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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 922/2015

CLC TEXTILES PARK PVT. LTD.

..... Appellant

Through: Mr Arvind Kumar, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME

TAX-2

..... Respondent

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel with Ms Lakshmi Gurung, Junior Standing Counsel and Mr Ishant Goswami, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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08.02.2016

1. The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 ('Act') impugning an order dated 24th June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5667/Del/2013. The said appeal - ITA No.5667/Del/2013 - was preferred by the Assessee against an order dated 12th August, 2013 passed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] whereby the Assessee's appeal against an assessment order dated 29th December, 2011 in respect of the Assessment Year ('AY') 2009-10 was rejected.

2. The issue sought to be urged by the Revenue is in respect of an addition of Rs. 49,28,006/- made by the Assessing Officer ('AO') under Section 68 of the Act as unexplained income.

3. The Assessee claims to be in the business of setting up of infrastructure projects as a part of a Central Government Scheme. However, the Assessee claimed that during the relevant financial year it had entered into transactions of trading in fabrics. Concededly, the said business is not related to its main business of setting up infrastructure projects. According to the Assessee it had purchased fabric for Rs. 49,28,006/- which was sold in cash against 33 invoices aggregating the same amount and thus had resulted in no profit or loss.

4. The Assessee explained that it had purchased fabric from a firm called Shyam Lal Goyal Textiles Pvt. Ltd. which was sold to various purchasers. A perusal of the sales register indicated that the entire sales were made in cash and for an aggregate sum of Rs. 49,28,006/-. Initially, the Assessee stated that it did not have copies of the invoice – and that was also recorded in an order sheet duly signed by the representative of the assessee - however, subsequently, 33 invoices were produced aggregating Rs. 49,28,006/-. The

AO observed that (a) the invoices did not mention any particulars of any party to whom such goods were sold; (b) there was no mention as to the measurement of cloth sold either in terms of number of bales or in terms of length; (c) there was no description of the quality or the make of the fabric on the face of the bills; and (d) there was no details as to the cartage details or transportation of consignment. In the aforesaid circumstances, the AO also made enquiries regarding the Assessee's claim of purchases made and sent notice under Section 133(6) to Shyam Lal Goyal Textiles Pvt. Ltd. The inspector entrusted with the task of serving the notice on making the inquiry reported that the aforesaid firm was housed in a small shop, which was found closed when he visited the shop at about 3:00 PM on 26th December, 2011. The AO noted that till the conclusion of the proceedings, no confirmation of the purchases had been received from M/s Shyam Lal Goyal Textiles Pvt. Ltd. In the aforesaid circumstances, the AO was of the opinion that the explanation offered by the Assessee with regard to the cash sales credited in its books was not satisfactory. Accordingly, the aforesaid sum was taxed as unexplained credit under Section 68 of the Act.

5. Aggrieved by the assessment made, the Assessee preferred an appeal before the CIT(A). The Assessee disputed the AO's observation that the

quantitative details were not mentioned on the bills. Insofar as, the identities of the purchasers are concerned, the Assessee contended that addresses of the said parties were neither required nor was it possible to verify the addresses in the case of sales made in cash. The CIT(A) considered the contentions advanced by the Assessee and found that the purchases were claimed to have been made from 21st May, 2008 to 8th August, 2008 but the payments to Shyam Lal Goyal Textiles Pvt. Ltd. were made much later from 21st March, 2009 to 26th March, 2009 almost at the end of the financial year; though, according to the Assessee it had sold its entire stock by August, 2008 and also decided to close down its business of trading and fabrics. The CIT(A) further observed that the Assessee had transferred cash of Rs. 37,50,100/- to Pandhurna (MP) on 21st July, 2008 followed by another cash transfer of Rs. 11,78,070/- on 2nd September, 2008. These transfers were made to purchase land at Pandhurna Industrial Cluster, Chhindwara (M.P.) for the purposes of undertaking infrastructure up-gradation scheme on PPP basis. On the basis of the aforesaid facts, the CIT(A) concluded that the entire transaction of trading had been conjured up by the Assessee to meet the minimum requirement of cash and to do so, the Assessee had shown a paper transaction of sale and purchase of cloth. The CIT(A) was also of the

opinion that the genuineness of the sales transaction as well as the purchases of fabric remained unapproved.

6. On further appeal, the ITAT concurred with the finding of CIT(A) and rejected the challenge laid by the Assessee to the aforesaid addition under Section 68 of the Act.

7. Mr Arvind Kumar, learned counsel for the Assessee contended that the details of purchase were filed by the AO on 20th December, 2011 but the notice to verify the same had been issued only belatedly on 26th December, 2011. He further asserted that Shyam Lal Goyal Textiles Pvt. Ltd. had filed confirmation with the office of the AO on 30th December, 2011 but the same was not considered. He submitted the fact that the AO had recorded “till the time of conclusion of the instant proceedings no confirmation was filed” raised question as to whether the AO was aware of the confirmation furnished by Shyam Lal Goyal Textiles Pvt. Ltd. He contended that the assessment order was antedated 29th December, 2011 and the confirmation was ignored. He argued that if the purchases were verified, the sales made in cash could not be held to be unexplained cash credit under Section 68 of the Act. He further contended that the audited final accounts and the tax audit

report indicated the content of the quantitative details of the items purchased and sold. Mr Arvind Kumar then referred to the decision of the Supreme Court in **Commissioner of Income Tax v. Bharat Engineering and Construction Co.:** (1972) 83 ITR 187 (SC) wherein the Supreme Court had upheld the Tribunal's decision not to treat certain cash entries as profits of the Assessee since it was the first year of Assessee's business. The ITAT held that it was not reasonable to assume that the Assessee could not have earned such profits within a few days of commencement of its business. Accordingly, it held that the cash credit entries were capital receipts. On the strength of the aforesaid decision, Mr Kumar argued that since it was the Assessee's first year of business of trading in fabrics, the cash sales made could not be treated as income. The Assessee next referred to the decision of the Supreme Court in **Omar Salay Mohamed Sait v. Commissioner of Income-tax:** (1959) 37 ITR 151 (SC) and on the strength of the aforesaid decision contended that the ITAT was wrong in basing its finding on suspicion and ignoring evidence which had been gathered subsequent to passing of the assessment order.

8. In our view, the aforesaid decision in ***Bharat Engineering and Construction Co. (supra)*** does not assist the Assessee in any manner. In

that case, the Supreme Court had declined to interfere with the decision of the ITAT and held that “*it is true that in the absence of satisfactory explanation from the Assessee the Income-tax Officer may assume that cash credit entries in its books represent income from undisclosed sources. But what inference should be drawn from the facts proved is a question of fact and the Tribunal’s finding on that question is final*”. In the present case, the ITAT has, after appreciation of evidence, concluded that the explanation offered by the Assessee regarding the cash sales was not satisfactory.

9. The decision in the case of ***Omar Salay Mohamed Sait v. Commissioner of Income-tax*** (*supra*) is also inapplicable to the facts of the present case. While, it is trite law that ITAT must act on evidence and not on the basis of surmises, in the present case it is seen that the CIT(A) and ITAT had examined the relevant facts and had returned their findings after appreciation of evidence and after considering the explanation offered by the Assessee.

10. In view of the concurrent findings returned by the CIT(A) and the ITAT -which we do not find to be perverse or unsustainable on any ground - we decline to interfere with the impugned order passed by the ITAT. No

substantial question of law arises.

11. The appeal is, accordingly, dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 08, 2016
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