

Gurbax Singh
2017.07.26 15:47

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 72 of 2017

Date of decision: 12.07.2017

The Pr. Commissioner of Income Tax II, Amritsar

.....Appellant

Vs.

Sh. Kulwinder Singh 66, Green Plaza Market, Court Road, Amritsar.

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

Ajay Kumar Mittal, J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 23.6.2016, Annexure A.3, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No. 149(Asr)/2016, claiming following substantial questions of law for the assessment year 2009-10:-

- (i) "Whether on the facts and circumstances of the case and in law, Hon'ble ITAT has erred in allowing relief to the assessee while not appreciating the fact that the provisions of Section 68 of the Income Tax Act, 1961 were rightly attracted in this case since the assessee failed to prove identity, capacity, creditworthiness and genuineness of the creditors?
- (ii) Whether on the facts and circumstances of the case and in law, Hon'ble ITAT was right in not following its own decision in the case of Shiv Rice & General Mills in ITA

No.468(ASR)/2001 dated 13.01.2006, which squarely covers the case of the revenue and also goes to the root of the matter?

- (iii) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is contrary to the evidence and material on the record of the case and therefore, perverse?
- (iv) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is suffering from non-application of mind and is reasonable and arbitrary?

2. A few facts necessary for adjudication of the controversy involved, as narrated in appeal, may be noticed. The assessee-respondent is a Government Contractor in the business of road construction. A return declaring income of ₹ 55,81,540/- was filed by him. The case was selected for scrutiny and the assessment was made under Section 143(3) of the Act. During the course of assessment proceedings, on examination of books of account vis-à-vis balance sheet filed by the assessee, it was seen that he had shown a number of sundry creditors against registration number of the vehicles. When enquired, it was submitted by the assessee that he had purchased crusher through these vehicles on credit during the month of February and March, 2009. The amount shown against each vehicle numbers in the balance sheet was on account of Freight, Octroi and carriage as on 31.03.2009. The assessee was asked to furnish copies of account of all the above creditors mentioned in the balance sheet by way of vehicle numbers. He was also asked to produce the goods carrier owners in respect of whom payment exceeding ₹ 50,000/- was outstanding as on 31.03.2009. Summons under Section 131 of the Act were issued randomly on 21.11.2011 to find out the genuineness of creditors in respect of outstanding payments as on 31.03.2009, which were reflected against registration numbers of vehicles.

All the summons were received back un-served with the remarks that “no such person available at this address”, “address is incomplete”. The assessee was asked to furnish ledger account of the aforesaid creditors, which were produced by him. It was found that credit entries in respect of all the vehicles had been made on account of freight, octroi and carriage. These entries had been made in the last days of March, 2009. A few entries pertained to the months of January and February, 2009. According to the appellant-revenue, the assessee had not been able to satisfactorily explain the aforesaid creditors shown against Registration Number of the vehicles. The Assessing Officer passed an order dated 21.12.2011 under Section 143(3) of the Act making an addition of ₹ 83,18,322/- on account of freight, octroi and carriage. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 9.12.2015, Annexure A.2, the CIT(A) dismissed the appeal and confirmed the addition made by the Assessing Officer. Not satisfied with the order, the assessee filed appeal before the Tribunal. Vide order dated 23.06.2016, Annexure A.3, the Tribunal allowed the appeal holding that the provisions of Section 68 of the Act could be invoked in case some amount was received by an assessee. In the present case, the concerned transactions were only of supply of material and, therefore, provisions of Section 68 of the Act were not applicable. It was further held that trade creditors in the earlier years stood accepted in scrutiny assessments. Thus, the genuineness of the expenses under consideration could not be doubted. Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. A perusal of the order passed by the Tribunal shows that the assessee had shown numerous sundry creditors along with details in his

balance sheet. The assessee being a road Contractor received material for the construction of the road. The amounts in question represented purchases made on credits. According to Section 68 of the Act, where any sum is found credited in the books of account of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to income tax as the income of the assessee of that previous year. It has been categorically recorded by the Tribunal that the provisions of Section 68 of the Act were clearly not attracted to the amount representing purchases made on credits. Further the trade creditors in the earlier years i.e. assessment years 2007-08 and 2008-09 stood accepted in scrutiny assessments. Thus, the genuineness of expenses under consideration could not be doubted. The relevant findings recorded by the Tribunal in this regard read thus:-

“Having heard the rival contentions in the light of the material available on record, it is seen that in para-3 of the assessment order, the AO observed that the assessee had shown numerous sundry creditors along with details, as was available from the examination of the assessee’s books of account vis-à-vis his balance sheet. The assessee is a road contractor. He received material for the construction of the road. The amounts in question represented purchases made on credits. The provisions of Section 68 of the Act are clearly not attracted to amount representing purchases made on credits, as is also held in ‘CIT Vs. Pancham Dass Jain’, 205 CTR 444 (All). The assessee raised this issue by way of written submissions (APB 37 to 160, relevant portion at para-5, on page 43) dated 10.05.2014 filed before the CIT(A). The ld. CIT(A) has, however, not addressed this grievance at all and merely upheld the addition made under Section 68 of the Act. On behalf of the assessee, a comparative chart of net profit rate of the assessee for the assessment years

2005-06 to 2011-2012 has been filed before us. In the earlier years also, no such addition was made. For the assessment year 2007-08, under scrutiny assessment, the assessment was made at 8%. The position remained much the same for the assessment year 2008-09. The year under consideration is assessment year 2009-10. The material supplied to the assessee by the concerned department is part of the assessee's turnover. The net profit rate of the assessee for the year under consideration was in line with the preceding assessment year. Further, the trade creditors in the earlier years, i.e. assessment years 2007-08 and 2008-09 stand accepted in scrutiny assessments. Thus, the genuineness of the expenses under consideration cannot be doubted. Moreover, the genuineness of the expenditure was not at all called into question. It was only that no-verification thereof raised doubts of the incurrence thereof. Then, even if the credits concerning the purchases and transportation of the material are not to be accepted, as discussed, still, the provisions of Section 68 of the Act cannot be invoked to make the addition."

5. Learned counsel for the appellant-revenue has not been able to show that the findings recorded by the Tribunal are illegal or perverse or based on misreading of any material on record, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 12, 2017
'gs'

Whether speaking/reasoned

Whether reportable

(Amit Rawal)
Judge
Yes

Yes