

Reserved

Case :- INCOME TAX APPEAL No. - 36 of 2009
Assessment Year 2004-05

Appellant :- Commissioner Of Income Tax-Ii

Respondent :- Smt. Prem Lata Sethi 3/1 Rail Vihar Colony Ashiana
Lucknow

Counsel for Appellant :- D.D.Chopra

Counsel for Respondent :- Mudit Agarwal

Hon'ble Rajiv Sharma,J.

Hon'ble Dr. Satish Chandra,J.

(Delivered by Hon. Dr. Satish Chandra, J)

The present appeal has been filed by the appellant-Department under Section 260A of the Income-tax Act, 1961, against the judgment and order dated 28.11.2008, passed by the Income Tax Appellate Tribunal, Lucknow in I.T.A.No.561/luc/2008, for the assessment year 2004-05.

On 17.11.2009, a Coordinate Bench of this Court has admitted the appeal on the following substantial question of law:-

"Whether, on the facts and circumstances of the case, the Income Tax Tribunal erred in deleting the addition of Rs.72,10,100/- on account of unexplained cash credit without giving any clear finding regarding the creditworthiness of the creditors and genuineness of the transaction?"

The brief facts of the case are that the assessee is an individual who is engaged in trading of consumable white goods in the name and style of M/s. Ashirwad Distributors. For the assessment year under consideration, the assessee has filed the return by showing an income of Rs.1,49,276/-. On 22.12.2006, the A.O. passed an order under Section 143(3) of the Act, on total income of Rs.80,11,200/-. The A.O. observed in his order that the borrowed funds and unsecured loans were introduced in the assessee's account from a common pool saving bank account No.45729 in Punjab National Bank. The details of the accounts are as under:-

1. Rs.25,05,100/-

2. Rs.4,22,500/-
3. Rs.17,20,000/-
4. Rs.20,00,000/-
5. Rs.8,35,500/-

 Total:- Rs.74,82,600/-

The funds were transferred from the saving bank account No.45729, Punjab National Bank which was known as common pool account. So, the A.O. made the addition accordingly. However, the first appellate authority has admitted the fresh evidence and deleted the addition by observing that all the credits were from closed family members. The department preferred a second appeal before the ITAT against all the above additions except for the deleted amount of Rs.2,72,500/-. In other words, the department has filed an appeal before the Tribunal for deleting the addition of Rs.72,10,100/-. The Tribunal confirmed the order of the first appellate authority for deleting the additions. Still not being satisfied, the department has filed the instant appeal.

With this backdrop, Sri D.D.Chopra, learned counsel for the department has justified the order passed by the A.O. At the strength of the written submissions, he submits that on various dates unsecured loans and credits were taken from the common pool, where the assessee herself, Sri Rohit Rai Sethi, Sri Mohit Sethi, and Ms. Ruchi Sethi were the accounts holders. The assessee was asked to furnish the source of addition and capital account and details of unsecured loan. No satisfactory reason/reply was furnished. So, the A.O. has rightly made the addition. He also submits that in the common pool, no source was furnished. Lastly, he made a request to set aside the order passed by the appellate authorities.

None appeared on behalf of the assessee though the name of Sri Mudit Agarwal is printed in the cause list. Service is sufficient.

From the record, it appears that on 29.03.2004, an amount of Rs.25,05,100/- was transferred through joint saving bank account No.45729 of assessee with others. The source of this entry was shown that on 29.03.2004, a sum of Rs.25 lacs was transferred from the account No.980 of M/s. Shubham India Market, and Propriety Firm of Sri Mohit Sethi, son of the assessee. But the assessee did not furnish the details of the account No.980 of M/s Shubham India Marketing, during the course of assessment proceedings inspite of being repeatedly asked. A graphic description of transfer was also shown in the remand report. The A.O. has verified the credit entries amounting to Rs.15 lacs, Rs.10 lacs, Rs.25 lacs and Rs.25 lacs all dated 27.03.2004 respectively, appearing in the savings bank Account No.987 of the assessee. An earlier examination of these entries on 24.08.2007 with the books of account of the assessee shows that these were said to have been payments received from the various parties against sales viz. M/s. Goldee Entertainment, M/s. Sangeet Radio, M/s. Shobha Electronic, and M/s Electronic Plaza. The assessee was required to produce all the invoices regarding the transfer entries appearing in the bank account No.987 vide ordersheet dated 12.09.2007.

Lastly, the A.O. observed that as per the list submitted by the assessee, no debit or credit balance was outstanding against the M/s. Subham India Marketing. This goes to prove that the assessee firm has not made any sales to the firm M/s. Subham India Marketing and the assessee has filed invoices just to form the basis of transfer entries from the bank account of Subham India Marketing to the bank account of the assessee firm. So, a deep investigation is required. But the CIT(A) has

deleted the addition by observing that no cash deposits are reflected in the bank account in the month of March. The Tribunal uphold the order passed by the CIT(A) without examining the remand report.

Needless to mention that the transaction through bank is not sufficient as per the ratio laid down in the case of ***CIT Vs. Precision Finance Pvt. Ltd, 208 ITR 465 Cal.*** Merely because the money is transferred through the bank account does not prove that the money is explained. The appellate authorities have not examined the creditworthiness of the persons or genuineness of the transactions. In the instant case, the remand report was not considered. Hence, the facts are not clear in the case.

When it is so, then in the interest of justice we deem it fit to restore the matter back to the Tribunal to examine the matter afresh in the light of above discussions as per law at the earliest preferably within a period of four months.

When we have restored the matter back to the Tribunal, no answer to the substantial question of law is required.

In the result, appeal filed by the department is allowed for statistical purposes.

Order Date:- 25th Oct., 2013

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