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(2010) 08 RAJ CK 0147

In the Rajasthan High Court

Case No : IT Appeal No. 380 of 2009 (Assessment Year 2005-06)

CIT APPELLANT

Vs

Chandra Prakash Rana RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:
Income Tax Act, 1961 — Section 260A, 68

Citation : (2010) 08 RAJ CK 0147

Hon'ble Judges : S.S. Kothari, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an intra court appeal filed by the income tax department u/s 260A of the Income Tax Act against an order dated 31-12-2008 passed by Income Tax Appellate Tribunal, Jaipur (for short called Tribunal) in ITA No. 1197/ Jp/2008 for the period assessment year 2005-06.

2. By the impugned order, the Tribunal dismissed the revenues appeal and affirmed the order of Commissioner (Appeals) on the issue raised in this appeal.

3. So the question that arises for consideration in this intra court appeal is whether it involves any substantial question of law within the meaning of Section 260A ibid?

4. Having heard the learned Counsel for the Appellant and on perusal of record of the case, we are inclined to dismiss the appeal in limine as in our opinion the appeal does not involve any substantial question of law as is required to be made out within the meaning of Section 260A ibid.

5. The issue relates to grant of certain deletions amounting to Rs. 17,01,652 which were made by the assessing officer in the course of assessment proceedings initiated against the Assessee under the Act. The assessing officer did not accept the explanation offered by Assessee and treating the transaction

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of shares to be bogus added in the total income. The Commissioner (Appeals) and Tribunal set aside the order of assessing officer insofar as it related to additions made by him (assessing officer) of Rs. 17,01,652. In other words, the Commissioner (Appeals) and Tribunal accepted the factual explanation coupled with the evidence tendered by Assessee in relation to the impugned additions made by assessing officer and accordingly held that since the same have been properly explained based on documentary evidence and hence, they cannot be included while computing the total income of the Assessee.

6. In substance, the issue involved in the appeal was in relation to addition/ deletion of Rs. 17,01,652 in the hands of Assessee in the assessment year under consideration. The question arose before assessing officer in relation to entry of Rs. 17,01,652 in the books of assessment (sic-account) and Assessee was called upon to prove the source. According to Assessee, it represented a genuine share transaction within one company and for which payments were made through cheques. In support of the transaction, the Assessee filed documentary evidence. The assessing officer did not find explanation offered by Assessee to be plausible and accordingly added the amount treating it to be an income from unexplained source u/s 68 ibid. It was however reversed by Commissioner (Appeals) and later also upheld by Tribunal in an appeal filed by the revenue when revenues appeal was dismissed. This is what Tribunal held by upholding the order of Commissioner (Appeals) and accepting the explanation of Assessee:

3. We have heard the rival contentions and perused the facts of the case. We concur with the views of the learned Commissioner (Appeals) that the contract note of broker indicating the numbers of shares purchased and its rate and date of purchase as well as date of sale and sale consideration. Relevant copies of the bills, letter issued by the broker and the company confirming the transfer of shares in the name of the Assessee, D-Mat opening account copy and confirmation by D-Mat account opening agency M/s Karvy Consultants Ltd. were also filed by the Assessee. Copy of the PAN of Rajeev Kumar, the broker was filed which proves identity of the broker through whom the shares were purchased and to whom share were also sold. The payments were made through account payee cheque. Copy of the letter of Tech DNA Solutions Ltd. was also filed confirming the transfer of the shares in the Assessees name. On the other hand, it is not the case of the assessing officer that particular information was not supplied by the Assessee. The assessing officer has heavily relied upon the reply of Delhi Stock Exchange Association Ltd. to his letter dated 16-11-2007. From the perusal of copy of the letter written by the assessing officer it appears that the name of script written by him was Tech DNA Solutions Ltd. and not tech DNA Solutions Ltd. Delhi Stock Exchange Association also confirmed that no trading in the share of M/s Tech DNA Solutions Ltd. in Delhi Stock Exchange during the period was made. Thus the wrong information was by the assessing officer and hence the reply received was also in respect of the company wrongly return by the assessing officer. Thus, the letter of Delhi Stock Exchange has no evidential value as it is in respect of company in which the Assessee did not enter into

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transaction of shares. The very basis for presumption of the assessing officer does not stand. The assessing officer has not found any fault with the documents supplied by the Assessee. The assessing officer has observed that the information furnished by the Assessee was wrong or certain information asked for by the assessing officer but the Assessee failed to provide it is also not the finding of the assessing officer that the share broker was not genuine or payments made by account payee cheque/draft were not genuine. Assessing officer also failed to make any enquiry either from broker or from the company. When the shares were sold in off-market trade the possibility of any record in stock exchange was ruled out. The assessing officer could have made enquiry from Stock Holding Corporation to find out the name of real buyer of the share. Under the facts and circumstances of the case the observation of the assessing officer that the transaction was sham cannot be upheld. Once the genuineness of the transaction is proved then question does not arise for making any addition u/s 68 of Income Tax Act. In such circumstances and facts of the case, we find no infirmity in the order of the learned Commissioner (Appeals). Thus the solitary ground of the revenue is dismissed.

7. Learned Counsel for the Appellant (Revenue) contended that firstly Tribunal erred in accepting the explanation offered by Assessee in relation to source of income. His second submission was that what was offered by Assessee was no explanation and hence should not have been accepted and lastly learned Counsel made sincere attempt on his part after taking us through factual scenario of the explanation and contended that it can never be taken as satisfactory explanation for deleting the addition made by assessing officer. We do not agree to this submission for more than one reason.

8. In the first place, it is a pure question of fact, what to say question of law, much less substantial question of law. Secondly, this Court cannot again in this appeal undertake the examination of factual issues nor can draw factual inferences on the basis of explanation offered by Assessee. Thirdly, once the explanation is accepted by the two appellate Courts i.e. Commissioner (Appeals) and Tribunal in this case, then in such event, a concurrent finding recorded on such explanation by two appellate Courts is binding on the High Court.

9. Perusal of impugned finding quoted supra would go to show that Tribunal did examine the explanation offered by Assessee in detail and then recorded a finding for its acceptance. Such finding when challenged does not constitute a substantial question of law within the meaning of Section 260A ibid in an appeal arising out of such order.

10. In our opinion, therefore, once the Commissioner (Appeals) and Tribunal accepted the explanation of Assessee and accordingly, deleted certain additions made by assessing officer holding the transaction of shares to be genuine, then it would not involve any substantial issue of law as such. In other words, this Court in its appellate jurisdiction u/s 260A ibid, would not again de novo hold yet another factual inquiry with a view to find out as to whether explanation offered

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by Assessee and which found acceptance to the Commissioner (Appeals) and Tribunal is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding recorded had been entirely de hors the subject, or that it had been based on no reasoning, or based on absurd reasoning to the extent that no prudent man of average judicial capacity could ever reach to such conclusion, or that it had been found against any provision of law, then a case for formulation of substantial question of law on such finding can be said to have been made out.

11. In our view, no such error could be noticed by us in the impugned order because as observed supra, the Tribunal did go into the details of explanation offered by Assessee and then accepted the explanation by placing reliance on the documents filed by Assessee. As a consequence thereof, the additions made by assessing officer came to be deleted.

12. Learned Counsel for the Appellant vehemently argued that when D.S. Exchange doubted the correctness of transaction in their letter then in such circumstances, the assessing officer was right in placing reliance on such letter for making addition whereas two appellate Courts were not right in deletion. We are not impressed by this submission for more than one reason. In the first place, it is not in the nature of substantial question of law and hence it is outside the purview of Section 260A ibid. Secondly, this submission was dealt with by Tribunal and negatived, finding no merit therein and lastly when the issue on this fact was examined and finding recorded then unless it constitutes a substantial question of law, the same cannot be entertained in appeal u/s 260A. It, in our opinion, amounts to reappraisal of evidence already done by two appellate Courts and hence third appellate court would not do it.

13. Learned Counsel for the Appellant (Revenue) then by placing reliance on the decision reported in Standard Radiators Pvt. Ltd. Vs. Commissioner of Central Excise, contended that Tribunal failed to properly exercise its appellate jurisdiction while deciding the appeal and hence impugned order deserves to be quashed. We find no merit in this submission. There can be no quarrel to the principle of law laid down in the case cited by learned Counsel for the Appellant. What is distinguishable is facts of each case. In this case, we have formed an opinion that Tribunal has exercised its appellate powers properly while considering the facts.

14. We thus, do not find any merit in the appeal. It fails and is dismissed in limine by holding that it does not involve any substantial question of law. No costs.

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