

HIGH COURT OF PUNJAB AND HARYANA

Commissioner of Income-tax, Faridabad

v.

Kamal Family Trust

AJAY KUMAR MITTAL AND G.S. SANDHAWALIA, JJ.

IT APPEAL NO. 19 OF 2009

OCTOBER 8, 2012

ORDER

Ajay Kumar Mittal, J. - This appeal has been preferred by the revenue under Section 260A of the Income-tax Act, 1961 (in short "the Act") against the order dated 13-6-2008 passed by the Income-tax Appellate Tribunal, Delhi Bench "I", Delhi (hereinafter referred to as "the Tribunal") in ITA No. 3977/DEL/2005, for the assessment year 2001-02, claiming the following substantial questions of law:—

- "A. Whether, on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in confirming the order of the Ld. CIT(A) in deleting addition of Rs.8,78,347/- out of total addition of Rs.17,56,694/-made by the Assessing Officer on account of foreign travel expenses incurred on foreign travel of Sh. Kamal Khanna and his wife especially when the assessee did not file any cogent evidence and has failed to discharge his onus to prove that the expenses incurred on foreign travelling were wholly and exclusively for the business of the assessee?
- B. Whether, on the facts and in the circumstances of the case, the Hon'ble ITAT is right in law in confirming the order of the Ld. CIT(A) in deleting the addition of Rs.2,64,937/- made by the Assessing Officer u/s 36(1) (va) and u/s 43B of the Income-tax Act, 1961 on account of late payment of employee's as well as employer's contribution to PF & ESI without appreciating the fact that payment was not made by the assessee within the prescribed "due date" by which the assessee was required to make payment?"

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee filed its return for the assessment year 2001-02 on 11-3-2004 declaring an income of Rs. 5,41,760/-. The assessment in this case was completed *vide* order dated 11-3-2004 at an income of Rs. 26,02,640/-. Against the assessment order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) [in short "the CIT(A)"] who *vide* order dated 8-8-2005 partly allowed the appeal and deleted the following additions made by the Assessing Officer:—

- (i) Rs.8,78,347/- On account of Foreign Travel Expenses
- (ii) Rs.2,64,937/- On account of late deposit of PF & ESI.
- (iii) Rs.1,04,328/- On account of short term capital gain.
- (iv) Rs.28,350/- On account of interest free advance.

3. Being dissatisfied, the revenue as well as the assessee filed appeals challenging the order of the CIT(A) before the Tribunal. The Tribunal *vide* order dated 13-6-2008 partly allowed both the appeals. Hence, the present appeal by the revenue claiming the substantial questions of law as noticed hereinbefore.

4. We have heard learned counsel for the revenue.

5. Question (A) relates to the admissibility of expenses on account of foreign travel incurred by Kamal Khanna and his wife which has been allowed to the extent of 50% by the CIT(A) and upheld by the Tribunal. The CIT(A) while allowing 50% deduction on account of expenses incurred on foreign visit by Kamal Khanna and his wife had noted that Kamal Khanna was a heart patient and was looking after the business of the firm. His wife had to accompany for looking after him on visit to the foreign country. It was also recorded that the visit resulted in increase in the business and after analyzing the factual matrix had allowed 50% expenses as revenue expenditure which was wholly and exclusively expended for business purposes. The said finding was affirmed on appeal by the Tribunal. It would basically be a question of fact as to how much expense is reasonable and is allowable in a given case. In the present case, on appreciation of evidence, it was recorded by the CIT(A) and affirmed by the Tribunal that it was 50% which was reasonable and was to be allowed as revenue expenditure. An effort was made by the learned counsel for the revenue to submit that 50% had been allowed without any basis. He, however, could not substantiate the said plea. Accordingly, question (A) is answered against the revenue and in favour of the assessee.

6. Adverting to question (B), learned counsel for the appellant could not dispute that the issue raised herein finally stands settled by the Apex Court judgment in *CIT v. Alom Extrusions Ltd.* [\[2009\] 319 ITR 306](#) and decision of this Court in *CIT v. Rai Agro Industries Ltd.* [\[2011\] 334 ITR 122](#), wherein it has been held that Second Proviso to Section 43B of the Act omitted by Finance Act, 2003 with effect from 1-4-2004 was clarificatory in nature and was to operate retrospectively. Once that is so, in the present case, the CIT(A) was right in deleting the addition of Rs.2,64,937/- made by the Assessing Officer u/s 36(1)(va) and u/s 43B of the Income-tax Act, 1961 on account of late payment of employee's as well as employer's contribution to PF & ESI as the same had been deposited prior to the filing of the return under Section 139 (1) of the Act. Thus, question (B) stands answered against the revenue and in favour of the assessee.

7. In view of the above, there is no merit in this appeal and the same is hereby dismissed.