(2009) 03 DEL CK 0300

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Jitin Gupta RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Income Tax Act, 1961 — Section 132, 132A, 139, 158BC, 260A

Citation : (2009) 03 DEL CK 0300

Hon'ble Judges : Vikramajit Sen, J;Rajiv Shakdher, J

Bench : Division Bench

Judgement

Rajiv Shakdher, J.—This is an appeal filed by the revenue u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against the judgment dated 11-1-2008 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) in ITA No. 68/Del/2006 for the block period 1-4-1996 to 4-4-2002.

2. Before us the revenue has made a grievance with respect to the following two issues:

2.1 First, the sustenance by the Tribunal of the orders of the Commissioner (Appeals) (hereinafter referred to as the Commissioner (Appeals)) with respect to deletion of the addition of a sum of Rs. 27,75,000 made by the assessing officer on account of unexplained cash credits u/s 68 of the Act.

2.2 Second, the deletion of the addition of Rs. 34,89,970 made by the assessing officer by disallowing the claim on account of commission paid by the assessee.

3. In order to dispose of the present appeal the following brief facts require to be noted:

3.1 The assessee who is an individual is engaged in the business of sale of Duty Entitlement Pass Book (in short DEPB). On 4-4-2002 a search and seizure operation was carried out at the business premises of the assessee. Consequent thereto, on 6-2-2004 a notice u/s 158BC was issued to the assessee calling upon him to file a return. Resultantly, on 23rd Feb., 2004 the assessee filed his return for the block period, that is, 1-4-1996 to 4-4-2002, wherein he declared his undisclosed income as nil. It transpires that the assessing officer issued two questionnaires to the assessee. The first one was issued on 24-2-2004 and the second on 9-4-2004, which was received by the assessee evidently on 13-4-2004. A hearing was fixed on 15-4-2004, whereupon the assessing officer proceeded to pass an assessment order on the very next day, that is, 16-4-2004. The assessing officer by virtue of the assessment order made various additions amounting to Rs. 72,65,339. However, in the present appeal we are concerned with only two additions. The first one being, as indicated hereinabove, with respect to unexplained cash credits in the sum of Rs. 27,75,000 and the second, the disallowance of commission amounting to Rs. 34,89,970.

3.2 The reasons recorded by the assessing officer with respect to the aforementioned additions were broadly as follows:

3.2.1 As regards the addition of Rs. 27,75,000 she was of the view that even though the credits were shown in the books of accounts and reflected in the balance sheet of the assessee for assessment year 2002-03 the same were reflected in the return for the said assessment year after the date of search. Furthermore, the assessing officer also observed that the assessee had failed to file confirmations from parties who had advanced the loan, as also copies of the bank accounts of such parties from whom the assessee had received money through cheques.

3.2.2 Similarly, with respect to disallowance of deduction claimed on account of commission amounting to Rs. 34,89,970 the assessing officer felt impelled to make the addition on account of the fact that the assessee had failed to file confirmations and copies of bank accounts of the recipients of the commission as required by her vide questionnaire dated 24-2-2004.

4. Being aggrieved the assessee preferred an appeal to the Commissioner (Appeals). The Commissioner (Appeals) reversed the order of the assessing officer with respect to both the aforementioned issues. The Commissioner (Appeals) noted the fact that the assessing officer herself had recorded in the assessment order that the credits/loan transactions stood disclosed in the regular books of accounts and were reflected in the audited balance sheet for the assessment year 2002-03. The Commissioner (Appeals) also noted that on the date of search, that is, 4-4-2002 the prescribed period for filing the return had not been reached, which was, 31-10-2002. It was also observed that the Commissioner (Appeals) had sought a remand report on the various issues raised by the assessee vide his letter dated 29-8-2005. The assessing officer was also given an opportunity of personal hearing. However, the assessing officer only submitted a remand report, copy of which was made available to the assessee, who filed a rejoinder to the same. At this stage it is pertinent to note that Commissioner (Appeals) in his order categorically records that the confirmation letters of the creditors giving complete details of the creditors bank accounts,

PANs which were placed before him, were also sent to the assessing officer for her to show cause as to why the same could not be received in evidence Under Rule 46A of the Income Tax Rules, 1962. With regard to the plea of the assessee that no adequate opportunity was given to the assessee by the assessing officer to place the material on record, it seems that the assessing officer took the stand that the assessee was asked to submit evidence which the assessee chose not to file and hence adverse inference had to be drawn against the assessee. In this regard the assessing officer referred to the questionnaire issued by her to the assessee.

