(2010) 12 KL CK 0181

In the High Court Of Kerala

Case No : IT Appeal No. 131 of 2007 (Assessment year 1998-99)

Commissioner of Income Tax APPELLANT

Vs

Ametak Auto Ltd. RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Companies Act, 1956 — Section 58A
Income Tax Act, 1961 — Section 260A, 68

Citation : (2011) 237 CTR 205 : (2011) 200 TAXMAN 184

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Urvashi Dhugga, for the Appellant; Lokesh Sinhal, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue u/s 260A of the IT Act, 1961 (for short, "the Act") against the order of the Tribunal, New Delhi dt. 16th June, 2006 in ITA No. 519/Del/2002 [reported as Asstt. CIT v. Amtek Auto Ltd. (2007) 112 TTJ (Del) 455--Ed.] for the asst. yr. 1998-99 proposing to raise following substantial question of law:

On the facts and circumstances of the case, whether the Hon''ble Tribunal was right in upholding the order of learned CIT(A) deleting the addition of Rs. 2,09,37,000 made by the AO u/s 68 of the IT Act, 1961, even though the Assessee had not discharged its burden of proving the identity, genuineness and crediworthiness of the creditors.

2. The Assessee is a private limited company. During assessment, the AO found that the Assessee had made cash credit entries of huge amount of unsecured loans, genuineness of which was doubtful. Accordingly, the Assessee was called upon to prove the identity, creditworthiness and genuineness of the transactions and after consideration of the explanation of the Assessee, addition was made, treating the deposits as income of the Assessee. It was held that the Assessee

failed to discharge the burden u/s 68 of the Act about the nature and sources of deposits. The relevant observations are:

... In spite of providing repeated opportunities as is clear from the order sheet, the Assessee has failed to file confirmation/explanation/ justification/produced anything well supported any corroborative evidence in respect of unsecured loans of Rs. 2,09,37,000 (Rs. 2,12,00,000 minus Rs. 2,63,000). The depositors as per list filed and placed on records are not assessed to income tax and the Assessee company also could not prove their identification, creditworthiness and genuineness of transaction. Under these circumstances, a sum of Rs. 2,09,37,000 is treated the Assessee''s income earned from undisclosed sources and is added in the income of the Assessee.

3. On appeal of the Assessee, the CIT(A) deleted the addition with the following observations:

13. Ground No. 4 is regarding aggregate addition of Rs. 2,09,37,000 being the amount of public deposit accepted u/s 58A of the Companies Act. I agree with the submissions of the learned Counsel quoted above that all the deposits have since been repaid by account payee cheques which are evidenced by the receipts issued by the bankers of the depositors, as such the identification, creditworthiness and genuineness of the depositors are automatically proved. Moreover, the requirements of the provisions of Section 58A of the Companies Act were complied with and accepted by them. Accordingly, in view of the explanation given by the learned Counsel in the rejoinder quoted above, the addition made by the AO is hereby deleted.

4. Appeal of the Revenue against the order of CIT(A) has been dismissed by the Tribunal. The relevant finding is as under:

8... The Assessee, as is evident from our discussion from the earlier para, could not submit confirmation from each of the creditors. Certainly in our view, seeking a confirmation from each and every individual creditor was not an easy task. Nevertheless, it also cannot be disregarded that the credits in question certainly fall within the scope of the provisions of Section 68 of the Act. Section 68 of the Act authorizes an AO to verify the nature and source of the credits appearing in the books of account of the Assessee and in case the Assessee does not furnish an explanation or furnishes an explanation which is not to the satisfaction of the AO, the credits in question can be assessed as income in the hands of the Assessee. The parameters to explain the nature and source of a credit are regarding the identity, creditworthiness of the creditor and the genuineness. However, the above said conventional parameters have to (?) forms whereby it had received deposits for Rs. 2,63,000 which have been accepted as explained. The fact that the AO was satisfied about the nature and source of the credit on the basis of the application forms in the case of three creditors itself shows an inconsistency in his approach. If according to him, the vetting of the application form was enough to discharge the onus cast on the Assessee u/s 68 of the Act, he ought not to have made any addition. It is starkly evident that if the AO was satisfied that the Assessee had discharged the onus cast u/s 68 on the basis of the application forms of three depositors, nothing prevented him from being satisfied with the rest of the deposits also. This is for the reason that there is no denying the fact that the entire deposits in question have been received by the Assessee on the basis of the application forms submitted by the depositors.

