

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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I.T.A.No.571 of 2015
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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act"), is preferred against the order passed by the Income Tax Appellate Tribunal in I.T.A.No.1765 of 2012 dated 17.04.2015 for the assessment year 2006-07.

The assessee, a partnership firm, filed its returns of income for the assessment year 2006-07 declaring a loss of Rs.24,11,385/-. An assessment order was passed, under Section 143(3) of the Act on 31.12.2008, assessing the income of the firm as Rs.82,24,116/-. The Income Tax Appellate Tribunal, by its order in I.T.A.No.705 of 2010 dated 07.01.2011, set aside the assessment order and remanded the matter to the Assessing Authority. Thereafter, the Assessing Authority examined the balance sheet and found that a sum of Rs.90,46,903/- was credited to the capital account of Sri Ch.Rajendra Kumar, a partner of the assessee-partnership firm, during the year under consideration. The assessee-firm was called upon to furnish certain information regarding the capital introduced in the name of the partner Sri Ch.Rajendra Kumar. The Assessing Authority observed that, despite giving numerous opportunities, the assessee had neither responded nor had they furnished the source for the amounts deposited into the bank accounts of the partner; they had furnished a sketchy reply; the plea taken by the assessee that the partner had, in fact, introduced the amounts was not acceptable, as he had failed to explain the known sources of the funds or as to how the funds were available to the said partner, to induce the same as capital in the firm; and since the assessee was unable to furnish any evidence, explaining the sources, the said amount of Rs.90,46,903/- should be added under Section 68 of the Act as they did not fulfil the ingredients

to substantiate the cash credits. Aggrieved thereby, the assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) who dismissed the appeal holding that the total deposits in the bank account were much more than even the gross receipts of Sri Ch.Rajendra Kumar in both his individual and HUF capacity; and, therefore, the claim of the appellant could not be accepted without a proper explanation of the proximate deposits for the credits to the partner's capital account which the appellant-firm had failed to provide. Aggrieved thereby, the assessee-firm carried the matter in appeal to the Tribunal.

In the order under appeal, the Tribunal referred to the earlier order of the Commissioner of Income Tax (Appeals), and then observed that since the matter was restored to the Assessing Officer for the reason of fulfilling the conditions of Rule 46-A, there was no scope to make addition in the hands of the firm; what the Assessing Officer was asking the firm to prove was the source in the hands of Sri Chaitanya Kumar, which could only be done in his assessment which was accepted as such; as far as the partnership firm is concerned, it had discharged its onus, and could not be expected to provide the source of funds of a third person; and in view thereof, the genuineness of the credits were accepted, and the additions made were deleted.

Before us, Sri J.V.Prasad, learned Senior Standing Counsel for the Income Tax Department, would reiterate the very same submissions urged before the Tribunal. Learned counsel would submit that Sri Ch.Rajendra Kumar has not satisfactorily explained the source of funds from which the unexplained cash credits of Rs.90,46,903/- was introduced into his capital account with the assessee-firm and, consequently, the Assessing Authority was justified in adding these unexplained cash credits to the income of the firm.

Section 68 of the Act stipulates that, where any sum is found credited in the books of an assessee maintained for any previous year

and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

In the present case, the assessee is a partnership firm. The cash credits of Rs.94,46,903/- have been explained by the firm as capital introduced by Sri Ch.Rajendra Kumar. If Sri Ch.Rajendra Kumar was unable to explain the source of funds, for his investment as capital in the partnership firm, the Assessing Officer would have been justified in adding these unexplained cash credits to the income of Sri Ch.Rajendra Kumar in his individual assessment. That, however, did not justify adding these cash credits of Rs.90,46,903/- to the income of the firm as these credits have been explained by the firm as having been introduced as capital by Sri Ch.Rajendra Kumar, a partner.

We find no legal infirmity in the order of the Tribunal, much less a substantial question of law, justifying interference in appeal under Section 260-A of the Act.

The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 06.01.2016

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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