5. In these circumstances, the Commissioner (Appeals) after examining the findings returned by the assessing officer came to the conclusion that the genuineness of the credits/loans amounting to Rs. 27,75,000 which were disclosed in the regular books of accounts could not have been examined by taking resort to the block assessment provisions by taking recourse to the provisions of Section 68 of the Act in the block assessment proceedings. The Commissioner (Appeals) thus concluded that the addition of Rs. 27,75,000 made u/s 158BC of the Act was not justified as the same could have been examined in the assessees regular assessment proceedings.

5.1 As regards the addition on account of the commission, the Commissioner (Appeals) similarly held that the assessing officer having recorded that the sum of Rs. 34,89,970 was disclosed in the regular books of account as part of the total commission amounting to Rs. 91,65,115, the assessing officer could not have resorted to the block assessment provisions for purpose of examining the genuineness of the claim and thereby subject it to a higher rate of tax. The Commissioner (Appeals) concluded by holding that the addition of Rs. 34,89,970 was not justified under the provisions of Section 158BC of the Act.

6. The revenue being aggrieved, carried the matter in appeal to the Tribunal. The Tribunal by the impugned judgment has sustained the order of the Commissioner (Appeals) on both counts. With regard to addition on account of unexplained credits made by the assessing officer u/s 68 of the Act, the Tribunal noted that the Commissioner (Appeals) had returned a finding of fact that the credits we rerecorded in the books of accounts and held that the creditors had confirmed the transactions. Given the fact that the Commissioner (Appeals) had put the confirmation letters, received from the creditors, to the assessing officer, who apart from stating that the assessee had not done the needful at the stage of assessment, offered no response with respect to the genuineness or the evidence produced before her, felt that the findings of the Commissioner (Appeals) were neither erroneous nor perverse and thus had to be sustained.

6.1 Similarly, as regards the disallowance of commission the Tribunal noted that the addition on account of commission had been deleted on the ground that the seized document, which formed the basis of the addition was a printout of the regular books of accounts and the entry pertaining to the same had been recorded in the regular books of accounts. In view of this finding as also the fact that the revenue had not been able to produce any evidence to demonstrate that the findings of the Commissioner (Appeals) were erroneous, it sustained the deletion of addition of Rs. 34,89,970 made by the Commissioner (Appeals).

7. Having heard the learned Counsel for the revenue, Ms. Prem Lata Bansal, we are of the view that the order of the Tribunal as well as that of the Commissioner (Appeals) deserve to be sustained for the following reasons.

7.1 Insofar as the deletion of addition of Rs. 27,75,000, the finding of the Tribunal is that the said sum is disclosed in the regular books of accounts of the assessee for the assessment year 2002-03. As correctly observed by the Commissioner (Appeals) the search took place on 4-4-2002, whereas the due date for filing the return u/s 139(1) of the Act was 31-10-2002, therefore, no fault could have been found with the assessee having reflected the said credits in the return filed after the date of the search as long as they found mention in the books of account for assessment year 2002-03. We agree with the view of the Tribunal that there was nothing on record which would have them doubt the genuineness of the transaction, in issue. On this aspect no fault could be found with the impugned judgment.

7.2 As regards the deletion of the addition of commission amounting to Rs. 34,89,970 we note that it is not disputed that the same formed part of the total commission amounting to Rs. 91,65,155 which was allowed by the assessing officer as a deduction for the relevant assessment year. In view of this finding of fact the assessing officer could not have made an addition by disallowing the claim on account of commission made by assessee. It is important to note that the so-called seized document was actually a printout of regular books of accounts.

7.3 At this stage, it would be important to note the observations of a Division Bench of this Court in the case of Commissioner of Income Tax, Delhi-II Vs. Ravi Kant Jain, to the effect that the special procedure prescribed in Chapter XIV-B of Act is applicable to undisclosed income which is detected as a result of search. The provisions of Chapter XIV-B of the Act are not designed to substitute a regular assessment. The observations of the Division Bench being apposite are extracted hereinbelow:

...The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the assessing officer. Evidence found as a result of search is clearly relatable to Sections 132 and 132A

8. In view of our discussion above we find there is no room for interference in the impugned judgment. The findings returned by the Tribunal and the Commissioner (Appeals) are pure findings of fact. No substantial question of law arises for our consideration. Resultantly, the appeal is dismissed.

