

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No.614 of 2010

DATE OF DECISION:October 21,2015

Commissioner of Income Tax (Central), Ludhiana

....Appellant

versus

M/s. Maharishi Markandeshwar Education Trust

.....Respondent

ITA No.841 of 2010

DATE OF DECISION:October 21,2015

Commissioner of Income Tax (Central), Ludhiana

....Appellant

versus

M/s. Maharishi Markandeshwar Education Trust

.....Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Rajesh Sethi, Advocate for the appellant.
Mr.Ravi Shankar, Advocate for the respondent.

RAMENDRA JAIN,J.

By this judgment, we shall dispose of two IT Appeals Nos.
614 and 841 of 2010, in which common questions of law have arisen
for determination by this Court.

These appeals have been filed by the Commissioner
of Income Tax (Central) Ludhiana against the orders dated

30.10.2009 (Annexure A.3) passed by the Income Tax Appellate Tribunal, Delhi Bench `E', New Delhi (for short, `the Tribunal').

Before discussing the general law governing the subject, it is appropriate to summarize the facts as under:

ITA NO.614 OF 2010

The respondent-assessee was running nine educational institutions. On 7.9.2005, a search and seizure operation under section 132(1) of the Income Tax Act (for short, `the Act') was carried out in the premises of the trust (in short, `the assessee'). During this operation, certain bogus cash receipts amounting to ₹18,67,277/- were seized. On 1.8.2006, a notice under section 153-A of the Act was issued to the assessee to furnish the return of income. In response thereto, the assessee furnished return of income declaring net loss of ₹16,44,05,110/-. Subsequently, the assessee was served with questionnaire and notices under sections 142(1) and 143(2) of the Act which were duly replied. Dis-satisfied with the material/evidence produced by the assessee, the Assessing Officer inferred that the assessee failed to explain the cash receipts amounting to ₹18,67,227/- in the books of account, by relying upon the statements of Accountants recorded during search that these bogus receipts were generated in the fictitious name in order to cover the aforesaid deficit for the year 2003-04. That being so, an addition of ₹18,67,227/- under section 68 of the Act was made assessing the net deficit at ₹(-

)16,25,37,883/- for the assessment year 2004-05 vide order dated 31.12.2007. Penalty notice under Section 274 of the Act for default under section 271(1)(c) of the Act was ordered to be issued separately.

ITA NO.841 OF 2010

During the above very search operation on 7.9.2005, certain documents, including the details of salary paid to the doctors/staff by cash, in addition to salary paid by cheque were seized in the institution of the assessee. Inventory of cash drawn and the cash amounting to ₹13,98,476/- was found at the college premises. In the return filed on 31.10.2006, the assessee declared net loss of ₹22,03,50,033/-. The assessee was served with questionnaire and notices under Sections 142(1) and 143(2) of the Act which were duly replied. On appreciation of material/evidence, the Assessing Officer inferred that the amount of ₹44,70,372/- was paid as salary from the unexplained source, while relying upon the statements of Dr.R.P.Aggarwal and Dr.S.K.Ahluwalia recorded during search. Dr.R.P.Aggarwal had admitted in his statement that an amount of ₹12,000/- per month was paid to him in cash, over and above to his salary, whereas, against his name mentioned at page 1,3 and 5 of document No.A-37 a sum of ₹28,000/- was mentioned. In this very document No.A-37, an amount of ₹16,000/- appeared to have been paid against the name of Dr.S.K.Ahluwalia. Hence, the difference in the salary of

Dr.R.P.Aggarwal of ₹16,000/- per month and further mentioning of ₹16,000/- against the name of Dr.S.K.Ahluwalia in document A-37 was considered by the Assessing Officer as it has been paid from unexplained source. The list annexed with document A-37 containing the names of 74 doctors. Hence, taking into consideration the difference of ₹48,000/- in the statement of Dr.R.P.Aggarwal and further ₹48,000/- on account of denial by Dr.S.K.Ahluwalia out of total amount reflected in the sheets as per A-37 for three months, the Assessing Officer made an addition of ₹44,70,372 under Section 69-C treating this as an amount paid out of books of account vide order dated 31.12.2007. Penalty notice under Section 274 of the Act for default under section 271(1)(c) of the Act was ordered to be issued separately.

Both the said assessment orders dated 31.12.2007 were made subject matter of challenge before the Commissioner of Income Tax (Appeals)-I, Ludhiana.

Vide order dated 7.4.2008 (Annexure A-2) in ITA No.614 of 2010, learned CIT(A) set aside, holding that addition of ₹18,67,227/- under Section 68 of the Act was not legally sustainable, inasmuch as, the statements of Accountants do not substantiate that the aforesaid alleged receipts were bogus because the receipts were duly found entered in the books of account and also in the balance sheet showing that the amount was deposited with the trust, which is registered under Section

12AA of the Act. Therefore, the aforesaid addition under Section 68 of the Act was ordered to be deleted. Dis-satisfied with the aforesaid order dated 7.4.2008, the revenue approached the Income Tax Appellate Tribunal (Delhi Bench 'E' New Delhi), who dismissed its appeal vide order dated 30.10.2009 affirming the findings of CIT(A).

Vide order dated 8.4.2008 (Annexure A-2) in ITA No.841 of 2010, the learned CIT(A) set aside the addition of ₹44,70,372/- made by assessing officer under Section 69-C of the Act for lack of legal credibilities. The main focus to disagree and negate the view taken by the Assessing Officer was that he had placed reliance on the statements of two doctors, namely, Dr.S.K.Ahluwalia and Dr.R.P.Aggarwal, who were considered to have not been made any payment in cash, though payment of ₹12,000/- was paid in cash to Dr.R.P.Aggarwal as per his admission before the Assessing Officer and in the seized documents, a sum of ₹16,000/- was shown to have been paid in cash to Dr.S.K.Ahluwalia. The learned CIT(A) came to the conclusion that remaining 72 doctors could not have been made payment in cash in view of the affidavits furnished by them, before the Assessing Officer, especially when they were not examined. Even the revenue has failed to prove the unexplained expenditure. Accordingly, it ordered for deletion of addition made by the Assessing Officer.

