(2013) 09 AHC CK 0040

In the Allahabad High Court

Case No : IT Appeal No. 46 of 2010

Commissioner of Income Tax — APPELLANT

Vs

Jagdish Prasad Tewari — RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 220 TAXMAN 141

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : D.D. Chopra and Sidhath Dhaon, for the Appellant; Amit Shukla and Surendra K. Garg, for the Respondent

Judgement

1. Present Appeal u/s 260A of the income tax Act, 1961 has been preferred by the Department against the judgment and order dated 30.12.2009 passed by the Income Tax Appellate Tribunal, Lucknow in I.T.A. No. 876/Luc/2008 for the assessment year 2004-05. On 06.09.2009 a coordinate Bench of this Court has admitted the instant appeal on the following substantial question of law:

Whether deletion of the addition with regard to sundry credit is lawful without appreciating the burden to prove the identity of creditors, their creditworthiness and genuineness of transactions was on the assessee to prove the same before the Assessing Officer?

2. The brief facts of the case are that the assessee is engaged in the manufacturing of fabric and sale having its manufacturing unit at Bhiwandi, Mumbai in the name of M/s. J.P. Textiles. During the assessment year under consideration, the assessee has shown sundry creditors for Rs. 36,26,206/-. On the basis, that notices were sent by the A.O. to the creditors, which were received back. So, the A.O. made the an addition. However, in first appeal, the CIT(A) has deleted the said addition. The Tribunal confirmed the same. Still not being satisfied, the department has filed the present appeal.

3. With this backdrop, Sri Prashant Kumar learned counsel for the department

submits that no proper evidence was given by the assessee to establish the genuineness of the said creditors. The Tribunal has not appreciated its facts. Lastly, he made a request that the addition may kindly be sustained by setting the impugned order.

4. On the other hand, learned counsel for the assessee-respondent has justified the impugned order. He submits that this is the first year of the assessee''s business. The books of account u/s 145(3) of the Act were rejected by the A.O. When the books of account were rejected, no addition can be made u/s 68 of the Act as per the ratio laid down in the case of Commissioner of Income Tax Vs. Banwari Lal Banshidhar, , where it was observed that when the books of account are rejected or ex-party assessment is made, the AO cannot make addition u/s 68 of the Act, which has to be necessarily on the basis of the entries in the books, which were rejected.

5. Further, the learned counsel submits that the sundry creditors were in various categories who have supplied the Yarn to the assessee factory. All the purchase bills were reflected in the books of account. The payments were made by the cheque. In some categories, the payment of interest was made to the creditors and reflected in a separate interest account, which was verified by the A.O. Lastly, he made a request to dismiss the appeal.

6. After hearing both the parties and on perusal of record, it appears that the sundry creditors were put in various categories. In first category, the name of M/s. Balaji Filament Limited was mentioned through its sale agent M/s. Mahabir Textiles. The assessee has made the payment through cheque and the same was duly debited in the account of the assessee for the purchase of the raw-materials.

7. In another category, the assessee made the payments pertaining to the interest to the creditors and the same was reflected in the separate interest account, which was verified by the A.O.

8. Another category was pertaining to the job work done from M/s. Rajesh Textiles. All the bills were verified by the CIT(A) and it was observed that the payment was duly made by cheque against three bills sent by the weaver M/s. Rajesh Textiles. All the entries are reflecting in the books of account.

9. The last category was pertaining to the purchase of yarn and job work. The confirmations were received from the creditors in respect of the purchase of yarn. All the purchase vouchers were verified and the payments were made to sales agent by cheque, which is fully supported by documentary evidence.

10. In the instant case, only a few creditors have not sent confirmation but fact remains that they have received the payment through cheque, which were duly reflected in the books of account of the assessee. The A.O. has not verified the same in the books of the recipients and made the addition by adopting short cut method.

11. The identity creditworthiness and genuineness have been proved beyond

doubt as observed by the First Appellate Authority and confirmed by the Tribunal.

12. Needless to mention that the First Appellate Authority has co-terminus power with the power of the A.O. The appellate authority has all the powers which the original authority has, subject to condition/restriction, if any, prescribed by law as per the ratio laid down in the case of Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another, , and Commissioner of Income Tax, M.P., Bhopal Vs. M/s. Nirbheram Deluram, .

13. In the instant case, concurrent findings have been given by both the appellate authorities and in the absence of any adverse material, we confirm the same.

14. Hence, we decline to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with the reasons mentioned therein.

15. The answer to the substantial question of law is in favour of the assessee and against the revenue. In the result, the appeal filed by the department is dismissed.