2005-06 stood duly explained and reconciled inasmuch as the entire amount of Rs. 37,10,000/- was found to have been adjusted against the sale consideration for different flats sold by the assessee in different assessment years, to the same persons in whose name those cash credit entries were found existing in the assessee books of account for the Assessment Year 2005-06. Thus the reasoning of the assessing officer that the identity of the persons in whose cash credit entries standing was not established lost its relevance in face of registered sale-deeds found existing in favour of those very persons.

Learned counsel for the revenue submits that the valuation of stock has been wrongly accepted by the Tribunal, inasmuch as the assessing office and the CIT (Appeals) had found that the assessee had not properly valued its stock and that those authorities had correctly deduced the valuation of closing stock with reference to the sale price found recorded in the books of account of the assessee and the gross profit rates disclosed by the assessee for the relevant period.

As to the deletion of addition made under Section 68 of the Act, learned counsel for the revenue submits that Rs. 8,00,000/- deposited on 09.02.2004 by Aashiq Ali Siddiqui could not have been deleted as that person did not appear in response to the notice sent by the assessing officer. No other challenge has been made to the order of the Tribunal.

Learned counsel for the assessee has relied on the findings recorded by the Tribunal and submitted that the same are concluded findings of fact based on evidence and as such they do not warrant any interference.

Having considered the argument so advanced by learned counsel for the parties, we find that ordinarily closing stock may be valued either at on cost or on market value basis. In the instant case, apparently, the assessee had valued its closing stock on cost basis. In that regard, the Tribunal had specifically found that the purchase of raw material was found to be duly vouched which vouchers upon examination were further found to have been duly signed by the third parties. No other or further exercise was carried out by the assessing officer to doubt the correctness or completeness of the vouchers entries. Thus, in the first place, there was clear documentary evidence in support of the valuation disclosed by the assessee.

Then, the Tribunal has rightly taken note of the fact that for the earlier year and two subsequent years the assessee's book results had been accepted in proceedings under Section 143(3) of the Act, though the assessee was following the same method of accounting, every year. Therefore, according to the Tribunal, the valuation of closing stock done following the same method in the previous year relevant to the Assessment Year 2005-06 should also have been accepted.

Again, there being no evidence to doubt the correctness of the method followed by the assessee, the Tribunal has again not committed any error in rejecting the foundation of valuation made by the assessing officer. In so far as it has noted that the total sale turnover of the residential units made by the assessee was irrelevant inasmuch as the sales of different units had been made in different years and the same could not be clubbed together to apply the gross profit rate thereto to infer the deemed cost of closing stock. Here, we find that besides the foundation being non-existent (as the Tribunal has found), even the method adopted by the assessing officer is doubtful if not plainly erroneous.

In any case, valuation of closing stock being an issue of fact that has a cascading effect in different years, we find that the Tribunal has accepted the valuation of closing stock upon due appraisal of evidence inasmuch as it has found that the cost claimed by the assessee was duly verified from vouchers and the assessee's same method of accounting had found acceptance during assessment proceedings for the Assessment Years 2005-06, 2006-07 and 2007-08 in proceedings under Section 143(3) of the Act. Therefore, the same does not suffer from any infirmity. The finding recorded by the Tribunal is a pure finding of fact recorded on the basis of material and evidence on record. It does not suffer from any infirmity. Question nos. 1 and 6 are answered in the affirmative i.e. in favour of the assessee and against the revenue.

Then as to question no. 2, we find that there is nothing to doubt the correctness of the finding of the Tribunal that upon two remand reports, the entire cash credit entry of Rs. 37,10,000/- considered for the purpose of addition made under Section 68 of the Act, stood reconciled against different sale deeds executed by the assessee. Once registered sale deeds had been executed by the assessee and the cash credit entries found standing in the books of account of the assessee during the previous year relevant to the Assessment Year

2005-06 had been adjusted against the same, there remained no further doubt as to the identity of the persons who deposited the money with the assessee in the previous year relevant to Assessment Year 2005-06. The fact that such person did not receive the letter or did not appear in person during the inquiry made by the assessing officer at the original assessment stage gets overshadowed and looses its relevance in absence of any evidence to doubt the genuineness or correctness of registered sale deeds executed by the assessee.

Even in respect of amount of Rs. 8,00,000/- the second remand report as extracted by the CIT (Appeals) clearly mentioned that Aashiq Ali Siddiqui had got the sale deed executed in his favour wherein an amount of Rs. 8,00,000/- had been adjusted. Thus, the finding of the Tribunal on this issue is also a concluded finding of fact recorded on the basis of material and evidence on record and warrants no interference. Questions of law are answered in favour of the assessee and against the revenue.

The instant appeal lacks merit and is accordingly **dismissed.** No order as to costs.

Order Date :- 5.12.2017
Lbm/-