

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No. 1805 of 2019

ORDER: *(per V. Ramasubramanian, J)*

- 1) Challenging an order of assessment passed pursuant to an order of passed by the Income Tax Appellate Tribunal, the assessee has come up with the above writ petition.
- 2) Heard Mr.K.Pratik Reddy, learned counsel for the petitioner.
- 3) The assessee, who is an individual, filed his return of income for the assessment year 2010-11 on 14.03.2012. During the assessment proceedings under Section 143 (3) of the Income Tax Act, the information furnished by the assessee was verified and it was found that the assessee had a bank account with DCB. There were cash deposits in the account, the sources of which, according to the Assessing Officer, was not explained. Therefore, the Assessing Officer worked out the peak credit at a particular amount and brought it to tax under Section 68 of the Income Tax Act.
- 4) The assessee preferred an appeal to the CIT (Appeals), who not only confirmed the additions but also enhanced the addition on account of peak credit. Therefore, the assessee filed a second appeal before the Tribunal in I.T.A.No.502/HYD/2015.

5) By an order dated 11.08.2017, the Tribunal allowed the appeal with respect to peak credit, and remanded the matter back to the Assessing Officer for fresh consideration. The operative portion of the order of the Tribunal, containing the discussion, findings and directions, read as follows:

“5. Having regard to the rival contentions and the material on record, we find that the copy of the bank a/c of the assessee with the DCB bank is placed at pages 4 to 7 of the paper book filed before us. We find that there was an opening balance of Rs.5,01,652/- which according to the assessee, should be given credit for while computing the peak credit as the said amount was available with the assessee for withdrawal and redeposit of the same. As regards the peak credit, according to the CIT (A), the peak credit comes to Rs.34,63,000/- whereas according to the assessee it works out to Rs.18,49,652. Since the cash flow statement is not filed before, we are unable to arrive at the actual peak credit during the relevant financial year. We find that there are payments and receipts by way of cheques as well. In view of the same, we remit the issue of computing the peak credit to the file of the AO and direct the AO to give credit to the opening balance of Rs.5,01,652 while arriving at the peak credit. The grounds of appeal Nos.2 to 4 are therefore, treated as allowed for statistical purposes.

6. Ground No.5 is rejected as no argument has been advanced by the learned Counsel for the assessee in support of this ground of appeal.

7. In the result, assessee's appeal is treated as allowed for statistical purpose.”

6) Pursuant to the order of remand, the Assessing Officer issued notices and the petitioner submitted written submissions. In the written submissions, the assessee attempted to explain the sources of cash deposits. He also filed certain documents in confirmation of the same.

7) But by an order dated 28.12.2018, the Assessing Officer refused to go into the source of deposits and confined the discussion only to the computation of peak credit. Eventually he passed an order arriving at the tax payable. It is against the said order the petitioner has come up with the above writ petition.

8) Admittedly the petitioner has an alternative remedy of appeal to the CIT (Appeals) as against the impugned order. But the petitioner has chosen to come up with the above writ petition on the ground of violation of principles of natural justice and also on the ground that the impugned order is not in accordance with the order of remand.

9) But we do not find that there was any violation of principles of natural justice. The refusal of the Assessing Officer to look into the sources of cash deposits, on the ground that there was no positive direction in this regard by the ITAT, cannot be taken to be a violation of the principles of natural justice. If the refusal of the Assessing Officer is wrong, it is a matter to be canvassed in the regular appeal.

10) On the second question as to whether the Assessing Officer followed the directions of the ITAT in letter and spirit we find that the

operative portion of the order of the Tribunal is silent on this aspect. We do not wish to record either way, as the same may affect either the petitioner or the revenue.

11) All that we can indicate is that though the Tribunal stated towards the end of para No.5 of its order that the grounds of appeal Nos.2 to 4 are treated as allowed, the discussion was confined only to re-computation of peak credit. Therefore, the allegation of non-compliance with the directions issued by the Income Tax Appellate Tribunal, is not patently made out so as to enable the petitioner to bypass the alternative remedy of appeal. Therefore, we find no reason to entertain the writ petition. Hence, the Writ Petition is dismissed, leaving it open to the petitioner to approach the CIT (Appeals). The Registry is directed to return the original impugned order. The CIT (Appeals) shall independently consider any such appeal filed by the petitioner without being influenced by any observations contained here.

As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

January 31, 2019
gkv/DSK