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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-64-2004 (O&M)
Date of Decision:12.11.2024

COMMISSIONER OF INCOME TAX, FARIDABAD
........Appellant(s)

V/s.

M/S GURSHANT ROTARY COMPRESSORS LTD., 62/27A, FARIDABAD.
.........Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Varun Issar, Senior Standing Counsel, for the appellant-Income Tax Department

Mr. Rajesh Lamba, Advocate for the respondent.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. Heard learned counsel for the parties at length.

2. The present Appeal is directed by the Income Department against the order dated 26.05.2006 passed by the Income Tax Appellate Tribunal, in Delhi Bench 'B' New Delhi (hereinafter referred to as "the ITAT") in ITA No.521/Del/2000 in the case of respondent-Assessee, for the assessment year 1996-97.

3. This Appeal was admitted by this Court on 12.08.2008 on the following questions of law:-

> ***"(i)*** *Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in upholding the order of learned CIT (A) in deleting the addition of Rs.3,70,34,500/- made by the AO u/s 68 of the Income Tax Act, 1961?*
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> ***(ii)*** *Without prejudice to the ground at Sr. No.1 above, whether the Hon'ble ITAT was right in not appreciating the fact that the assessee had used colourable device in*

the form of bogus transactions in order to accumulate capital in the grab of allotment of shares?

(iii) *Without prejudice to the ground at Sr. No.1 above, whether the Hon'ble ITAT was right in not appreciating the fact that the assessee company made no actual payment for purchase of handloom items to the tune of Rs.5,03,28,905/-, but made adjustments in the books by way of allotment of shares to the related parties of the sellers?"*

4. Learned counsel for the appellant-revenue has assailed the findings of the CIT(A) and the ITAT in deleting the addition of ₹3,70,34,500/- made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (for short "the Act") and further submits that if the transactions entered are to be treated as bogus transactions in order to accommodate capital amount, the said allotment of shares was also required to be treated as taxable.

5. Learned counsel for the revenue has further taken us to the order passed by the ITAT and submits that once it is an admitted position that Section 68 of the Act would take into consideration any sum which is found credited in the books of the assessee, the interpretation taken by the ITAT that no cash has been received and the addition of ₹3,59,53,000/- could not have been made, is clearly erroneous.

6. Learned counsel for the revenue submits that even the CIT(A) has failed to take notice of the fact that there had been purchase of handlooms articles etc. of ₹5,03,28,905/- and their transactions would also include the profit as such.

7. On the other hand, learned counsel appearing on behalf of the respondent-Assessee have supported the order passed by the CIT(A) and the ITAT and submitted that the deletion of the wrongful addition made by the Assessing Officer under Section 68 of the Act was correct and in accordance with law.

8. Learned counsel for the respondent-Assessee has invited the attention to the observations made by the CIT(A) to submit that the shares were allotted to the sister concerns of the respondent-Assessee. Their factual existence has not been doubted. The transactions have been confirmed by the concerned companies and M/s Feddrex Sales Corpn. had appeared before the Assessing Officer and no discrepancy has been so noticed by the Assessing Officer. The Assessing Officer has, thus, cleared the purchases made by the two parties. However, for the present Assessee, the Assessing Officer has raised an objection limited to ₹3,59,53,000/- from the total purchase of ₹5,03,28,905/- which remains unexplained by the Assessing Officer. The parties to the transactions are duly identifiable and all of them are income tax assessee. The assessments of the said parties do not contain any qualification or remark with regard to the said transactions and the said transactions, therefore, could not said to be in any manner bogus.

9. Learned counsel submits the explanation was put up before the Assessing Officer who has failed to take notice that apart from the transactions with the concerned two parties in terms of the share, ₹10,80,000/- stood in the name of M/s Hare Shree Finance Ltd., which is a transaction done by cheque. The Assessing Officer, however, ignored the explanation and even such transaction was held to be fictitious and unexplained.

10. Learned counsel for the respondent-Assessee, thus, submits that the CIT(A) has rightly held the order passed by the Assessing Officer to be bad in law and same has been confirmed by the ITAT and no interference is warranted. Therefore, question No.(i) has to be answered in favour of the respondent-Assessee.

11. We have considered the submissions of learned counsel for the parties and carefully gone through the orders passed by the Assessing Officer, CIT(A) and the ITAT.

12. We find that for answering question No.(i), the issue would arise as to whether what was the amount of total purchase by the respondent-Assessee. We find that the total amount of purchase is ₹5,03,28,905/-, however, without there being proper explanation, the Assessing Officer has limited to the extent of ₹3,59,53,000/-. The Assessing Officer statement was challenged before the CIT(A) who found that the order passed by the Assessing Officer was self-contradictory while the Assessing Officer and at one place whole transaction and made, it takes into consideration two transactions found in the books of entries for the purpose of confirming that the amount is as against the respondent-Assessee. The two companies i.e. M/s Feddrex Sales Corpn. as well as M/s Adbros Electrotech have admittedly filed their own returns and the same have been accepted wherein such transactions have been mentioned. The Assessing Officer has confirmed such transactions in their income tax returns. In the circumstances, two different approaches cannot be allowed to be maintained and the CIT(A) has, therefore, deleted the additions made by the Assessing Officer in relation to the present Assessee.

13. The ITAT has also again independently examined the contentions raised by the appellant-Revenue and reached to the same conclusions.

14. The provisions of Section 68 of the Act would apply in cases where the assessee fails to prove the genuineness of the transaction that has entered into their book of accounts. However, if the transactions are duly explained and it is found that the shares have been transferred of valuation, which has been entered in the books of accounts, the same cannot be treated as a sum credited in the books. The allotment of shares to the parties, thus, cannot be treated as an income which has been evaded by the Assessee. Moreover, we find that certain amount has been transferred on a sum of ₹10.8 Lakhs and the Assessing Officer do not count the transaction which has been done by the account-payee cheques.

15. Therefore, we are satisfied that the ITAT has rightly confirmed the order passed by the CIT(A). Accordingly, we answer question No.(i) in favour of the respondent-Assessee.

16. As regards the question No.(ii), we find that there is no bogus transaction and the respondent-Assessee has not used any colourable device in view of the categorical findings arrived at by the CIT(A) as well as by the ITAT that the transactions which had been shown by the respondent-Assessee are also part of the transactions shown in the books of accounts of the concerned companies and the Assessing Officer has approved such transactions with regard to their assessments. Therefore, the approach adopted by the Assessing Officer in holding the same to be bogus, while examining the case of the respondent-Assessee, is found to be perverse and the ITAT and the CIT(A) has, therefore, corrected the order which does not warrant any interference. Thus, question No.(ii) is also answered accordingly in favour of the respondent-Assessee.

17. Question No.(iii) is with regard to the contentions of the respondent-Assessee relating to allegation of assessee-company having made no actual payment for purchase of handloom items to the tune of ₹5,03,28,905/-. We find that the said aspect is purely factual which has already been examined both before the CIT(A) and the ITAT and no perversity can be said to be committed while arriving at the conclusion on the questions of law. Therefore, question No.(iii) is accordingly also answered in favour of the respondent-Assessee.

18. In view of the aforesaid discussion, the Appeal is found to be devoid of merits and the same is dismissed accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

November 12, 2024
Ess Kay

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No