10. Further it is clear from the Assessee''s communication to the lower authorities that only three application forms were submitted merely to illustrate the manner in which the transaction has been carried out. Moreover, for none of the deposits had the AO taken any unexplained. Therefore, considering the overall gamut of facts and circumstances of the issue, we are inclined to affirm the conclusion of the CIT(A) in deleting the addition made by the AO.

12. The plea of the Revenue that the order of the CIT(A) is non-speaking, we do not find any justifiable reasons to interfere on this Count. We find that the CIT(A), after getting the submissions and the material from the Assessee, sent the same to the AO and called for a remand report. The AO duly submitted his report. Even at this stage, it was open for the AO to have conducted further inquiries. But no such opportunity has been utilized. Nevertheless, the CIT(A), after having considered the rival submissions has made the decision to delete the addition. While it may show an absence of a detailed discussion on the part of the CIT(A) in concluding the issue, nevertheless the CIT(A) has, in extenso referred to the submissions of the Assessee as also the remand report of the AO in this regard. Therefore, merely because the order of the CIT(A) is brief, cannot be a reason to interpret it as a non-speaking order...

5. We have heard learned Counsel for the parties.

6. Learned Counsel for the Revenue submitted that in absence of satisfactory explanation, the AO was justified in treating the amount of cash deposits as income of the Assessee and the CIT(A) as well as the Tribunal erred in holding that the Assessee had given sufficient explanation only on account of the fact that the deposits had been accepted in accordance with Section 58A of the Companies Act, 1956. Mere fact that procedure u/s 58A of the Companies Act was followed, was not conclusive of genuineness of the deposits made.

7. Section 68 of the Act is intended to check undisclosed income being shown as deposits, so that real income does not escape assessment. Whenever cash deposits are found in the account books, burden is placed on the Assessee to explain nature and source thereof and if no explanation is furnished or the explanation furnished is not satisfactory, the amount credited can be charged as income of the Assessee. Mere fact that procedure u/s 58A of the Companies Act was followed, cannot be conclusive of genuineness of the deposits. The statutory procedure under the Companies Act is merely intended to safeguard the interest of the depositor and the company is required to act in accordance with the guidelines issued by the Central Government in consultation with the RBI. In

spite of such guidelines having been followed, the assessing authority can go into the genuineness or otherwise of the deposit made. In the present case, the AO gave due opportunity to the Assessee to prove identity and creditworthiness of the depositors as well as the genuineness of the transaction. It was not difficult for the Assessee to prove identity and status of the depositors. No effort was made by the Assessee to discharge the burden statutorily placed on it in that regard. No doubt, the Assessee furnished the list of depositors with their addresses but mere furnishing of the said material was not enough to discharge the burden. The Assessee could have produced documents taken from the depositors at the time of deposit, which could establish their identity and status and also inspire confidence about the genuineness of the depositors. This having not been done, as held by the AO, the CIT(A) could either give further opportunity or draw adverse inference against the Assessee for withholding material available with it. While deleting the addition, only ground which the CIT(A) has mentioned is that the deposits were as per Section 58A of the Companies Act, which in our view could not be conclusive. The Tribunal also failed to appreciate the patent error in the view taken by the CIT(A). Question of law as to perversity of finding of the CIT(A) and the Tribunal does arise for consideration and has to be answered in favour of the Revenue.

8. Accordingly, the appeal is allowed to the extent of the issue raised and discussed hereinabove. The orders of the CIT(A) and the Tribunal are set aside and the matter is remanded to CIT(A) for fresh decision in accordance with law.

9. The Assessee may appear before the CIT(A) for further proceedings on 9th Feb., 2011.