(2013) 05 DEL CK 0508

In the Delhi High Court

Case No : ITA 596 of 2012

CIT APPELLANT

Vs

Akme Projects Ltd. RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0508

Hon'ble Judges : Vibhu Bakhru, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Karan Khanna, with Ms. Ashmita Kumar, for the Appellant; Piyush Kaushik, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This is an appeal by the revenue against the order dated 28.12.2011 passed by the Income Tax Appellate Tribunal, New Delhi, in ITA No. 3276/Del/11 relating to the assessment year 2008-09. The appeal was admitted for hearing on 15.10.2012. The order indicates that the following question of law arises for consideration:-

Whether the Tribunal fell into error in directing that the sum of Rs. . 39,52,293/-, added by the Assessing Officer, was covered by the disclosure made by the assessee after the survey conducted, which led to his filing a return?

At the outset, the learned counsel for the respondent/assessee urged that the above question was not a question of law at all and much less a substantial question of law and that the same involved only issues of fact which had been finally determined by the Tribunal. However, the learned counsel for the appellant contended that a Bench of this court had already framed the above question and therefore the same needs to be answered.

2. The facts of the case are aptly set out in paragraph 2 of the impugned order and the same are reproduced herein below:-

2. A search operation was carried out at the premises of the assessee including

the group concerns. A survey was also conducted on 19, 20th February, 2008 on various premises and group concerns of the assessee. During the course of survey, on the basis of various documents/papers/soft copies of the data, the assessee declared a sum of Rs. . 15 crore as additional business income in the hands of various business concerns of the assessee group vide letter dated 10th March, 2008 the copy of which has been placed at page 59 of the paper book. On the basis of the declaration, it is the case of the assessee that the entire Rs. . 15 crore was declared in its hands and accordingly the return of income was filed at Rs. . 18,37,88,691/-. However, while assessing the income of the assessee, the Assessing Officer found that the assessee had claimed set off of loss from trading in commodities amounting to Rs. . 39,52,293/- against business income. The Assessing Officer treated that such loss is of speculative nature, hence could not be set off against business income. He, therefore, added the said sum to the income of the assessee and has assessed the income of the assessee at Rs. . 18,77,40,980/-. The addition was challenged by the assessee before the CIT(A). It was contended that the assessee had transferred 58 flats having mutually agreed value at Rs. . 18,08,31,794/- in favour of M/s. BLK Reality Pvt. Ltd. Against which claim of having incurred Rs. . 17 crore on various projects of the assessee company. The assessee company recognized total value of sales of such flats in its profits and loss account at Rs. . 18,08,31,794/- as against the earlier sale value shown at Rs. . 4,50,00,000/- there by offering an additional income to the extent of Rs. . 13,58,31,794/-. The said accretion formed part of the overall agreed income of Rs. . 15 crore as offered voluntarily by the assessee after the survey. The balance amount of Rs. . 1,41,68,206/- was offered directly in the computation of income to cover any deficiency or discrepancies or other investments/expenditure, etc. Thus, it was pleaded by the assessee that further disallowance of Rs. . 39,52,293/- being less than the amount additionally offered for tax of Rs. . 1,41,68,206/- on account of there being no other discrepancy, should have been considered to be covered by the said additional addition and therefore, the addition of Rs. . 39,52,293/- was not called for. Such submissions of the assessee were forwarded by the CIT (A) to the Assessing Officer vide letter dated 20th January, 2011 for his comments within ten days, but, no comments were received from the Assessing Officer. It is observed by CIT (A) that the written submission of the assessee do not contain any additional evidence. Therefore, he proceeded to decide the appeal filed by the assessee on the basis of the material available on record. Learned CIT (A) after reproducing the submissions of the assessee in letter dated 10th March, 2008 vide which the assessee had offered additional income of Rs. . 15 crore has come to the conclusion that in view of the additional amount taken by the assessee of Rs. . 1,41,68,206/- which did not exceed the disallowance made by the Assessing Officer of Rs. . 39,52,293/-, the addition made by the Assessing Officer was not called for. It is against these findings recorded by the CIT (A), the department has filed the aforementioned grounds of appeal.

3. The argument of the revenue is that the sum of Rs. . 39,52,293/- was by way

of speculation loss and therefore the said amount had to be added back to the business income of the assessee. On the other hand the learned counsel for the respondent/assessee contended that the said sum of Rs. . 39,52,293/- was already embedded in the additional business income which was offered by the respondent/assessee which was to the extent of Rs. .1,41,68,206/-. The Tribunal has examined this aspect of the matter in detail and observed that the assessee, in order to make its offer an honest attempt, apart from declaring the discrepancy pointed out, offered an additional sum of Rs. . 1,41,68,206/- so as to complete the figure of Rs. . 15 crores which was the offer made at the time of survey. The Tribunal noted that the said amount of Rs. . 1,41,68,206/- exceeded the amount of Rs. . 39,52,293 added by the assessing officer. Consequently the Tribunal held as under:-

Therefore, in our opinion, learned CIT (A) has taken a right view that the aforementioned amount should have been considered to be embedded in the additional income offered by the assessee. We find no infirmity in the view taken by the CIT (A) and, therefore, we decline to interfere in the order of CIT (A).

4. Consequently, we are of the opinion that, first of all, the question is one which entirely rests on facts and is not a substantial question of law. Secondly, even if we consider the question on merits the Tribunal has arrived at the correct decision in concluding that the said sum of Rs. . 39,52,293/- which was added by the assessing officer was embedded in the additional offer of Rs. . 1,41,68,206 made by the assessee at the time of the survey proceedings.

5. Consequently, even on merits the question is answered in favour of the respondent/assessee and against the revenue. The appeal is dismissed. There shall be no orders as to costs.