(2016) 02 KAR CK 0343

In the Karnataka High Court

Case No : I.T.A Nos. 200001 and 200002 of 2014

Commissioner of Income-Tax — APPELLANT

Vs

Anil Kumar and Co. — RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:
Income Tax Act, 1961 — Section 145(3), 68

Citation : (2016) 386 ITR 702

Hon'ble Judges : Ram Mohan Reddy and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Ameeth Kumar Deshpande, Advocate, for the Appellant; A. Shankar, V. Chandrashekar and M. Lava, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Aravind Kumar J.—These two appeals have been preferred by the Revenue against the order passed by the Income-tax Appellate Tribunal, Bengaluru Bench in I.T.A. No. 986/Bang/2011 and I.T.A. No. 956/Bang/2011 dated January 30, 2014 where under the appeal filed by the Revenue is partly allowed and the appeal tiled by the assessee came to be allowed.

2. The assessee is a partnership firm carrying on the business as cotton merchants and commission agents. For the assessment year 2006-07 the assessee filed its return of income on October 24, 2007 declaring the total income as nil. On such return being selected for scrutiny assessment order came to be framed under section 143(3) on December 29, 2009 after issuing notice and hearing the assessee. The Assessing Officer found that the assessee had shown sundry creditors (trade creditors) totalling to Rs. 10,37,33,867 in the balance-sheet and as such called upon the assessee to file confirmation. On account of non filing of such confirmation and on the asses - See''s failure to furnish the postal address of such creditors for verification of the balances a sum of Rs. 3,60,00,000 was added to the total income of the assessee out of total sundry creditors. In the course of the assessment proceedings the Assessing

Officer noticed that the gross profit declared by the assessee for the earlier assessment years and the present assessment year were at variance and as such the gross profit was adopted at 4 percent, of the total turnover.

3. Being aggrieved by this order assessee preferred an appeal before Commissioner of income-tax (Appeals). The appellate authority during the course of proceedings called for remand report from the Assessing Officer and specifically directed the Assessing Officer to verify the ledger extract and confirmations which were produced before him and submit the report on the admissibility of the same. The Assessing Officer filed three remand reports and found that the assessee had proved the persons and also genuineness of the transactions by producing confirmations as well as ledger extracts in its books and held that the assessee had maintained regular books of account which are subjected to audit under section 44AB. It was also held that since the assessee had discharged his initial burden the Assessing Officer had not brought on record to show that these outstanding balances are not genuine. Hence, he disallowed the addition of Rs. 3,60,00,000 made by the Assessing Officer and deleted the said addition. On the issue of gross profit adopted by the Assessing Officer at 4 per cent, it came to be held that the assessee had maintained regular books of account and also stock register which are duly audited under section 44AB of the Income-tax Act and concluded that differential gross profit of Rs. 5,99,101 is to be sustained as against gross profit of Rs. 32,43,994 made by the Assessing Officer.

4. Being aggrieved by the order of the Commissioner of Income-tax (Appeals) on the issue of sundry creditors, the Revenue filed I.T.A. No. 986/Bang/2011 and also raised a ground in the said appeal with regard to gross profit issue contending that the gross profit adopted at 4 per cent, of the total turnover by the Assessing officer was correct and modification of the same by the Commissioner of Income-tax (Appeals) was erroneous. The assessee in I.T.A. No. 956/Bang/2011 contended that the Commissioner of Income-tax (Appeals) erred in sustaining the gross profit addition to an extent of Rs. 5,99,101. The Appellate Tribunal after considering the rival contentions by order dated January 30, 2014 allowed the appeal of the assessee and deleted the addition of Rs. 5,99,101 made by Commissioner of Income-tax (Appeals) on the issue of gross profit. On the issue of sundry creditors the Tribunal held that in the remand report submitted by the Assessing Officer the sundry'' creditors had been bifurcated into three categories A, B and C and in respect of sundry creditors listed under A category there was no dispute since the Assessing Officer himself had accepted the plea of the assessee of these creditors were genuine. In so far as the sundry creditors reflected under B and C categories the matter came to be remanded to the Assessing Officer for fresh consideration for the reasons indicated in paragraphs 11 and 12 of the order of the Tribunal. Hence, these two appeals have been preferred by the Revenue.

5. We have heard Sri Ameet Kumar Deshpande, learned standing counsel

appearing for the appellants and Sri V. Chandrashekar, learned counsel appearing for the respondent assessee.

