
(2014) 05 P&H CK 0555

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 401 of 2006 (O & M)

Adarsh Sood

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 260A, 41

Citation : (2014) 225 TAXMAN 67

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Sanjay Bansal and Rajni Paul, Advocate for the Appellant; Tejinder K. Joshi, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal been preferred by the revenue u/s 260A of the income tax Act, 1961 (in short, "the Act") against the order dated 24.2.2006, Annexure P-I passed by the Income Tax Appellate Tribunal, "SMC", Delhi (in short, "the Tribunal"), proposing to raise following substantial questions of law for determination of this Court:--

"(i) Whether the Tribunal has acted within its jurisdiction in holding that the amount aggregating to Rs. 1,03,648/- was assessable as business income of the assessee for the assessment year 1993-94 that too by making out a new case in favour of the Department/revenue?

(ii) Whether the amount of Rs. 1,03,648/- representing the advance money found credited in the books of accounts of the assessee was liable to be taxed as "income from business" under the income tax Act, 1961 during the assessment year 1993-94 even when the provisions of section 41(1) or section 68 were not attracted to the case of the assessee-appellant?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in arriving at the conclusion that the amount of Rs. 1,03,648/- was assessable as income of the assessee under the head "income from

business" during the assessment year 1993-94?

(iv) Whether the amount of Rs. 1,03,648/- was chargeable to tax as business income in the assessment year 1993-94 by virtue of Section 41(1) of the Act even when the Department/Revenue failed to bring material on record to show that the liability of the assessee appellant had ceased or remitted during the assessment year 1993-94 and therefore, the amount in question was liable to be taxed as business income during the said assessment year?

(v) Whether in the absence of any finding with regard to the year in which the liability had ceased to exist or having been remitted, even when the transaction pertained to the financial year 1986-87, was the Tribunal right in law in concluding that the amount of Rs. 1,03,648/- was still assessable as income of the assessee under the head "income from business" during the assessment year 1993-94?

(vi) Whether the Tribunal misdirected itself in law as well as on facts in wrongly applying the decision rendered by the Hon"ble Supreme Court in the case of Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd.,

Briefly, the facts necessary for adjudication of the controversy involved, as available on record, may be noticed. Return declaring total income of Rs. 2,97,879/- was filed by the assessee on 31.12.1993. The assessment u/s 143(3) of the Act was made on 14.3.1996 at an income for Rs. 4,49,490/-. Against the assessment order, the assessee went in appeal before the Commissioner of income tax (Appeals) [CIT(A)] who dismissed the same. The assessee filed further appeal before the Tribunal and vide order dated 19.8.2002, the Tribunal set aside the issue regarding liabilities claimed towards M/s. Aman Sales Pvt. Limited (Rs. 60,000/-), M/s. ASK Steel (Rs. 13,650/-), M/s. Technological Corporation (Rs. 29,998/-) and M/s. Guest Keen Williams Limited (Rs. 13,731/-) and remitted the same to the file of the Assessing Officer to decide as per law. In compliance to the directions of the Tribunal, notices under Sections 143(2) and 142(1) of the Act were issued requiring the assessee to file necessary evidence in support of the claim that these liabilities were allowable. The assessee vide letter dated 16.2.2005 submitted that all the details including copy of account of the creditors had already been submitted during the original assessment proceedings. It was further submitted that balances in the names of these parties were appearing since 1984 to 1987 and since the above liabilities were quite old and the addition made during the assessment year 1993-94 on the ground that liabilities had ceased to exist during the assessment year 1993-94 was not correct and there was no material/evidence to show that the liabilities ceased to exist during the year 1993-94, no addition on this account could be made. After considering the reply submitted by the assessee and the evidence on record, the Assessing Officer passed the assessment order dated 16.2.2005, Annexure P. 3, making taxable income at Rs. 4,49,492/-. The appeal filed by the assessee was also dismissed by the CIT(A) vide order dated 9.9.2005, Annexure P. 2. Still not satisfied, the appellant filed appeal before the Tribunal. Vide order

dated 24.2.2006, Annexure P. 1, the Tribunal dismissed the appeal holding that the aforesaid amounts aggregating to Rs. 1,03,648/- were assessable as income of the assessee under the head income from business and not as unexplained credits u/s 68 of the Act. Hence the present appeal by the assessee.

