(2015) 02 AHC CK 0078

In the Allahabad High Court

Case No : Income Tax Appeal No. 1 of 2015

Commissioner Income Tax APPELLANT

Vs

Krishna Capbox (P.) Ltd. RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Income Tax Act, 1961 — Section 133(6), 143(1), 143(2), 263

Citation : (2015) 372 ITR 310

Hon'ble Judges : Sudhir Agarwal, J;Shashi Kant, J

Bench : Division Bench

Advocate : Dhananjay Awasthi, Standing Counsel, for the Appellant; Shubham Agrawal, Advocates for the Respondent

Judgement

1. Heard Sri Dhananjay Awasthi, learned counsel for the appellant, Sri Shubham Agrawal, learned counsel for the respondent and perused the record. The following substantial question of law has arisen in this matter, which need adjudication :

"Whether it is necessary for the assessing authority to mention in the assessment order regarding inquiry made by him, reply received from the assessee thereon or material supplied by the Department and discussion thereon and demonstrate from the order that he has made inquiry in the matter and has been satisfied with the reply of the assessee or mere inquiry is sufficient to pass an order of assessment and to exclude application of section 263 of the Income-tax Act, 1961, in such a case."

2. Both the learned counsels have addressed this court on this question.

3. The admitted facts are that the assessee filed his return for the assessment year 2008-09 on September 28, 2008, declaring an income of Rs. 8,14,647, which was processed under section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case was selected for scrutiny and statutory notice under section 143(2) of the Act was issued on September 29,

2009. The assessing authority made certain queries, which were replied by the assessee and after inquiry, the Assessing Officer, being satisfied in respect to the queries replied by the assessee, accepted his declared income and passed the assessment order on December 14, 2010.

4. The Commissioner of Income-tax, Meerut, however, issued a notice under section 263 of the Act on the ground that Assessing Officer had not made inquiry on certain aspects. The said points, as detailed in paragraph 3 of the notice under section 263, read as under :

"(a) During the year, the assessee has made an addition in fixed assets of Rs. 9,67,963 but source of investment have not been verified by the Assessing Officer and not obtained the bills/vouchers of the same.

(b) Sundry creditors of Rs. 2,99,89,828 have not been confirmed by the assessee. The Assessing Officer has also not obtained the confirmed copies and proper confirmations from the assessee.

(c) Unsecured loan of Rs. 45,67,059 have not been properly enquired into by the Assessing Officer The Assessing Officer has simply accepted the confirmation filed by the assessee.

(d) The Assessing Officer has not obtained the copy of bank statements and not verified the genuineness of shareholders.

(e) As per the profit and loss account, the company has paid the freight of Rs. 11,44,387 but no TDS was deducted. Therefore, the same amount needed to be disallowed.

(f) The Assessing Officer has sent a notice under section 133(6) for confirmation of creditors in the case of Vidhu Sales Corporation. Looking to the confirmation, there is a difference of Rs. 10,28,256 but the Assessing Officer has not verified or reconciled the difference from the assessee nor did he make the addition of Rs. 10,28,256."

5. The assessee submitted a reply stating that on all these aspects, inquiry was made by the assessing authority but the Commissioner did not agree with the same and observed that the Assessing Officer has accepted the version of the assessee without making any inquiry or verification has passed the assessment order, which is substantially prejudicial to the Revenue. Accordingly, he passed order dated March 21, 2013, partly setting aside the assessment and directing the assessing authority to pass a fresh order of assessment after considering all evidences and affording opportunity to the assessee.

6. The order of the Commissioner was challenged by the assessee in Income Tax Appeal No. 3340/Del/2013. The Department took a defence before Tribunal that no inquiry was made by the Assessing Officer in respect to the queries set out in sub-paragraphs (a) to (f) of paragraph 3 of the notice issued under section 263, therefore, the order of the Commissioner passed under section 263 of the Act is

wholly justified.

