IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.25 of 2008

==

M/s Otan Mal, a registered Firm, in Nai Bazar, Muzaffarpur, through its partner, Deep Narayan Alani, aged about 38 years, son of Late Sri Otan Mal, Resident of Nai Bazar, P.S.-Town, District of Muzaffarpur- 943129504

.... Appellant

Versus

Assistant Commissioner of Income Tax, Circle I, Patna.

.... Respondent

==

Appearance :

For the Appellant : Dr. R. Usha, Advocate.
Mrs. Sabita Kumari, Advocate.

For the Respondent : Mr. Rishi Raj Sinha, Advocate.
Mrs. Archana Prasad, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-03-2016

Heard learned counsel for the appellant and the respondent.

2. The assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 being aggrieved by an order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short "the Tribunal) on 7th of September, 2007 in ITA No. 421 (Pat)/2004 arising out of Assessment Year 2002-03.

3. The assessee is a contractor engaged in execution of construction work allotted by Railways. During the year in question, the assessee executed the work allotted by Ircon International Limited on sub-contract basis declaring income of Rs. 7,77,990/-. The Assessing Officer after going through the balance-sheet found that a sum of Rs. 9,17,846/- was outstanding in the liability side of 15 sundry creditors. These sundry creditors were the suppliers of stone chips and red sand. The assessee claimed that in the balance-sheet an amount of Rs. 9,17,846/- has been shown to be outstanding in the liability side of 15 sundry creditors. Such creditors were said to be the petty suppliers having no bank accounts. The Assessing Officer added back the said sum of Rs. 9,17,846/- as unexplained credit.

4. The assessee, aggrieved against the said order, filed an appeal before the Commissioner, Income Tax (Appeals) which was dismissed on 22nd of March, 2006. Even the

Tribunal dismissed the further appeal. Still aggrieved, the assessee has come up in the present appeal. This Court framed the following substantial question of law:-

> *"Whether on the facts and in the circumstances of the case the Tribunal was justified in not allowing a sum of Rs. 9,17,846/- outstanding credit assessed in the income at the hands of the Appellant".*

5. Learned counsel for the appellant vehemently argued that the Assessing Officer has accepted the purchases of Rs. 1,09,67,551/- out of which an amount of Rs. 1,00,49,705/- was paid during the relevant Assessment Year. The sum of Rs. 9,17,846/- was the balance due amount. The said amount was shown as a liability to be paid to the suppliers, which was actually paid to the suppliers in the next financial year in the month of April and May. It is contended that such amount was a liability consequent to purchases having been made and thus, such amount cannot be treated to be a cash credit entry, which could be added back by the Assessing Officer. The very basis of the order is erroneous.

6. Learned counsel for the appellant has referred to a Division Bench judgment of Allahabad High Court reported as Commissioner of Income-tax Vs. Pancham Dass Jain (2007) 196 Taxation 569 (All.) to contend that having accepted the purchases and sales, the provisions of Section 68 of the Act could not be attracted. The Court said to the following effect:

> "He submitted that as the respondent-assessee was unable to produce the alleged creditors the provisions of section 68 of the Act was squarely attracted in the present case and the assessing authority has rightly added the two amounts at the hands of the respondent-assessee. According to him section 68 of the Act also covers up the case of purchases made on credit.
>
> The submission is misconceived. The Tribunal has recorded a categorical finding of fact based on appreciation of materials and evidence on record that the AO had accepted the purchases, sales as also the trading result disclosed by the respondent-assessee. It had recorded a finding that the aforesaid two amounts represented the purchases made by the assessee on credit and, therefore, the provisions of section 68 of the Act could not be attracted in the present case. We fully agree with the view taken by the Tribunal on this issue, inasmuch as, on the basis of the findings recorded by it that these two amounts represented purchases made by the respondent-assessee on credit and the purchases and sales having been accepted by the

Department, the question of addition of the aforesaid two amounts under section 68 of the Act did not arise inasmuch as the provisions of section 68 of the Act would not be attracted on the purchases made on credit."

7. We find merit in the argument raised. The Assessing Officer has accepted purchases of Rs. 1,09,67,551/- out of which Rs. 1,00,49,705/- stood paid during the relevant assessment year. Therefore, the remaining amount is a liability which the assessee has to discharge, which he discharged in the next financial year. How the said amount can be treated to be a cash credit entry after the purchase amount accepted by the Assessing Officer, could not be explained by the learned counsel for the Revenue.

8. We find that the very basis of the order passed by the Assessing Officer and as affirmed by the learned Commissioner and the Tribunal is erroneous. Such amount is the liability towards the suppliers and could not be added as a cash credit entry, when the purchase of the material including the price of the material supplied by the 15 suppliers is admitted. Thus, the addition of Rs. 9,17,846/- as cash credit entry is not sustainable. Consequently said finding is set aside and the question of law is answered in negative and in favour of the assessee and against the Revenue.

9. The appeal is, thus, allowed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

P.K.P.
N.A.F.R.

U			