

(2012) 07 DEL CK 0168

In the Delhi High Court

Case No : ITA No's. 115, 116, 117, 118, 121, 123 and 124 of 2012

CIT

APPELLANT

Vs

RL Traders

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 143(2), 153A

Citation : (2012) 07 DEL CK 0168

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Rashmi Chopra in all Appeals, for the Appellant; K.R. Manjani, Advocate in all Appeals, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice S. Ravindra Bhat

1. Admit. The following substantial question of law arises in these batch of appeals i.e. whether the Tribunal's approach in confirming the CIT's order which had deleted the addition made on account of unsecured loans by the Assessing Officer, for the concerned assessment years i.e. 2000-01 to 2006-07 and the interest component, is correct, having regard to the facts and circumstances of the case. The brief facts of the case are that the assessee's premises were searched on 13.12.2005, pursuant to which, a notice was issued under Section-153A on 09.07.2007 for the assessment years, 2000-01 to 2006-07. A detailed questionnaire was issued under Section-142 (1)/143 (2) on 29.10.2007. The assessee filed returns thereafter. The firm claimed to have earned NIL income. One of the claims made by the assessee was in respect of unsecured loans obtained from individuals and firms. The assessee was required to file the details of such loans obtained along with complete particulars. After consideration of these, the assessing officer passed separate orders of assessment. Broadly in all the cases, the assessing officer added back the loans except for two years i.e. 2003-04 and 2005-06. In these years, there were no

fresh loans taken by the assessee. Assessing Officer in addition disallowed the interest component for all the years and added back an amount of Rs. 5 Lakh of unexplained cash. This Court is not inclined to go into the other aspect vis-?-vis unexplained cash and gross profit addition which have been dealt with by the CIT (Appeals) as well as the Tribunal. The assessee had declared a gross profit depending and based on the peculiar circumstances of each case. With regard to the rate of gross profit and unexplained cash, the decision of the Tribunal is factual and no substantial question of law arises.

2. As far as the addition of the loan amount and the interest component is concerned, the Assessing Officer held as follows: -

2. Loan Creditors: The assessee was required to file details of loans obtained along with the complete particulars of the persons i.e. their names, addresses, PAN particulars, source, financial capacity etc. Assessee has merely filed names & addresses with PAN particulars in some of the cases. In most of the cases merely GIR No. has been filed. It is a know fact that these days GIR Nos. have no great significance after the introduction of the new series of PAN number. Source of loan and financial capacity of the lenders has not been provided at all, this gives a strong signal that this is the precise mode in which unaccounted money is being rotated by the assessee into his business. Each year assessee obtain loan and squares up next year. In the next to next year again loans are claimed to be obtained. It is also interesting that some person, his wife, father, brother and HUF is giving loans to assessee as is seen from the addresses of the lenders.

As stated above, assessee has failed to establish the credit worthiness of the lenders, hence all these loans obtained in each year will be treated as non-genuine and assessee's own money generated through under-invoicing etc. which is being pulled in and pulled out at the will of the assessee. On this account addition is made as under:

Assessment Year

Amount (Rs.)

2000-01

19,80,000

2001-02

1,21,75,000

2002-03

19,00,000

2004-05

68,50,000

2006-07

3,75,000

It is further seen that most of the so called loans received are utilized only for partners personal requirement. For example, in A.Y.2001-02, when loans of Rs. 1.21 crores were allegedly received, partners had withdrawn collectively above Rs. 75.00 lacs. Therefore, I see no reason to allow interest paid on these loans as business expenditure. I, therefore, disallow 75% of interest paid in each year towards non-business use and for the personal needs of the partners. Firm's fund an interest are being utilized Disallowance of interest an above basis will work out as under:

Assessment Year

Amount (Rs.)

2000-01

2,10,137

2001-02

9,58,065

2002-03

5,45,173

2003-04

2,70,350

2004-05

3,95,738

2005-06

5,98,725

2006-07

4,63,194

3. The assessee's appeal was considered by the CIT (A) by a common order dated 31.08.2010, allowed the claim with regard to the loan and interest made by the assessee. The CIT (Appeals) reasoning is as follows:

2. Loans and interest therefor.

Submissions of the appellant are that the loans is a regular feature of the business and these are raised almost every year and so far so long no addition had been made. The loans raised are from persons who are existing assessee, their confirmations as mentioned in letter dated 25.3.2008 have been filed, loans

are through banking channel, these are interest bearing loans. TDS has been deducted from the interest paid, necessary details for which have been filed. The appellant also contended that the loans have been added because the people did not respond to summons sent by the A.O. because the matter was old one. The appellant had repeatedly requested A.O. to enforce the attendance of creditors if they are not responding but no action on this was taken by A.O. The appellant had even offered to the A.O. that if he deposes his Inspector, he can get fresh supporting confirmations from majority of these parties. The Learned A.O. did not accede to this request.

