IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1805 OF 2013

Commissioner of Income Tax-15 ..Appellant
Vs.
Pankaj S. Samdhani ..Respondent

....

Mr. A.R. Malhotra a/w N.A. Kazi and Padma Diwakar, Advocates for Appellant.
Mr. Mandar Vaidya, Advocate for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 9 SEPTEMBER 2015

P.C.:

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 11 January 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 2007-08.

2. The revenue has framed the following questions of law for our consideration:

"1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the CIT(A)'s order in deleting the interest in respect of loans advance to sister concerns amounting to Rs.6,39,371/- merely because sister concerns are in the same line of business without appreciating the fact that the assessee has borrowed interest-bearing funds and has not shown any business purpose?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition made by the Assessing Officer for no services having been substantiated regarding Commission of Rs.9,23,654/- paid to related parties merely because it was paid by cheque and TDS was deducted?

3) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal was not perverse in restricting the disallowance towards cash expenses by AO to Rs.25,00,000/- out of Rs.37,63,853/- without appreciating the facts of the case and without appreciating the fact of non existence of supporting vouchers?”

3. <u>Regarding Question No.1</u>:

(a) The respondent-assessee had withdrawn Rs.60 lakhs in excess of the amount available in the bank and therefore paid interest on the same. Out of the aforesaid amount during the subject assessment year, the respondent-assessee had interalia advanced a sum of Rs.36 lakhs to M/s Samdhani Steels Pvt. Ltd. The Assessing Officer interalia disallowed interest at 12% payable on Rs.36 lakhs paid to M/s Samdhani Steels Pvt. Ltd.

(b) In appeal, CIT (A) held that the respondent-assessee was in the same line of business as M/s Samdhani Steels Pvt. Ltd. viz. Trading in nonferrous and ferrous materials. Besides the respondent-assessee had business dealings with M/s Samdhani Steels Pvt. Ltd. in having purchases of over Rs.2.55 crores and sales of Rs.2.90 crores during the subject assessment year. In the above view, the CIT(A) held that the advance of Rs.36 lakhs paid to M/s Samdhani Steels Pvt. Ltd. a sister concern, was utilization of funds by the assessee for its business. Thus deleted the disallowance of interest payment on Rs.36 lakhs claimed by the respondent-assessee.

(c) Being aggrieved, the revenue carried the issue in appeal to the Tribunal. By the impugned order it upheld the findings of CIT(A) by relying upon the decision of Apex Court in S.A. Builders Vs. CIT(A) 288 ITR 1 wherein it has been held that what has to be considered is whether the advance was given as a measure of commercial expediency on the part of the respondent-assessee. The Court observed that the revenue cannot put itself in the arm chair of businessman and decide how the business is to be conducted.

(d) Thus if the expenditure has been incurred on account of commercial expenditure, then even if there is no legal obligation to incur it, the same is to be allowed. In the above view, the question as proposed does not raise any substantial question of law. Accordingly Question (1) as proposed is not entertained.

4. Regarding Question No.2:

(a) For the subject assessment year, the Assessing Officer disallowed the commission in the aggregate of Rs.9.23 lakhs constituted of the the commission of Rs.8.96 lakhs paid to Dinesh

Samdhani and Rs.27,450/- paid to M/s Siddi Metal Corporation. This commission was disallowed by the Assessing Officer on the ground that the respondent-assessee had not substantiated with evidence, the factum of payment of the commission to the parties concerned.

(b) In appeal, the CIT(A) observed that the Assessing Officer had not made necessary enquiry into the claim of commission paid. This enquiry could be done by examining the persons to whom the commission is paid and/or make enquiry from parties from/to whom the the respondent-assessee had made purchases and sales with regard to which the commission was paid to the above parties. This is particularly so as that the respondent-assessee had provided various details including the assessment details of parties concerned. In these circumstances, the CIT(A) disallowed the addition made by the Assessing Officer.

(c) On appeal by the revenue, the Tribunal by the impugned order upheld the finding of the CIT(A). It recorded the fact that the respondent-assessee filed the details in respect of the service rendered by Dinesh Samdhani and M/s Siddi Metal Corporation and that the commission was paid by account payee cheque after deducting the TDS.

(d) We find that on this issue of payment of commission, concurrent finding of fact arrived between the CIT(A) and the Tribunal holding that the commission as claimed had been paid. The view taken by the Tribunal is a plausible view and the same has not been shown to be perverse. Accordingly, Question (2) as proposed is not a substantial question of law and is not entertained.

5. Regarding Question No.3:

(a) The respondent-assessee had incurred cash expenses of Rs.37.63 lakhs during the year. The expenses incurred in cash were allowed on account of transportation charges, salary and wages, coolie and cartage, vehicle maintenance, traveling expenses, etc. which are generally paid in cash. The Assessing Officer was of the view that the cash expenditure claimed by the respondent-assessee could not be relied upon as they are supported only on the basis of self made vouchers. Therefore, the Assessing Officer concluded that the respondent could not prove genuineness of the expenditure. In the circumstances, out of total cash of Rs.37.60 lakhs claimed as expenditure to Assessing Officer by order under Section 143(3) of the Act had disallowed an ad-hoc amount of Rs.25 lakhs.

(b) In the appeal, the CIT(A) confirmed the disallowance on account of telephone expenses to the extent of Rs.30,000/- as being on account of personal use and Rs.37,000/- on account of vehicle expenses. Therefore out of total claim of cash expenses of Rs.37.50 lakhs, disallowed 10% thereof i.e. Rs.3.44 lakhs. The CIT(A) in his order also records the fact that for the subsequent Assessment Year in the scrutiny proceedings, the Assessing Officer has disallowed the cash expenses on similar/identical nature to the extent of only 10%.

(c) In further appeal by the revenue, the Tribunal upheld the finding of CIT(A) interalia holding that the Assessing Officer had given no reason while making ad-hoc disallowance save and except the respondent-assessee did not produce proper vouchers in support of the expenses claimed. The Tribunal by the impugned order accepted the reasoning of the CIT(A) and particularly the observations that in the appellant's business major head of expenses are for transportation charges, coolie and cartages and salary and wages which are invariably paid in cash. Thus holding 10% disallowance of expenditure called for no interference.

(d) We find that the CIT(A) and the Tribunal have reached concurrent findings of fact in restricting the disallowance to the extent of 10% of the cash expenditure. This results in reversing the ad-hoc disallowance of almost 70% done by the Assessing Officer without any justifiable reasons. Moreover, for the subsequent years also the Assessing Officer has himself disallowed the expenses of similar nature only to the extent of 10% as done by CIT(A) and the Tribunal by the impugned order. Accordingly, the Question (3) as proposed does not raise any substantial question of law.

6. The appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

<u>CERTIFICATE</u>

Certified to be true and correct copy of the original signed Judgment/Order.