2. Learned counsel for the appellant submitted that neither the provisions of Section 68 of the Act were attracted nor provisions of section 41(1) of the Act were applicable. It was urged that it was under bona fide belief that three entries in the books of account of the assessee amounting to Rs. 1,03,648/- which had been treated to be income by the Assessing Officer were not income of the assessee. It was also argued that the judgment of the Apex Court in Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., was not applicable and was distinguishable as in that case, the assessee had carried the amount to the profit and loss account and in such a situation, the amount was treated to be income of the assessee.

3. On the other hand, learned counsel for the respondent-revenue supported the order passed by the Tribunal.

4. The primary issue that arises for consideration in this appeal is whether the amount of Rs. 1,03,648/- representing the advance money found credited in the books of account of the assessee was assessable as income of the appellant.

5. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the appeal.

6. The Tribunal vide order dated 19.8.2002 when the appeal was filed at the instance of the assessee in the first round of litigation had remanded the case to the Assessing Officer and held that the provisions of section 41 of the Act were not applicable. The revenue had never challenged the said finding recorded by the Tribunal. The Tribunal while deciding the appeal had concluded that the income of the assessee could not be brought to tax by application of section 68 of the Act. However, the Tribunal recorded as under:--

"8. I have heard the parties and perused the material on record. M/s. Aman Sales (P) Limited and M/s. ASK Steel Limited have denied to have any amount payable to them by the assessee. The credit in the account of the third party, namely Technological Corporation, was not found genuine. No material had been adduced on record to show that these findings reached by learned CIT(A) are perverse on facts. The first amount of Rs. 60,000/- from Aman Sales (P) Limited was received for supply of goods in the year 1987. The other two amounts at credit in the account of M/s. ASK Steel Limited and M/s. Technological Corporation were also received in the earlier years. All these credits are raised for the trading activity carried by the appellant. In other words, the moneys had arisen out of ordinary trading transactions. After the creditors denied of any claim over these moneys and in the case of the third party, the credit being non genuine, it can be held that these moneys did not remain money of its customers and suppliers respectively since the liability to pay back ceased to exist. These

amounts thereafter had become moneys of the appellant and character of receipts too changed to the income of the appellant, even though the same could not be brought to tax by application of section 68 of the Act. The settled principle is that if an amount is received in the course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character, when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, the commonsense demands that the amount should be treated as income of the assessee. A useful reference to this principle may be had to the judgment in the case of MORLEY (INSPECTOR OF TAXES) Vs. TATTERSALL., This principle has also been explained in the judgment in the case of Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., In the overall conspectus of the case, it has to be held that the aforesaid amount aggregating to Rs. 1,03,648/- was assessable as income of the assessee under the head "income from business" and not as unexplained credits u/s 68 of the Act. I, therefore uphold the action of learned CIT(A) to bring to tax all these credits."

7. A perusal of the aforesaid order and the facts would show that the entries which had been shown in the books of account of the assessee were not treated to be income under Sections 41(1) or 68 of the Act. The Tribunal had applied the principles enunciated by the Apex Court in T.V. Sundaiam Iyengar & Sons" case (supra) where the amount which was initially of capital nature but had changed its character to be of revenue nature, it was treated to be taxable income of the assessee. Thus, the amount of Rs. 1,03,648/- found credited in the books of account of the assessee, the liability to pay back the same had ceased to exist and, therefore, the Tribunal had rightly treated it to be assessee's taxable income. It may be noticed that the submission of learned counsel for the appellant that the non-declaration of Rs. 1,03,648/- as the income of the assessee was due to bona fide belief that it was not exigible to tax, appears to be plausible. In view of the above, we do not find any merit in the appeal.

The substantial questions of law are answered accordingly. The appeal stands dismissed.