(2015) 10 DEL CK 0090

In the Delhi High Court

Case No : ITA 1869/2010

Commissioner of Income Tax — APPELLANT

Vs

Kuber Securities Ltd. — RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(1)(a), 260A, 68

Citation : (2015) 10 DEL CK 0090

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Kamal Sawhney, Senior Standing Counsel, Ragvendra Singh, Junior Standing Counsel and Shikhar Garg, Advocate, for the Appellant

Judgement

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (''Act'') is directed against the impugned order dated 31st July 2009 passed by the Income Tax Appellate Tribunal (''ITAT'') in ITA No. 2352/Del/2005 for the Assessment Year (''AY'') 1997-98.

2. By an order dated 7th December 2011 the Court framed the following questions of law for determination:

(1) Whether learned Income Tax Appellate Tribunal/Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 13,57,50,000 made by the Assessing Officer on account of unexplained increase in shares capital?

(2) Whether learned Income Tax Appellate Tribunal/Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 19,98,774 made by the Assessing Officer on account of unexplained increase in sundry creditors?

(3) Whether learned Income Tax Appellate Tribunal/Commissioner of Income Tax (Appeals) erred in deleting the disallowance of 50% expenditure amounting to Rs. 1,97,34,214 made by the Assessing Officer under different head of profit and loss account?

(4) Whether learned Income Tax Appellate Tribunal/Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 6,66,59,956 made by Assessing Officer on account of stock in trading particularly when the same was shown in the balance sheet and not in trading account?

Question No. 1: Concerning the alleged unexplained increase in shares capital

3. The Assessee, Kuber Securities Limited, filed its return of income on 30th November 1997 disclosing a net loss of Rs. 3,93,28,695. The Assessing Officer (''AO'') processed the return under Section 143 (1) (a) of the Act. The AO noted that there has been an increase in the share capital during the year under the head ''Share Application Money'' from Rs. Nil as on 31st March 1996 to Rs. 13,27,50,000 as on 31st March 1997. Since no details or confirmation from the share Applicants or proofs of identity or creditworthiness was furnished, the entire amount was added under Section 68 of the Act to the income of the Assessee.

4. The Commissioner of Income Tax (Appeals) [''CIT (A) ''], in an order dated 28th February 2005, noted that the learned counsel for the Assessee has furnished details of all the 14 subscribers from whom funds had been received by way of share application money. The money was also shown to have been received through banking channels. After obtaining a remand report from the AO, the CIT (A) concluded that "the AO has not commented anything adverse" on the additional evidences, copies of accounts and bank statements furnished by the Assessee to the AO. The AO has not disapproved/doubted "the identity and the genuinely of the subscribers." The CIT (A) accordingly concluded that "all ingredients of Section 68 stands satisfied as far as the receipt of share application money by the Assessee company is concerned." Accordingly, the CIT (A) deleted the additions on this account.

5. The ITAT has, in the impugned order dated 31st July 2009, upheld the order of the CIT (A) while relying on the decision of the judgment of the Supreme Court in Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., . The above finding is purely factual and no materials have been placed on record by the Revenue to counter this factual finding or to show it to be perverse. The Court finds no reason to interfere with the impugned order of the ITAT.

Question No. 2: Concerning the alleged unexplained increase in sundry creditors to the extent of Rs. 19,98,714.

6. The AO made an addition on the basis of the increase in the total balance of sundry creditors as no details of the confirmation from the sundry creditors or proof of their identity or creditworthiness were furnished. The CIT (A) noted the submission of the Assessee that the increase in sundry creditors and sundry debtors are on account of the business transactions in the course of Assessee''s stock broking business. Here again it was noted by the CIT (A) that the AO, in his remand report, did not doubt the increase in the sundry debtors while making an addition for the sundry creditors. He observed that the increase in sundry

debtors was interlinked with the increase in the sundry creditors and both were on account of the "pure business transaction of purchases and sale of share." The CIT (A) was satisfied that the increase in sundry creditors stands fully explained and established by the Assessee. The ITAT, while observing that "there is no presumption that if increase in sundry creditors is proved, the increase in sundry debtors should also be taken as proved", found that the AO did not examine the details of each credit entry as was required by Section 68 and affirmed the decision of the CIT (A). On this issue this Court finds that the Revenue is not able to controvert the factual finding. The Court finds no ground to interfere with the impugned order of the ITAT.

Question No. 3: Concerning the 50% disallowance of total expenses claimed under the head of the profit and loss account amounting to Rs. 1,97,35,214

7. The CIT (A) deleted the disallowance on the ground that the AO had not spelt out any basis for making the 50% disallowance and that there was no justification for such a huge addition. The ITAT agreed with the CIT (A) that no case for making ad hoc disallowance was made by the AO. The Revenue is not able to persuade this Court to interfere with the impugned order of the ITAT which appears to be on a sound legal basis.

Question No. 4: Concerning stock in trade being shown in the balance sheet and not in the trading account

8. In the absence of complete information, the AO treated the entire closing stock of shares appearing in the profit and loss account as stock in trade and made an addition of Rs. 6,66,59,956.75. The CIT (A) noted that the Assessee had chosen to show the net effect of the entire transactions taking into account the opening stock, purchases, sales and the closing stock. Therefore, the effect of the closing stock stands automatically considered and reflected in the accounts. The Assessee had declared a loss on trading in shares. With the Assessee having followed the mercantile system of accounting, it is not possible for it to show the closing stock in trade in the balance sheet without taking into account the effect of the credit entry passed for the closing stock which necessarily had to be routed through the profit and loss account. Since no adverse comment has been made by the auditor and since the same method of accounting had been followed by the Assessee in the earlier as well as the subsequent year, the CIT (A) concluded that there was no justification for the addition.

9. The ITAT affirmed the above order. The Court is unable to be persuaded to hold that any legal error has been committed by the ITAT or the CIT (A) in returning the above finding. Consequently, no grounds have been made for interference with the impugned order of the ITAT.

10. The appeal is accordingly dismissed.