7. The Tribunal, as a matter of fact, found that this defence on the part of the Commissioner factually incorrect and contrary to record. In this regard, it recorded findings as under :

"Inviting our attention to the order under section 263, the learned authorised representative submitted that as per paragraph 3 of the order the learned Commissioner of Income-tax from the assessment records had observed that the Assessing Officer had not carried out any investigation with regard to the queries as contained in sub-paragraphs (a) to (f) of paragraph 3 but in fact the Assessing Officer had investigated all these points and in this respect, our attention was invited to paper book pages 21-39 wherein the documents relating to the reply filed with the Assessing Officer, vide letter dated September 20, 2010, was placed. Similarly, our attention was invited to paper book pages 40-86 wherein reply relating to query at (b) in respect of sundry creditors was placed. Similarly, pages 109-124 were referred to highlight that the query regarding unsecured loan was also made by the Assessing Officer and in reply, necessary confirmations were filed. As regards the observation of the Commissioner of Income-tax as contained in paragraph (d), the learned authorised representative took us to pages 125-166 of the paper book to highlight that the same was also replied to the Assessing Officer. Similarly, he took us to copy of Form 2 filed with the Registrar of Companies for the allotment of shares was placed. It was submitted that no share application money was raised during the year and it was only the share applicants of earlier year who were allotted shares during the year. As regards point (e), the learned authorised representative took us to pages 175-211 wherein a copy of the letter dated October 5, 2010, submitting details of freight and cartage were placed. Regarding difference in creditors as observed by the learned Commissioner of Income-tax at point (f), the learned authorised representative submitted that the difference was already explained to the Assessing Officer, vide letter dated September 20, 2010, placed at paper book pages 40-41 and in this respect, we were taken to paper book page 41 where the necessary explanation was placed."

8. The Tribunal further considered the question whether discussion of queries and reply received from the assessee, in the assessment order, is necessary or not. Relying on the two judgments of the Delhi High Court in Commissioner of Income Tax Vs. Vikas Polymers, (2010) 236 CTR 476 : (2012) 341 ITR 537 : (2010) 194 TAXMAN 57 and CIT Vs. Vodafone Essar South Ltd., (2013) 212 TAXMAN 184 , it held that once inquiry was made, a mere non-discussion or non-mention thereof in the assessment order cannot lead to assumption that the Assessing Officer did not apply his mind or that he has not made inquiry on the subject and this would not justify interference by the Commissioner by issuing notice under section 263 of the Act.

9. In CIT v. Vikas Polymers (supra) relevant part of the observations in this regard read as under (page 548 of 341 ITR) :

"This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision."

10. Further, the relevant observation made in CIT v. Vodafone Essar South Ltd. (supra) in this regard reads as under (page 531 of 1 ITR-OL) :

"The lack of any discussion on this cannot lead to the assumption that the Assessing Officer did not apply his mind."

11. Learned counsel for the Department could not place any other authority before this court wherein any otherwise view has been taken. On the contrary, learned counsel for the assessee has placed before us a decision of the Bombay High Court in Income Tax Appeal No. 296 of 2013 (CIT v. Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom)) decided on February 3, 2015, wherein also the Bombay High Court, following its earlier decision in Idea Cellular Ltd. Vs. The Deputy Commissioner of Income Tax, Range 3(2), The Commissioner of Income Tax and The Union of India (UOI), (2008) 215 CTR 288 : (2008) 301 ITR 407 has taken a similar view and said as under (page 307 of 372 ITR) :

"... if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it."

12. We are not persuaded by placing any other authority or by any substantial argument so as to take a different view to what has been taken in the decisions, as noticed above. We also find that the learned counsel for the Department though sought to re-argue before this court that no inquiry has been made by the Assessing Officer with respect to the queries set up in paragraph 3(a) to (f) of the notice issued under section 263 of the Act but when his attention was drawn to the order passed by the Tribunal recording otherwise findings, he could not place anything to show that the aforesaid findings recorded by the Tribunal are perverse or contrary to record.

13. In view thereof the aforesaid question is answered against the Department-appellant and in favour of the assessee.

14. No other point has been argued.

15. We, therefore, do not find any invalidity in the order impugned in the appeal. The appeal lacks merit, and is, accordingly, dismissed.