The revenue approached the Income Tax Appellate Tribunal (Delhi Bench `E' New Delhi), who dismissed the appeal vide order dated 30.10.2009. Additionally, it came to the conclusion that if, the amount is added as unexplained expenditure, still the character of the expenditure incurred was on the object of the trust and that being so, the assessee was entitled to claim deduction while computing its income under Sections 11 and 12 of the Act.

Now the revenue has approached this Court challenging the orders dated 30.10.2009 passed in both the cases by the ITAT, Delhi.

From the respective pleadings and the stands taken by both the parties, following points emerge for consideration:

- (a) Whether the addition of ₹18,67,227/- made under section 68 of the Act by the Assessing Officer is legal?
- (b) Whether the cash payment of salary as unexplained expenditure falls under section 69C of the Act?

Re: Point No.1.

Learned counsel appearing for the revenue submitted that the revenue has rightly invoked the provisions of Section 68 of the Act, inasmuch as, the assessee failed to establish the genuineness, creditworthiness and identity of the cash credits and, therefore, addition of ₹18,67,227/- under the aforesaid

section in the total income of the assessee had rightly been made. Moreover, it makes no difference, if the receipts forming part of income are taken as donation or unexplained credit. Thus, the orders passed by the Appellate Authorities below are liable to be set aside.

On the other hand, learned counsel appearing for the assessee submits that the Appellate Authorities below have rightly dismissed the claim of the revenue holding that the assessee has duly proved that the proper entries were made in the relevant registers showing the deposits of the amount with the trust. Thus, the appeal of the revenue be dismissed.

We have given our thoughtful consideration to the arguments of learned counsel for the parties.

In the present case, the premises of the trust was searched on 7.9.2005. During search, donation receipts amounting to ₹18,67,277/- were seized. No particulars or addresses were detailed out in the cash receipts. Statements of Shri D.K.Bansal, Senior Accountant and Shri Yashpal Anand, Accountant were recorded, who stated that whenever the assessee society has negative cash balance, the Chairman of the Trust has instructed to divert cash by preparing fake cash receipts. However, later on, by furnishing affidavits, both the above persons have resiled from their earlier versions. The Assessing Officer did not place reliance on their resiled version,

inasmuch as, their earlier statements lacks any duress or threat.

The respondent assessee is a registered trust under Section 12AA of the Act and, therefore, it is claiming exemption under Sections 11 and 12 of the Act. However, when it is established that the receipts form part of income and found mentioned in the account books, in that eventuality, unless and until, there is any material/evidence on record to show that the amount was spent on the object of the trust, it is not deductible.

Re: Point No.2.

Learned counsel for the revenue submitted that the payment of salary in cash, over and above the cheque amount, was made to the doctors/staff which even did not reflect in the books of account. That being so, a sum of ₹44,74,372/- is to be considered as income for the financial year under Section 69C of the Act.

On the other hand, learned counsel appearing for the assessee submits that the two Appellate Authorities below have rightly dismissed the appeal of the revenue.

In the instant case, the authorities below observed that since two doctors, namely, Dr.S.K.Ahluwalia and Dr.R.P.Aggarwal were considered to have not been made any payment in cash and made payment of ₹12,000/- instead of ₹28,000/- in cash, therefore, the appellate authority came to

the conclusion that remaining 72 doctors could not have been made payment in cash in view of the affidavits furnished by them, especially, when they were not examined before the Assessing Officer. Additionally, ITAT came to the conclusion that if the amount is added as unexplained expenditure, still the character of the expenditure incurred was on the object of the trust and therefore, the assessee is entitled to claim deduction while computing its income under Sections 11 and 12 of the Act. Be that as it may, the findings of the authorities below are not legally sustainable, because the material/evidence of the revenue was discarded merely on the premise that since the aforesaid two doctors were not found to be paid salary in cash or partly paid, over and above the cheque amount, as depicted above, therefore, the remaining 72 doctors were also considered to be not paid salary in cash, which is factually and legally incorrect. Furnishing of affidavits by 72 doctors denying that they did not get the salary in cash does not mean that the content of the concepts remain static. The entire evidence is to be considered, while adjudicating the matter. Without examining the concerned doctors/staffs, as to how it can be inferred that they were to be considered not paid salary in cash, over and above the cheque amount. However, this fact is lacking in this case. Thus, the findings of ITAT that assessee being a trust, the unexplained expenditure is not chargeable

under sections 11 and 12 of the Act are not legally correct, because under proviso to section 69C of the Act amount which was unexplained expenditure was to be added to the income of the assessee over and above the income declared by the assessee and shall not be allowed as a deduction under any head of income.

Conclusion Re: Points Nos.1 and 2.

In view of the aforesaid discussion, we find that this aspect of the matter has not been considered by the two Appellate Authorities below in the light of the aforesaid observations and accordingly, the present appeals are allowed. The orders dated 7.4.2008/8.4.2008 and 30.10.2009, Annexures A.2 and A.3, respectively, are set aside and the matter is remanded back to the Commissioner of Income Tax (Appeals)-I, Ludhiana for taking fresh decision in the light of aforesaid observations without being influenced by the earlier orders.

The CIT(A) shall decide the matter afresh in accordance with law. The appeals stand disposed of according.

(RAMENDRA JAIN)
JUDGE

October 21,2015
Kd

(AJAY KUMAR MITTAL)
JUDGE