It was also pleaded that majority of the loan creditors even sent confirmation second time directly to the ITO and about this the lenders even informed the appellant, who has filed the speed postage proof of sending the intimation to the A.O. It was pleaded that where payments are through cheque, genuineness of payment could not be doubted when these are also supported by deduction of TDS. It is contended that where the persons are existing assesses, it ipso facto proves the credit worthiness as per 82 TTJ 13. Several judgments have been quoted in support and on these facts of the appellant, no addition in respect of loans and interest thereon is called for. It is also pleaded that similar addition in the case of the sister concern M/s Shri Raghunath Traders has also been deleted except for Rs. 2,50,000/- and Rs. 1,00,000/- in respect of the parties who have changed either addresses and their present addresses are not known. Appeals against these additions have been filed because taking of the loan does not mean that appellant can keep watch on their movements especially when the loans have already been returned and more than 8 years have passed. In this case, there is no such loan for which addresses are not available.

The arguments of the appellant were sent to the A.O. and A.O.'s only objection is that they are not responding to the summons. To this appellant added that for this, he is helpless because power to enforce their attendance is with the A.O. and the matter being old one. They are not co-operating especially because in few cases, the loan creditors who had attended, were sent by to come again as is clear from Affidavit of Shri Rajesh Bhatia, one of the partners of the appellant.

Considering the history of the case and legal position, this addition is uncalled for and is deleted along with interest for all the above years.

4. The learned counsel for the Revenue contends that the CIT (Appeals)" order is bereft of any reasoning. Apart from reciting the submissions of the assessee's appeal, the CIT (A) did not furnish any independent reasons to displace the inference and reasoning given by the Assessing Officer. This plainly amounted to perverse and unreasonable approach which called for interference by the ITAT. Learned counsel also relied upon two remand reports said to have been called by the CIT (Appeals) during the pendency of the assessee's appeals before him. They are dated 27.01.2009 and 26.05.2009. It was contended that these remand reports bore out the assessing officer's inferences and conclusions that the unsecured loans had to be added back and could not be allowed as claimed by

the assessee.

5. Learned counsel for the assessee contended that neither in the grounds of appeal by the revenue nor even in the submissions made before the ITAT, was the issue of non-consideration of the remand reports brought to the notice of ITAT. In the absence of such contentions, the ITAT could not be faulted with for overlooking the alleged lapses on the part of the CIT (Appeals). Independently, on merits of the CIT (Appeals) order, counsel highlighted that the reasoning of that body were sufficient to displace the inferences which the Assessing Officer had drawn based upon his own understanding of the record and the material available which included the enquiries made by the Assessing Officer and the material available with the CIT (Appeals). Counsel highlighted the fact that the CIT (Appeals) was seized of the entire proceedings including the remand reports which were duly taken into consideration by him.

6. In the Appeals by the Revenue, the deletion of the addition to the income made on account of unexplained loans was raised as a ground. The appeal in respect of the order for the assessment year 2003-2004 urges this ground: -

3 (a) The learned CIT (A) erred in law and fact in deleting the addition made on account of unsecured loan of Rs. 2,70,350/- without explaining the history of the case or the legal position. Whereas creditors did not respond to the summons issued by the Assessing Officer during the course of the assessment proceedings.

(b) The CIT (A) has erred in law in accepting loans as genuine even though the credit worthiness of the creditors and the genuineness of the transactions was doubted by the Assessing Officer.

7. Now bare reading of the above grounds would undoubtedly leave the reader with the impression that they are generic and did not specify the precise error which the Tribunal fell into. More particularly, the Revenue undeniably did not mention the remand reports which the Revenue urges now before this Court. The question which arises, therefore, is whether the Tribunal's reasoning can be faulted as unreasonable and the inferences drawn by it - by confirming the order of the CIT (Appeals), justified in the circumstances of the case. Whilst the assessee may be right in contending that the Tribunal per se cannot be faulted in not delving into the matter and dealing with the remand reports, what nevertheless is a matter of record is that the CIT (Appeals) even after being aware of the entire circumstances merely proceeded to record the submissions of the Appellant without in any manner indicating the soundness or merit of those arguments. At this stage, this Court is not concerned with the soundness of the reasoning of the CIT (Appeals) or the fact that the CIT (Appeals) did or did not address itself to the remand reports. What strikes this Court is the fact that the Tribunal being the appellate authority vis-?-vis CIT (Appeals) was under the duty to satisfy itself that the reasoning adopted by the CIT (Appeals) - in a case where the appeal was allowed and the reasoning of the Assessing Officer displaced - was bound to ensure that there were adequate and sound reasons for

doing so. Unfortunately, the Tribunal did not display the diligence that was called for and record its satisfaction that the CIT (Appeals)" reasoning overturning the Assessing Officer"s findings were sound and justified. As is apparent from the extracts of the CIT (Appeals)" order, it merely recounted the arguments made on behalf of the assessee and in three lines the authority recorded its satisfaction that they are sufficient to set aside the Assessing Officer"s order. These can be hardly called the reasons, much less reasons that can be endorsed by the Tribunal (which is required to go into the records) while considering the appeals whether they are by Revenue or by the Assessee.

8. In view of the above discussion, we are of the opinion that the Appeals require to be allowed. We accordingly remit the matter for reconsideration on the question of adding back of the cash loans and interest thereon for the concerned assessment years to the Tribunal which shall independently consider the records and hear the submissions of the parties. All contentions of the parties are left open. Observations made in this order shall not be construed as a reflection on merits of the case. ITA Nos. 115, 116, 117, 118, 121, 123 & 124/2012 are allowed in the above terms.