6. It is the contention of Sri Ameet Kumar Deshpande that the Assessing Officer had issued notices to various creditors but no reply had been received and as such the burden was on the assessee to produce his creditors and discharge the onus. He would further contend despite opportunity extended by the Assessing Officer to the assessee to produce the creditors it was not done. He would also contend that the Tribunal has grossly erred in ignoring the comparable cases considered by the Assessing Officer while estimating the gross profit at 4 percent, and the Tribunal ought to have appreciated the details of cotton, kapas, etc., mentioned in the trading account furnished along with the return is devoid of quantity stock tally and are not comparable of verification which would in itself is a discrepancy justifying the addition. On these grounds he contends that the substantial questions of law is to be framed, adjudicated and answered.

7. Per contra, Sri V. Chandrashekar, learned counsel appearing for the respondent would support the order of the Tribunal and contend that the findings recorded by the Tribunal are all questions of fact and there is no substantial questions of law involved in these appeals and he prays for rejection of the appeals.

8. Having heard learned advocates appearing for the parties and on perusal of the orders of the Assessing Officer, the Commissioner of Income-tax (Appeals) and tire Income-tax Appellate Tribunal, we notice that on the issue of sundry creditors the Assessing Officer had added to the total income of the assessee-firm a sum of Rs. 3,60,00,000 out of the total sundry creditors of Rs. 10,37,33,867. The Commissioner of Income-tax (Appeals) held that the assessee had proved the identity of the persons and genuineness of the transactions by producing confirmation as well as ledger extracts in its books and evidence in the form of bank account extracts to demonstrate that payments were made through bank account only. It was also held that the assessee had maintained regular books of account and they were subjected to audit under section 44AB. However, the Tribunal while re-appreciating tire evidence tendered by the assessee had called for remand report from the Assessing Officer and on receipt of such remand report the sundry creditors were categorised under three categories namely :

1. Where no variation in the amount outstanding balances is found-annexure-A.

2. The letters issued to some of the creditors which were not served on them since not avail able/door locked and returned by the postal authority and in some cases where though duly served confirmation letters are not received-annexure-B.

3. Sundry creditors wherein excess amount of outstanding balances shown-annexure-C.

9. From out of the above, the Tribunal found that sundry creditors who were categorised under annexure A there was no dispute since the Assessing Officer himself had accepted that these creditors were genuine. In so far as annexure-B sundry creditors are concerned it came to be held that the Assessing Officer had not issued summons under section 131 of the Act to compel their attendance and there was no break up in the remand report as to which of the creditors were served but not replied or on whom it was not served. In the factual background discussed in detail by the Tribunal at paragraph 11 the said issue came to be remanded to the Assessing Officer for fresh consideration. Likewise this annexure C sundry creditors are concerned the Tribunal held that the assessee had filed reconciliation of some of the accounts before the Assessing Officer did not result in the Assessing Officer demanding any further evidence from the assessee to substantiate the reconciliation. As such the Tribunal held that the assessee should be afforded an opportunity to explain the discrepancy with regard to 26 creditors out of 36 creditors. by reserving liberty to file any other supporting evidence to substantiate its case the issue came to be remanded by the Tribunal to the Assessing Officer.

10. The facts as discussed herein above would clearly indicate that these are purely questions of fact and does not involve substantial question of law.

11. In so far as the estimation of gross profit made by the Assessing Officer modified by the Commissioner of Income-tax (Appeals), the Tribunal has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed under section 144 of the Income-tax Act the said authorities were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable. Section 145(3) of the Act lays down that the Assessing Officer can proceed to make assessment to the best of his judgment under section 144 of the Act only in the event of not being satisfied with the correctness of the accounts produced by the assessee. In the instant case the Assessing Officer has not rejected the books of account of the assessee. To put it differently Assessing Officer has not made out a case that conditions laid down in section 145(3) of the Act are satisfied for rejection of the books of account. Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, the same would form the basis for computation of income. In the instant case it is noticed that neither the Assessing Officer nor the Commissioner of Income tax (Appeals) have rejected the books of account maintained by the assessee in the course of the business. As such the Tribunal has rightly rejected or set aside the partial addition made by the Assessing Officer for arriving at gross profit and sustained by the Commissioner of Income tax (Appeals) and rightly held that the entire addition made by the Assessing officer was liable to be deleted. The said finding is based on sound appreciation of facts and it does not give rise for framing substantial question of law.

12. For reasons indicated herein above, we proceed to pass the following :

ORDER

1. I.T.A. Nos. 200001 and 200002 of 2014 are hereby dismissed.

2. Tire order passed by the Income-tax Appellate Tribunal, "A" Bench, Bengaluru, in I.T.A. No 986/Bang/2011 and I.T.A. No. 956/Bang/2011 for the assessment ear 2007-08 is hereby affirmed.

3. Parties are directed to bear the cost of these proceedings.