(2010) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : IT Appeal No. 26 of 2010

CIT APPELLANT

Vs

Sunil Kumar Bhadoria RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:
Income Tax Act, 1961 — Section 132A, 260A, 69A

Citation : (2010) 08 RAJ CK 0019

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 IT Department u/s 260A of the Income Tax Act against an order dated 24-4-2009 passed by Income Tax Appellate Tribunal, Jaipur (for short called Tribunal) in ITA No. 126/Jp/2008 for the period assessment year 2003-04.

2. By the impugned order, the Tribunal allowed the Assessees appeal and reversed 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 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 said amount to be that of Assessee added

in his total income. The Commissioner (Appeals) upheld it but the Tribunal set aside the order of assessing officer and that of Commissioner (Appeals) insofar as it related to additions made by him (assessing officer). In other words, the Tribunal accepted the factual explanation coupled with the evidence tendered by Assessee in relation to the impugned additions made by assessing officer and held that since the same have been properly explained 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. 16 lacs in the hands of Assessee in the assessment year under consideration. 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 69A ibid. It was upheld by Commissioner (Appeals) but reversed by Tribunal in an appeal filed by the Assessee when his appeal was allowed. This is what Tribunal held by accepting the explanation of Assessee:

The explanation submitted hereinbefore appears to be satisfactory and both the authorities below have failed to appreciate the said explanation. As regards Rs. 4.50 lacs, the Assessee has submitted the copy of the cash book of M/s Siddh Baba Royalty Collection Co., Dholpur along with copy of the balance sheet and the assessment order. As regards Rs. 8 lacs, the same amount was withdrawn from current account of M/s Siddh Baba Royalty Collection Co. out of Punjab National Bank, Kroli on 20-4-2002 and a certificate of bank manager is on record. As regards Rs. 3.50 lacs, the same amount was withdrawn by Shri Satyendra Singh on 18-4-2002 from current account No. 104 out of State Bank of India, Tasimo Branch, District Dholpur. The relevant confirmation and copy of the bank account are placed on record. The cash was seized by the Police on 21-4-2002 and IT department was informed who has taken action u/s 132A of the Act. The explanation given by the Assessee appears to be satisfactory. Therefore, the assessing officer is not justified in treating the said amount of Rs. 16 lacs as unexplained and he is directed to accept the explanation of the Assessee and delete the addition made. Hence, the order of the learned Commissioner (Appeals) is reversed on this issue. As regards the explanation with regard to agricultural income, the disallowance made by the assessing officer is without any basis and the same is also directed to be deleted. The learned Commissioner (Appeals) is not justified in passing ex parte order without taking into account evidences placed on record before the assessing officer and therefore, the order so passed by the learned CIT(A) is directed to be quashed. Thus ground Nos. 1 to 4 of the Assessee are allowed.

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 an appellate court (Tribunal in this case), then in such event, a finding recorded on such explanation 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 Tribunal accepted the explanation of Assessee and accordingly, deleted certain additions made by assessing officer 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 by Assessee and which found acceptance to the 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. As a consequence thereof, the additions made by assessing officer came to be deleted.

12. 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.

13. 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.