IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.125 of 2011

==

M/s R.B. Electronics, Harsh Vardhan Arcade, Fraser Road, P.O. GPO, P.S. Kotwali, Patna through partner Amit Bahri.

... ... Assessee/Appellant/s

Versus

1. Commissioner of Income Tax-II, Patna
2. Addl. Commissioner of Income-tax, Range-5, Patna.

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi, Senior Advocate
Ms. Smriti Singh, Advocate

For the Respondent/s : Mrs. Archana Shahi, Senior Standing Counsel

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

<u>ORAL JUDGMENT</u>
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2023

The assessment year is 2005-06 and the appeal is from the order of the Tribunal which confirmed the additions made by the Assessing Officer, affirmed in the first appeal. The additions made were on account of the unsecured loans returned by the assessee, having not been proved with substantiating evidence.

2. The questions of law coming forth from the order of the Tribunal are re-framed as follows :-

(i) Whether the order of the Tribunal confirming the addition of Rs.9,00,000/- representing unsecured loans taken from three individuals was passed in

total disregard of the evidence produced on this account and in contravention of the provisions of the Income Tax Act, 1961 as also the decisions on this aspect?

(ii) *Whether the Tribunal was justified in not adjudicating the ground nos. 13 and 14 of the memo of appeal which challenged dis-allowance of proportionate interest paid against the two unsecured loans?*

3. Definitely, the second question would depend upon the answer to the first question.

4. On facts, suffice it to notice that the return of income for the assessment year 2005-06 was furnished on 31.10.2006 showing total income of Rs.13,40,380/-. A notice was issued under Section 143(2) of the Income Tax Act, 1961 (for brevity, 'the Act') and the assessee was directed to furnish the details of the unsecured loans reflected in the balance sheet of the relevant assessment year. The assessee by communication dated 08.10.2007 took up a new contention that the partnership firm has introduced unsecured loans from two new persons, namely Smt. Rachna Bahri and Shri Syed Alam. The copy of the ledger account of two lenders and incomplete list of the parties as appearing in the balance sheet along with addresses were enclosed. With respect to the two loans of Rs.5,00,000/- and Rs.3,00,000/- appearing in the name of Ms. Gunmala Devi

and Mr. A.P.N. Singh, a notice under Section 133(6) of the Act, dated 10.10.2006 was issued to all the parties appearing in the balance sheet. There was no effective response to the aforesaid notice and hence the assessee was asked to produce the parties for examination. The Assessing Officer after examining the entire records and also the evidence proffered by the assessee made an addition of Rs.9,00,000/- being the alleged unsecured loan; Rs.5,00,000/- from Ms. Gunmala Devi; Rs.3,00,000/- from Mr. A.P.N.Singh and Rs.1,00,000/- from Mr. Syed Aijaz Alam.

5. Learned Senior Counsel for the assessee Shri Ajay Kumar Rastogi from the records pointed out that there was sufficient evidence before the Assessing Officer, which should have restrained him from making the additions. Ms. Gunmala Devi though not appeared in person; from her account statement, it is evident that the unsecured loan of Rs.5,00,000/- was from the said person to the assessee. The account books of both the others were also produced and they had sufficient explanation for the source of income. When the parties from whom the unsecured loans were produced and they affirmed the loans as also substantiated it by the transactions carried out through a bank; there is no scope for an addition. The learned Senior Counsel relied on a number of decisions of different Division

Benches of this Court in ***Saraogi Credit Corporation v. Commissioner of Income Tax, (1976) 103 ITR 344 (Pat); Additional Commissioner of Income Tax v. Bahri Brothers Pvt. Ltd, (1985) 154 ITR 244 (Pat); Additional Commissioner of Income Tax, Bihar v. Hanuman Agarwal, (1985) 151 ITR 150 (Pat)***; of the Gujarat High Court in ***Deputy Commissioner of Income Tax v. Rohini Builders, (2002) 256 ITR 360 (Guj)***; of the Gauhati High Court in ***Nemichand Kothari v. Commissioner of Income Tax, (2003) 264 ITR 254 (Gauhati)***; of the Jharkhand High Court in ***Prayag Tendu Leaves Processing Co. v. Commissioner of Income Tax, (2018) 400 ITR 120 (Jhar)*** as also the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax v. Chunni Lal, (1995) 211 ITR 11 (ST) SC***.

6. Learned Senior Standing Counsel appearing for the Revenue Smt. Archana Shahi opposed the appeal and placed before us the judgment of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax (Central)-1 v. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161: (2019) 15 SCC 529***. The essential ingredients for proving the unsecured loans, in the instant case, were not available according to the Revenue and heavy reliance was placed on the decision of the Hon'ble

Supreme Court in ***Kale Khan Mohammad Hanif v. CIT, (1963) 50 ITR 1 (SC)*** to rubbish the contention raised by the assessee and uphold the additions made by the Assessing Officer.

7. In the context of the binding precedents of the Hon'ble Supreme Court, we respectfully notice the decision cited on behalf of the Revenue. In ***Kale Khan Mohammad Hanif*** (supra), it was declared that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to the identity of the creditor with his credit-worthiness and the genuineness of transaction, the Assessing Officer must conduct an enquiry and the addition can be made if the assessee is not able to provide a suitable explanation of the nature and source. It was categorically held that there is no further burden on the Revenue to show that the income is from any particular source and if the source has not been established by the assessee, it could be added on to determine the taxable income.

