(2008) 03 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Blowell Auto (P) Ltd. — APPELLANT

Vs

Assistant Commissioner of Income Tax — RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:
Income Tax Act, 1961 — Section 143, 260A

Citation : (2008) 219 CTR 185 : (2009) 177 TAXMAN 261

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The instant appeal filed by the assessee u/s 260A of the IT Act, 1961 (hereinafter referred to as ''the Act'') is directed against the order dt. 19th Jan., 2007 passed by the Income Tax Appellate Tribunal, Delhi Bench ''SMC, Delhi (hereinafter referred to as the Tribunal'') in ITA No. 4135/Del/2005 in case of the assessee for the asst. yr. 1993-94, by raising the following substantial question of law:

1. Whether in the facts and circumstances of the case and in law, the Tribunal was correct in sustaining an aggregate addition of Rs. 2,50,000, representing the loans and share capital investment, as unexplained cash credit?

2. In the present case, the AO framed the assessment u/s 143(3) of the Act while making an addition of Rs. 2,85,000 on the ground that the appellant has failed to prove the creditworthiness of the creditors, namely Mrs. Sukha Goyal, Mr. Lav Goyal and Smt. Sumita Shekhar, and the genuineness of the transactions of loan and Investments made by those creditors.

3. The said order was challenged in appeal by the assessee. The Commissioner of Income Tax (Appeals) [hereinafter referred to as ''the CIT(A)''], vide its order dt. 22nd Aug., 2005, dismissed the appeal and confirmed the addition made by the AO.

4. Aggrieved against the said order, the assessee filed appeal before the Tribunal, which was allowed in part vide order dt. 19th Jan., 2007 and the addition of Rs. 35,000 on account of unsecured loan of Smt. Sumita Shekhar, sustained by the CIT(A), was deleted. However, the finding recorded by the AO that the assessee failed to establish the source of income, genuineness and creditworthiness of Mrs. Shikha Goyal, Mr. Lav Goyal was confirmed.

5. We have heard counsel for the appellant and gone through the impugned order, passed by the CIT(A).

6. In this case, one Smt. Shikha Goyal had advanced loan of Rs. 55,000 and subscribed Rs. 45,000 as share application money. Another creditor, namely, Mr. Lav Goyal, had advanced a loan of Rs. 1,05,000 and subscribed Rs. 45,000 by way of share application money. Though the assessee has established the identity of both these creditors by filing their affidavits, but in the affidavits, they have not mentioned any specific source of money which was advanced by them. It is well-settled that it is for the assessee to prove not only the Identity of the creditor, but the capacity of the creditor to advance the money and also the genuineness of the transaction.

7. In the instant case, the assessee has though established the identity of both the aforesaid creditors by producing their affidavits, but a finding of fact has been recorded to the effect that the assessee has failed to prove the capacity of these creditors to advance the money and genuineness of the transaction. A perusal of the affidavits, annexed with the appeal, shows that the creditors have only mentioned that they advanced the amount to the assessee from their savings, but no saving account number of the bank or any other material showing the source of income has been mentioned. Except these two affidavits, no other material was produced to establish the creditworthiness of the creditors. Since the authorities have recorded a pure finding of fact, which in our view is neither illegal nor perverse, we are of the opinion that no substantial question of law is arising from the order of the Tribunal, therefore, we do not find any merit in this appeal.