IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.170 of 2013
Date of decision: 11.8.2015

Commissioner of Income Tax-I, Amritsar
……Appellant.

M/s The International Engg. Corporation (R)
…..Respondent

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Dinesh Goyal, Advocate for the appellant-revenue.

Mr. Pankaj Jain, Sr. Advocate with Mr. Divya Suri, Advocate
Mr. Deepanshu Jain, Advocate and Mr. Madhur Sharma, Advocate
for the respondent.

Ajay Kumar Mittal,J.

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 15.2.2013, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No.433(ASR)/ 2012, for the assessment year 2007-08, claiming following substantial questions of law:-

i) Whether the Hon'ble ITAT, Amritsar Bench is justified in deleting the addition made under Section 41(1) of the Income Tax Act, 1961 when the assessee failed to produce any explanation/documentary evidence during the course of assessment proceedings and as well as before Ist appellate authority?

ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT Amritsar Bench is right in law in deleting the addition of ₹ 26,30,038/- made by Assessing Officer on account of unexplained cash credit/unsecured loans and confirmed by learned CIT(A) Amritsar as the assessee failed to discharge its onus to establish the genuineness of capacity and creditworthiness of these unexplained cash credits/unsecured loans?

iii) Whether in the facts and circumstances of the case, the finding of Hon'ble ITAT under para No.10 of the judgment, to the effect that the amount of ₹ 14,74,763/- pertained to preceding year, as per copies of accounts, is perverse being contrary to material on record because it is the admitted fact that the assessee has not submitted confirmation of copies of accounts, books of accounts, for which his books of accounts have already been rejected under section 145(3) of the Act?

iv) Whether in the facts and circumstances of the case, the finding of Hon'ble ITAT under para No.11 of the judgment to the effect that the amount of ₹ 26,30,038/- is outstanding for the last many years as per the acknowledgment of return and PAN of concerned persons and proved their identity, capacity and creditworthiness, is perverse being contrary to material on record because it is the admitted fact on record that the assessee has not submitted confirmation of copies of accounts, books of accounts, for which his books of accounts have already been rejected under section 145(3) of the Act and no explanation was offered by the assessee for proposed addition to be made under section 41(1) of the IT Act 1961?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee firm is engaged in the business of manufacturing of textile machinery. It filed its return of income on 29.10.2007 at ₹ 44,000/- for the assessment year 2007-08 and the same was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny as per CBDT's instructions and guidelines. The Assessing Officer completed the assessment under Section 143(3) of the Act on 16.12.2009, Annexure A.1 and while rejecting the books of account of the assessee under Section 145(3) of the Act made additions of ₹ 14,74,763/- representing fictitious and cessation of liability and ₹ 26,30,038/- representing unsecured cash credits/unsecured loans respectively. Not satisfied with the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [in short, the CIT(A)]. Vide order dated 17.10.2012, Annexure A.2, the CIT(A) dismissed the appeal confirming the additions made by the Assessing Officer holding that the assessee could not file any evidence at the appellate stage. The assessee went in appeal before the Tribunal. Vide order dated 15.2.2013, Annexure A.3, the Tribunal partly allowed the appeal holding that the assessee having proved the identity, capacity and credit worthiness of the said persons, deleted the additions of ₹ 14,74,763/- and ₹ 26,30,038/-. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue submitted that the Tribunal erred in deleting the additions of ₹ 14,74,763/- and ₹ 26,30,038/-.

5. On the other hand, learned counsel for the respondent supported the impugned order dated 15.2.2013, Annexure A.3 passed by the Tribunal.

6. It has been categorically recorded by the Tribunal that the assessee had submitted the copies of accounts and complete postal addresses of all the parties on record which had not been held to be false or fraudulent by the Assessing Officer and therefore, the assessment had to be made on that basis. The relevant findings recorded by the Tribunal in its order dated 15.2.2013, Annexure A.3 read thus:-

> "10. We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the assessee has not submitted confirmation of copies of accounts, books of account and therefore, the arguments made by the learned DR and the findings of both the authorities below to that extent are not disputed but at the same time, there is also no dispute that the assessee has submitted copies of accounts in the case of sundry creditors amounting to ₹ 14,74,763/- where the balances shown are outstanding as per last year i.e. which has been brought forwarded from the preceding year except provision of interest in the respective years and in the impugned year which has not been disallowed by the AO. The liability pertains to the preceding year, as is evident from pages 6 to 21 where copies of accounts of all sundry creditors are placed on record and were available before both the authorities below. The said balances are outstanding in the following years as well is a matter of record and there is no dispute to the said fact. The assessee has not obtained any benefit out of such liability which is not ceased to be liability

and the assessee has not written back such liability unilaterally in its books of account. Therefore, such liability cannot be a subject matter of section 41(1) of the Act. It is also a matter of record in the order of the AO where the assessee had made some payments during the assessment years 2008-09 and 2009-10, which the AO at page 2 has mentioned in his order. Inspite of such facts on record, the matter did not find favour to the AO and confirmation made by the learned CIT(A) in a summary manner is not justified. The assessee is assessed to income tax regularly, is on record and sundry creditors are outstanding as per last year for which assessment record was available with the AO which was argued by the learned counsel and was not rebutted by the learned DR in this respect. Even if confirmation copies of accounts and books of account are not produced, the copies of audited accounts for the impugned year and the assessment record of preceding year was available with the AO. The AO cannot make the assessment on conjectures, surmises or on the basis of suspicion. The AO has not given any findings that the said copies of account as false or fraudulent. Therefore, the assessment has to be made on the basis of such copies of account when they are not proved false or fraudulent. Notwithstanding the fact, the rejection of books of account, the matter disclosed by the assessee, other material has to be collected by the AO which should have formed the basis of computation of income. In the present case, the assessee having submitted the copies of accounts and complete postal addresses of all the parties is a matter of record and the AO has not collected any adverse material. The learned counsel for the assessee, Mr. P.N.Arora has invited our attention that by mistake at PB-2, the assessee had written confirmed copy of account which was explained to the AO and which is part of the assessment order at page 2 on the hearing dated 16.12.2009, which infact were copies of account.

11. As regards the addition of ₹ 26,30,038/-, all the balances are outstanding for the last many years as appearing from PB 22 to 33 and 97 to 99 and also all the persons i.e. Smt.Ujjal Kaur, Smt.Manjit Kaur and Smt.Rayam Kaur are assessed to tax as per copy of acknowledgment of income tax return at PB-75, 76 and 77 alongwith PAN is placed on record. The AO after applying his mind has made the addition of family loans of ₹ 26,30,038/- which has been confirmed by the learned CIT (A). The arrangements made by the learned DR has no substance in the matter in this regard. The assessee having proved the identity, capacity and creditworthiness of said persons and therefore cannot be subject matter of addition. Thus, both the additions of ₹ 14,74,763/- and ₹ 26,30,038/- have wrongly been confirmed by the learned CIT(A) and the same are directed to be deleted."

The findings recorded by the Tribunal have not been shown to be erroneous or perverse by the learned counsel for the appellant. No substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 11, 2015 **(Ramendra Jain)**
Judge

'gs'