
(2013) 03 AHC CK 0329
In the Allahabad High Court
Case No : IT Appeal No. 422 of 2005

CIT

APPELLANT

Vs

Arya Auto Financers

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 03 AHC CK 0329

Hon'ble Judges : Ram Surat Ram (Maurya), J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan and B.J. Agrawal, for the Appellant; Shubham Agrawal, for the Respondent

Judgement

1. The present appeal has been filed u/s 260A of the Income Tax Act against the order dt. 29-3-2005 passed by the Income Tax Appellate Tribunal, Agra Bench, Agra in ITA No. 150/Agra/2001 for the assessment year 1997-1998.
2. The assessee respondent is a partnership firm and is engaged in the business of hire purchase finance. For the relevant assessment year 1997-1998 it filed return of income disclosing the same at Rs. 280. The matter was taken up by invoking section 143(3) of the Income Tax Act by the Assessing Authority. During the course of assessment proceeding, the Assessing Authority has noticed that the assessee Firm has received deposits from various persons. All these deposits have been categorized under three heads-Fixed Deposits, Small Deposits and Cumulative Deposits.
3. The assessing officer was of the opinion that the assessee has not been able to prove these cash credits about nature and source whereof. Explanation offered by the assessee with regard to all these cash credits were found unsatisfactory. Additions were made u/s 68 of the Income Tax Act. The matter was carried unsuccessfully in appeal before the Commissioner (Appeals)-I, Agra. The assessee filed a second appeal before the Tribunal. The Tribunal by the order under appeal has allowed it. The above appeal has been admitted on the

following substantial questions of law:--

1. "Whether on the facts and in the circumstances of the case the Tribunal is justified in deleting the additions made by the assessing officer u/s 68 of the Act?"

2. "Whether on the facts and in the circumstances of the case the Tribunal is justified in holding that the assessee has proved the identity, their capacity and the genuineness of the transactions in respect of the cash credits found in the books of the assessee?"

4. Heard Sri R.K. Upadhyaya, learned counsel for the appellant, and Sri Subham Agrawal, learned counsel for the assessee respondent.

5. The learned counsel for appellant submits that although the order of Tribunal is lengthy one but there is no application of mind by it to the controversy involved. The Tribunal while reversing the findings of the authorities below to it should have given some reasons. But the Tribunal has reversed the order of the authorities below to it by making some general and sweeping remarks. Further, reliance has been placed upon a Division Bench judgment of this Court in Jagmohan Ram Ram Chandra Vs. Commissioner of Income Tax, .

6. In reply, the learned counsel supports the order of Tribunal and submits that the findings recorded by the Tribunal are essentially findings of fact which cannot be interfered with u/s 260A of the Act. He submits that only the few depositors were asked to be produced by the Assessing Authority and they were produced. The assessee Firm is a finance Firm and it has received deposits of small amount from various persons ranging from Rs. 4500 to Rs. 9500 and Rs. 3,750 to Rs. 11,500.

7. Considered the respective submissions of learned counsel for the parties and perused the record.

8. A bare perusal of the order of Tribunal would show that it runs into fourteen pages and is divided in 18 paragraphs. Upto paragraph 13, the Tribunal has noticed the facts of the case and argument of counsel for parties. Without assigning any reason, the Tribunal has jumped to its conclusion as recorded in paragraph 14 of its order. For the sake of convenience, the said paragraph is reproduced below:--

14. After careful consideration of the rival submissions and facts and circumstances of the case, we are of the opinion that so far as deposits under various heads are concerned, the assessee being carrying on the business of financing and having filed confirmations as well as produced some of the depositors and also having requested the assessing officer to call for further information or personal presence of the depositors by exercising his power u/s 133(6) or 131 of the Act, had discharged the onus put on it by the provisions of section 68 of the Act and the Revenue Authorities did not consider the assessee's request (supra), the addition cannot be sustained in law. This conclusion of ours

is supported by the decision in various cases as listed in para no. 9 of this order (supra). Respectfully following the decisions in aforesaid cases and in the fact that Revenue Authorities failed to consider the assessee's request for calling for information u/s 133(6) or u/s 131 of the Act, we delete the addition in question.

9. A perusal of the above quoted para would show that the Tribunal has not applied its mind to the various aspects of the case and has allowed the appeal of the assessee by making general remarks. The Tribunal being last fact finding authority should have considered the evidence and material produced by the respective parties in support of its findings. The order of Tribunal is far from satisfactory and therefore, the same cannot be allowed to stand.

10. Besides the above, the learned counsel for the department submits that in view of the aforesaid judgment of this Court in the case of Jagmohan Ram Ram Chandra (supra) the finding recorded by the Tribunal in paragraph 16 is unjustified which is being disputed by the learned counsel for the assessee. In view of the fact that we are remanding the matter back to the Tribunal, it is not necessary for us to say anything in this regard. By way of clarification, it is added that the entire order of the Tribunal is set aside and the matter is restored back to the Tribunal to decide the appeal afresh in the light of observations made above keeping in view the ingredients of section 68 of the Income Tax Act and other relevant provisions.

11. In the result, the order of Tribunal cannot be allowed to stand. The appeal succeeds and is allowed. The order dt. 29-3-2005 is hereby set aside and the matter is restored back to the Tribunal to rehear and redecide the ITA No. 150/Agra/2001. It will do good by deciding the appeal preferably within a period of six months from the date of production of certified copy of this order.