102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

ITA-319-2019 (O&M)
Date of decision : 30.09.2021

The Pr. Commissioner of
Income-Tax Patiala …. Appellant

Vs.

M/s Mahakali Developers &
Resorts Pvt. Ltd. ….Respondent.

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Kunal Sharma, Advocate, for the appellant.

AJAY TEWARI, J. (ORAL)

Taken up through video conferencing.

By this appeal the revenue has challenged the orders of the Commissioner Appeals and the Income Tax Appellate Tribunal, whereby they had set aside the orders passed by the Assessing Officer under Section 68 read with Section 147 and 148 of the Income Tax Act, 1961.

The brief facts are that the respondent had received some share capital from some foreign parties. The Assessing Officer issued notice to assessee to explain investment made by them, its source of fund, object and purpose of investment, identity and creditworthiness of the investing company as also mode and genuineness of the transaction. The following reply was given:-

> "*It may be submitted there the blessing investment ltd is a investment company hence there cannot be large no of transaction. In regard to loan raised from HA WK fright Services FZE there is nothing wrong The copy of the loan agreement is enclosed. Further interest has been paid by Blessing Investment Ltd to M/s HAWK fright Services FZE.*

Yearly balance received confirmation received from HAWK fright Services FZE advanced the loan is enclosed and also enclosed the copy of bank account when the loan was received back by M/s HAWK fright Service. It may be further mention that in the first year balance sheet provision of interest on the loan was there which was paid in subsequent years.

We are also enclosing complete balance sheet of the M/s Blessing Investment Ltd as on 31/03/2007 and 31/03/2013. As on 31/03/2013 where total funds are to the tune of Rs.28.00 Cr (4702131 US Dollars converted at the rate of Rs 59.55. In the said balance sheet also M/s Blessing Investment the said investment Ltd owns the said investment.

We further submit that the company i.e. M/s Blessing Investment Ltd. Still hold the said investment. The Certificate from the said company is also enclosed. It may be further submitted that total 456710 shares were issue to NRIS out of which 108034 shares were issued to Blessing Investment Ltd. All the said shareholder still own the said shares….."

The Assessing Officer came to the conclusion that the said entity seems to be shell company. He consequently concluded that this money was actually undisclosed income of the assessee, which had been recycled by the said entity into the company of the assessee.

In appeal, the Commissioner Income Tax held that this material could not be held to be justified for adding the amount of investment into the company as income of the assessee and consequently set aside the order. This finding was confirmed by the Tribunal in the appeal filed by the Revenue holding as follows:-

" Another fact on the file is that the reopening in this case has been done by the Assessing Officer beyond the four years. The another important fact is that such reopening has been done even after 03 years from the date of information received from the Foreign Tax Division. Why the Income Tax Authorities/Assessing Officer/Departmental authorities were sitting on the said information for such a long time has not been explained. Even otherwise, the first proviso to Section 147 comes into play. The assessee during the original assessment proceedings provided all the information whatever was called for by the Assessing Officer. Hence, it was not a case where there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment . If some information was received by the Assessing Officer later on, though creates some suspicion, but in our view, that is not enough for holding that investment made by the M/s Blessing Invests Ltd. was out of unaccounted income of the assessee. We therefore, do not find any merit in the appeal of the Revenue and the same is accordingly dismissed."

The first argument of the learned counsel is that both the Commissioner and the Tribunal erred in holding that this material was not sufficient to justify re-assessment. In our considered opinion, even if for the sake of arguments this assertion is accepted, the crux of the matter is whether the conclusion that the entity was a shell company, could inevitably give rise to the subsequent conclusion that the money received from that company was actually undisclosed income of the assessee without any material to show any link between the said entity and the assessee.

Learned counsel for the appellant - revenue has argued that under Section 68 of the I.T Act, such a presumption can be drawn and it was for the assessee to prove that the income was infact not his income. In our considered opinion this argument is too far-fatched It may have been different if some link had been established between the said entity and the assessee, but in the absence thereof, it cannot be held that the presumption under Section 68 of the IT Act, is available.

No fault can be found with the judgments of the Commissioner and the Tribunal.

Accordingly, the appeal is dismissed.

Since the main case has been dismissed, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

September 30, 2021
tripti

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO