(2013) 08 AHC CK 0197

In the Allahabad High Court

Case No : ITA Defective No. 92 of 2013

CIT APPELLANT

Vs

Kaiser Construction and Engineers RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 08 AHC CK 0197

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. The certified copy of the order has been filed in connected Income Tax Appeal No. 203 of 2013. The application for exemption is allowed. The appeal will be given regular number.

2. We have heard Shri Dhananjay Awasthi, learned counsel appearing for the department.

3. This Income Tax Appeal filed u/s 260-A of the Income Tax Act arises from an order of Income Tax Appellate Tribunal, Agra Bench, Agra dated 22.2.2013 in ITA No. 211/Agra/2012 in respect of assessment year 2006-07.

4. The appeal has been preferred by the department on following substantial questions of law:--

"1. Whether the Income Tax Appellate Tribunal was justified in upholding the deletion made on account of unconfirmed creditors when it is clear that the A.O. did not get sufficient opportunity to controvert the additional evidence filed before the Commissioner (Appeals).

2. Whether the Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner (Appeals) solely on the grounds that PAN was provided.

3. That the Hon''ble Income Tax Appellate Tribunal has erred in confirming the

order of the Commissioner (Appeals) which allowed relied of Rs. 45,46,166 on account of disallowance out of expenses though the assessee had failed to produce books of account and prove the genuineness of expenses claimed at a time of assessment. Therefore, expenses remained unexplained and A.O. rightly disallowed expenses @ 50%.

4. That the Hon''ble Income Tax Appellate Tribunal has erred in confirming the order of the Commissioner (Appeals) which restricted the addition on account of unconfirmed creditors of Rs. 1,26,51,811 to Rs. 40,998, since the genuineness of these creditors could not be provide beyond doubt at the time of assessment."

5. During the remand proceedings the A.O. recorded a finding that the assessee produced books of account including ledger and cash book along with original vouchers, bank statement etc. After considering the remand report it was held by the Commissioner (Appeals) in appeal that books of account were produced. The payment in cash could not be faulted as it was supported by vouchers. The assessing officer failed to indicate any specific example with regard to factual verification to support his general observations. The Commissioner (Appeals) found that the addition of Rs. 5 lacs will meet the ends of justice and gave a relief of Rs. 45,46,166.

6. The Commissioner (Appeals) further found that so far as the genuineness of the creditors is concerned, the assessing officer himself recorded the finding in the remand report that he had accepted the statement of almost all the creditors recorded on 27.12.2010 except one creditor for an amount of Rs. 40,998. On this material the Income Tax Appellate Tribunal did not find any good ground to interfere with the order of Commissioner (Appeals) and dismissed the appeal of the revenue. The relevant findings are quoted as below:--

"11. We have heard the ld. representatives of the parties and records perused. We do not find substance in the submission of the ld. departmental representative that the matter should be sent back to the file of A.O. as the details were filed before the Commissioner (Appeals). We notice that the assessing officer has wrongly recorded the fact that on the date of hearing dated 27.12.2010 the assessee/Authorised Representative did not appear before the A.O. whereas the fact is that the assessee/Authorised Representative appeared before the A.O. and the A.O. himself recorded statement of some parties which are filed in the paper book. The A.O. has recorded blind in correct fact which is not appreciable. Merely mentioning that the case is going to be barred by limitation on 31.12.2010 the A.O. has taken shelter and on the basis of incorrect fact made the assessment u/s 144 of the Act. Such a practice is not in accordance with law, therefore, such action of the assessing officer is not sustainable. As regards the submission of the ld. Departmental Representative of sending back the matter to the file of assessing officer, we find that the Commissioner (Appeals) has provided opportunity of hearing to the assessing officer also and the assessing officer has filed the remand report. Copy of remand report filed by the assessing officer has also been furnished by the ld.

Departmental Representative before us. The Commissioner (Appeals) before coming to the conclusion considered the remand report of the assessing officer. We find that the Commissioner (Appeals), after a detailed discussion on each and every aspect of the matter including the claim of expenditure and after examining the details filed by the assessee in respect of expenditure, came to a reasonable conclusion and addition to the extent of Rs. 5,00,000 has been sustained for want of verification of expenditure and others and has rightly allowed relief of Rs. 45,46,166 as sustaining 50% of expenses and running a business with remaining 50% expenses is impossible. The view taken by the Commissioner (Appeals) appears to be fair and reasonable. We, therefore, confirm the order of Commissioner (Appeals) in respect of disallowance of expenses.

12. As regards the addition on account of creditors, we find that the assessing officer himself has accepted the document filed by the assessee containing copy of bank statement and confirmation and the assessing officer did not doubt about the genuineness of those parties. The assessing officer himself recorded the fact in the remand report that he has also accepted the statement of almost all the creditors recorded on 27.12.2010 except creditor for the amount of Rs. 40,998. When the assessing officer himself accepted the genuineness of the creditors before the Commissioner (Appeals) in the remand report and the Commissioner (Appeals) has deleted the addition to that extent, we are of the considered view that there is no error in the order of Commissioner (Appeals) in deleting the addition of Rs. 1,25,69,815. The Revenue has failed to point out any contrary material to the finding of Commissioner (Appeals) in respect of disallowed amount as well as on account of creditors being the addition made u/s 68. In the light of the fact, we confirm the order of Commissioner (Appeals)."

7. Shri Dhananjay Awasthi appearing for the revenue submits that the Commissioner (Appeals) and Income Tax Appellate Tribunal have erred in law in giving relief of Rs. 45,46,166 in respect of the expenses and have further erred in law in believing the genuineness of the credits of Rs. 1,25,69,815.

8. We have carefully perused the orders passed by the Commissioner (Appeals) and Income Tax Appellate Tribunal, and find that the findings recorded by them are finding of fact, which do not raise any question of law to be considered by the Court. The Commissioner (Appeals) found that the books of account were produced and were relied upon to allow the expenses. The rejection of accounts and additions made by the assessing officer were not justified. He also held that when the assessing officer himself had verified the genuineness of the credits and did not doubt the bonafides of the transactions relating to creditors, he could not have added the amount to the income of the assessee.

9. The questions framed in the memorandum of appeal do not raise any substantial questions of law to be decided by the Court. The findings recorded by the Commissioner (Appeals) and Income Tax Appellate Tribunal are findings of facts, which do not call for interference.

10. The Income Tax Appeal is dismissed.