8. ***NRA Iron & Steel Pvt. Ltd.*** (supra) also held that the assessee is expected to establish to the satisfaction of the Assessing Officer: (i) proof of the identity of the creditor; (ii) capacity of the creditor to advance money; and (iii) genuineness of the transactions. Hence, merely by providing the identity of the investors, the onus of the assessee to prove the loan is not discharged. The capacity of the creditor to make the loan, i.e: his credit-worthiness, has to be proved along with the genuineness of the transaction. We also think it appropriate to extract hereunder the relevant portion of the decision in ***CIT v. P. Mohankala, (2007) 291 ITR 278: (2007) 6 SCC 21,*** which has been extracted in the cited decision :-

> "A bare reading of Section 68 of the Income- tax Act, 1961, suggests that (*i*) there has to be credit of amounts in the books maintained by the assessee; (*ii*) such credit has to be a sum of money during the previous year; and (*iii*) either (*a*) the assessee offers no explanation about the nature and source of such credits found in the books or (*b*) the explanation offered by the assessee, in the opinion of the assessing officer, is not satisfactory. It is only then that the sum so credited may be charged to income tax as the income of the assessee of that previous year. *The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.* …
>
> *The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature.*
>
> (emphasis supplied)"

9. It is with these principles in mind, the specific facts of the instant appeal have to be examined to answer the

questions of law raised.

10. The loan from Ms. Gunmala Devi, as has been asserted by the assessee, was Rs.5,00,000/-. It was also seen from the passbook produced of the said person that a cheque was issued in the name of the assessee-firm. The creditor was not produced since she was said to be a 72 years old person and hence infirm and unable to present herself before the Assessing Officer. However, there was absolutely nothing produced to prove that the said creditor had the capacity to make a loan of Rs.5,00,000/-. It is also pertinent that the assessee furnished a copy of the creditor's return of income and balance sheet for the assessment year 2005-06; which was contrary to that obtained from the Assessing Officer of the said creditor. The balance sheet for the relevant year of the creditor, procured from her Assessing Officer did not reflect the loan of Rs.5,00,000/-. The assessee was asked to proffer explanation as to the source of the credit entry, in response to which a cash flow statement was filed by the alleged representatives of the creditor, but without any *vakalatnama* or authorisation. The cash flow statement filed without due authorization and the confirmation regarding genuineness of transaction was found to be lacking in credibility. But for the production of a passbook which also was

not authenticated, there is no reliable evidence produced for the unsecured loan of Rs.5,00,000/-. The assessee also does not produce the firm's passbook through which the loan was received; especially the loan being an amount of Rs.5,00,000/-. We find that none of the ingredients, neither the identity, nor the credit-worthiness of the alleged creditor and not at all the genuineness of the transaction was proved by the assessee.

11. As far as Mr. A. P. N. Singh is concerned, the loan received was an amount of Rs.3,00,000/- and the notice issued under Section 133(6) to the creditor was not complied with. On the assessee being informed of the non-compliance, a return of income and bank statement of the creditor was produced wherein there was a credit entry of Rs.3,00,000/-, immediately preceding the withdrawal of the loan. Mr. A. P. N. Singh also appeared before the Assessing Officer and submitted that the deposit was out of a sale consideration received, on sale of land at Muzaffarpur. The creditor had no answer when he was confronted with the fact that the sale transaction is not reflected in his return of income, submitted by the assessee herein, which merely reflected a rental income of Rs.2.71 lakhs. The return of income also did not have the balance sheet to substantiate his credit-worthiness. Several opportunities were given to bring

forth evidence, establishing the sale of land or the credit-worthiness otherwise, so as to establish a nexus to the loan granted to the assessee. A document submitted from the Standard Chartered Bank enclosing copies of deposit slips of Rs.3,00,000/- to Mr. A. P. N. Singh was found to be not relatable to the loan. In the present case also, the creditor's bank statement was produced which disclosed a credit of the very same amount just prior to the alleged loan. The source of such credit was not proved before the authority. Hence, though the identity of the creditor was proved, neither was the credit-worthiness of the creditor nor the genuineness of the transaction established.

12. Mr. Syed Aijaz Alam was said to have given a loan of Rs.1,00,000/- to the assessee-firm. The creditor appeared and also contended that the source of the income was a repayment of loan he had given to one Mr. Madan Mohan Sharma. The bank statement of Mr. Alam was produced which indicated a credit of Rs.1,00,000/- on 17.07.2004 and the withdrawal of the very same amount on 26.07.2004. Otherwise, the bank account had frugal transactions with an average balance of less than Rs.5,000/-. Mr. Madan Mohan Sharma, who was alleged to have repaid a loan, was also summoned; who

could not appear due to old age, but produced bank statement and return of income. He also had a credit entry of Rs.1,00,000/- immediately preceding the debit entry which denotes the loan repayment; source of which could not be explained by him. Mr. Alam was also the Accountant of the assessee's firm, receiving a salary of Rs.3,000/- per month. In the case of Mr. Alam also, though the identity of the creditor is established, proof of source of income and the genuineness of the transaction is wanting.

13. We find no reason to interfere with the orders of the Tribunal and we find no questions of law arising from the order. The factual aspects have been dealt with elaborately and concurrently by the Assessing Officer, the first Appellate Authority and the Tribunal. There is no perversity on the analysis of evidence produced and the same is also not in contravention of the binding precedents. In fact, the binding precedents support the order of the Tribunal affirming those of the lower authorities. In the context of our answering the first question against the assessee and in favour of the Revenue, we feel no compulsion to answer the second question. The second question is on the allowance of interest paid on the unsecured loans; which does not arise when the unsecured loans stand disproved.

14. The Miscellaneous Appeal stands dismissed, leaving the parties to suffer their costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.08.2023
Transmission Date	