(2011) 12 KAR CK 0221

In the Karnataka High Court

Case No : ITA No. 170 of 2006 (A.Y. 1989-90 to 1999-2000)

CIT and Another APPELLANT

Vs

Mulberry Silk International Ltd. RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:
Income Tax Act, 1961 — Section 158 BC, 68

Citation : (2012) 205 TAXMAN 132

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : Thirumalesh, for the Appellant; S. Parthasarathi, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is filed by the revenue being aggrieved by the order passed by the Income Tax Appellate Tribunal, Bangalore Bench A in IT (SS) No. 11/Bang/2002, block assessment years 1989-90 to 1999-2000, wherein the Tribunal by its order dated 12-8-2005, wherein the appeal filed by the revenue is dismissed. This appeal has been admitted for consideration of the following two substantial questions of law by order dated 2-7-2007.

1. Whether the Appellate Authorities were right in holding that a sum of Rs. 3,84,88,500 treated as income of the assessee u/s 68 of the Income Tax Act, pursuant to search had been detected in a search and the assessee had not established the source of the said sum by producing positive evidence?

2. Whether the Appellate Authorities were right in holding that the judgment of the Apex Court in the case of Commissioner of Income Tax Vs. Steller Investment Ltd., is applicable to the facts of the case?

2. The material facts leading to this appeal for adjudicating the substantial questions of law raised in this appeal as referred to above are as follows:

There was a search in the premises of the respondent assessee on 25-1-1999 and block assessment proceedings were initiated under Chapter XIV-B to issue notice u/s 158-BC of the Income Tax Act, 1961 (hereinafter referred to as the ''Act'') on 7-6-1999. In response to the said notice, the assessee filed block return of income on 2-8-1999 admitting the total undisclosed income as nil. After hearing the representative of the assessee, the assessing officer by his order dated 31-1-2001 held that so far as the amount of share capital contribution for the assessment years 1994-95, 1995-96 and 1996-97 amounting to Rs. 3,85,38,500. The same has not been satisfactorily explained and the same has to be treated as undisclosed income u/s 68 of the Act. Being aggrieved by the said order of the assessing officer, the assessee preferred appeal before the CIT(A)-III, Bangalore, ITA No. 804/DC 12(I)/CIR(A)III/ 2000-01 and the First Appellate Authority by order dt. 28-11-2001 allowed the appeal in part. In the meanwhile, the application had been filed before the settlement Commissioner by M.S.I.L., on 18-6-2001 and the same was pending consideration. The appellate authority deleted the addition of Rs. 3,85,38,500 being the unexplained share capital in view of the various submissions of the appellate and in view of the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax Vs. Steller Investment Ltd., and accordingly allowed the appeal in part. Being aggrieved by the said order, the revenue preferred the appeal before the Tribunal and the Tribunal by order dated 12-8-2005 held that the appellate authority had rightly followed the decision of the Supreme Court in the case of CIT v. Steller Investment Ltd. (supra) and further also took into account the order which has already been passed by settlement Commissioner on 30-3-2005 and accordingly dismissed the appeal filed by the revenue and being aggrieved by the same, this appeal is being filed by the revenue.

3. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

4. Learned counsel appearing for the appellants submitted that the appellate authority was not justified in relying upon the judgment of the Supreme Court in the case of CIT v. Steller Investment Ltd. (supra) as the said case was decided on the facts of the said case, even though the conclusion arrived at on the basis of the fact that if the subscriber who contributed in shares of the assessee-company were not genuine, the amount could not be treated undisclosed income of the assessee-company. The learned counsel has taken us through the order passed by the settlement Commissioner dt. 30-3-2005 as also the order passed by the appellate authority and submitted that having regard to the facts of the present case, the assessing officer has rightly treated the unexplained contribution to the share capital as undisclosed income u/s 68 of the Act and wherefore the order of the Tribunal is liable to be set aside and substantial questions of law shall be answered in favour of the revenue.

5. Learned counsel appearing for the respondent submitted that even before the assessing officer, M.S.I.L. had written a letter stating that it has subscribed to the additional share capital and therefore the assessing officer ought to have

considered the said letter filed and the finding that the amount should be treated as undisclosed income is baseless. He further submitted that the decision of the Supreme Court in the case of CIT v. Steller Investment Ltd. (supra) is applicable to the facts of the case and further the Division Bench of this court in the case of Commissioner of Income Tax and Another Vs. ASK Brothers Ltd., has reiterated the principles laid down in Steller Investment Ltd. case and subsequent decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax Vs. Steller Investment Ltd., and has held that the unexplained share capital contribution even if not genuine cannot be treated as undisclosed income. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinised the material on record. It may be observed at the outset that it is unfortunate that the department is not making available to the Court the documents that are seized during search in the present case, as it is well settled that any finding given by the assessing officer or the appellate authority or the Tribunal should be based upon the material found during search and in the present case even though according to the learned counsel appearing for the appellant the books of account of the assessee has been seized and the same has not been produced. Even otherwise the fact remains that the additions made by the assessing officer is in respect of amount of share capital contribution amounting to Rs. 4,95,38,500 for the assessment years 1995-96, 1996-97 and 1997-98. The fact that MSI which is a sister concern of MSIL has addressed a letter to the assessing officer stating that it has invested and contributed towards the share capital is not in disputed. In view of the decision of the Hon''ble Supreme Court in Steller Investment Ltd., the decision of the Division Bench of this Court in Ask Brothers Ltd., it is clear that even an amount of share capital contributed is not found to be genuine and the same cannot be treated as undisclosed income u/s 68 of the Act and in the present case having regard to the letter given by the MSIL stating that it had contributed to the share capital cannot be disputed. Further the report of the Settlement Commissioner has been taken into consideration by the Tribunal and though the amount of share capital contribution was Rs. 4,95,38,500 added as undisclosed income as per the assessing officer, the Settlement Commissioner has also accepted the letter given by MSIL. Under the circumstances, the finding of the Tribunal confirming the order of the Appellate Authority is justified and accordingly we answer both the substantial questions of law against the revenue and in favour of the assessee and we hold that the appeal is devoid of merits and accordingly we pass the following:

The appeal is dismissed.