(1993) 12 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 88 of 1992

Commissioner of Income Tax APPELLANT

Vs

Kakkar Complex Steels (P.) Ltd. RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1994) 75 TAXMAN 174

Hon'ble Judges : N.K. Kapoor, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—The petitioner has filed this petition u/s 256(2) of the income tax Act, 1961 (''the Act'') seeking a direction to the Tribunal to refer the following question of law along with statement of the case for adjudication to this Court:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition of Rs. 1,32,168 being the income shown in the name of Dipan Kumar & Co. but assessed in assessee''s hands as benami of the assessee-company that Dipan Kumar & Co. was a separate entity ignoring the fact that though it had a Sales-Tax number but it had no bank account of its own. Rather it used assessee''s bank account and also no expenditure whatsoever was incurred towards rent, salary, etc., in the running of day-to-day business activities?

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Facts as noticed by the Tribunal are as under:

The assessee-company, the respondent, was carrying on business of manufacture of steel ingots and alloy steels. The firm submitted a return, offering a taxable income of Rs. 35,43,180. The IAC (Asst.) during the course of examination of books of account noticed that the assessee had received 39.18 tons of scrap from V Traders, Delhi, for the purpose of converting into steel and the conversion charges totalling Rs. 2,12,813 had been charged to the account of Dipan Kumar & Co. Damtal, which was stated to be an HUF concern of the Managing Director, Shri Dipan Kumar. It was also noticed, according to IAC (Asst.) , that the raw material had been directly received in the factory premises of the company and after its conversion was despatched to Pathankot Steels Alloys (P.) Ltd., Damtal. It was also mentioned that the assessee-company had independent business of dealing with Pathankot Steels Alloys (P.) Ltd., Damtal. It is during the scrutiny of profit and loss account of Dipan Kumar & Co., Damtal, that it was known that his company incurred no expenditure on rent, salary, etc., and this firm too had its office located in the premises of Pathankot Steels Alloys (P.) Ltd., Damtal. Thus, on the basis of examination of the books of account it formed an opinion that Dipan Kumar & Co. had no independent existence and was, in fact carrying on the business for the assessee-company. While giving the above finding against the assessee, the IAC (Asst.) rejected the contention that Dipan Kumar & Co. had an independent identity.

It is this finding which was assailed by the assessee before the Tribunal. The Tribunal after going through the material placed on record as well as a perusal of the impugned orders of the authorities below, came to the conclusion that conclusion arrived at by the authorities was contrary to facts on record. Examining the contentions raised by the parties in the light of material on record, Tribunal came to the conclusion that the assessee was not to gain anything by claiming that Dipan Kumar & Co., in HUF concern, had earned profit of Rs. 1,32,165 and also had a credit balance of Rs. 9,77,363 and had this been a case of benami transaction, then the easy course would have been to pay interest on the credit balance and which figure would have been in the vicinity of profit of Rs. 1,32,165. Tribunal also examined the accounts of Dipan Kumar & Co. in this regard. Accordingly, Tribunal came to the conclusion that neither the assessee gained anything by way of reducing tax liability nor Dipan Kumar & Co., an HUF concern, benefited anything in any manner. This being the position, no legal controversy remained to be resolved. It was, thus, held that Dipan Kumar & Co. was a separate entity and the profit earned by it could not be taxed in the hands of the appellant.

2. The learned counsel for the petitioners assailed the conclusion arrived at by the Appellate Tribunal and in support of his arguments, has made reference to the order passed by the IAC (Asst.) and Commissioner (Appeals). Almost identical points have been pressed which somehow did not find favour with the Tribunal, that is to say, that Dipan Kumar & Co. was, in fact, a benami concern for the reason that it had no independent office. It was not paying any rent for any premises under its occupation nor there was proof that any salary was being paid to its employees. Since the Appellate Tribunal had not examined the matter in its right perspective and contrary to the statutory provisions, a question of law

arises on the facts as noticed by the Authorities and this way the direction is called for by the court to the Tribunal to frame question of law as proposed or in a modified form for reference. The learned counsel for the respondent contested the assertions of the petitioner on facts as well as law. According to the respondent''s counsel, the basis of reference u/s 256(2) is the decision of the Tribunal. In the instant case, the Tribunal has minutely examined the contentions raised by the assessee as well as the department in detail and on a perusal of the accounts of the assessee-firm as well as of Dipan Kumar & Co., it came to the conclusion that conclusion arrived at by the authorities below was unsustainable in law. On facts it was found that neither the assessee nor Dipan Kumar & Co. was to gain by such an arrangement. Not only this, the counsel high lighted that parties before the Tribunal, if fact, accepted that no legal controversy was involved in the present case which entirely depends on appreciation of facts alone. Accordingly, it was urged that since no question of law arises, the present petition is liable to be dismissed.

3. We have heard the learned counsels for the parties and perused a relevant material referred to during the course of arguments. By now it is well settled that Tribunal is a fact-finding Tribunal and in case it comes to the conclusion of facts after necessary consideration of evidence before it, this Court will not interfere. All that is envisaged, is that facts for and against the assessee have been taken into consideration. Once it is found that the Tribunal has examined the material on record for and against the party and thereafter reached a conclusion, any such finding cannot be interfered with. Thus, when examined in the light of material on record as noticed by the Tribunal, there is no manner of doubt that the Tribunal had examined the matter from all possible angles. Reasoning given in support of its conclusion that none of the parties, namely, Dipan Kumar & Co. nor the assessee-firm was to gain by the arrangement, as sought to be projected by the revenue department, appears to be correct. Thus, no question of law arises on the given facts. Finding no merit in this petition, the same is hereby dismissed. No order as to costs.

