(2007) 07 AHC CK 0031

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Lalit Kumar Goel RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 68

Citation : (2008) 303 ITR 466 : (2008) 169 TAXMAN 121

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for opinion to this Court:

1. Whether, on facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in deleting the addition of Rs. 4,58,000 for the assessment year 1987-88 in respect of the credits shown from various parties despite the non-satisfaction of the conditions laid down u/s 68 of the Income Tax Act by the assessee in respect of the credits?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in deleting the addition of Rs. 3,83,000 for the assessment year 1986-87 in respect of the credits shown from various parties despite the non-satisfaction of the conditions laid down u/s 68 of the Income Tax Act by the assessee in respect of the credits?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in deleting the addition of Rs. 43,543 for the assessment year 1988-89 in respect of credits shown from various parties despite the non-satisfaction of the conditions laid down u/s 68 of the Income Tax Act by the assessee in respect of the credits?

2. The present reference relates to the assessment years 1986-87, 1987-88 and 1988-89.

3. The brief facts giving rise to the present reference are as follows:

A search and seizure operation took place at the residential premises of the assessee on October 14, 1987, during which it transpired that the assessee had constructed a residential house property at No. 128, Kamla Nagar, Meerut. A reference was also made to the queries raised at the time of the earlier search and seizure operations conducted on September 18, 1987, at the business premises of the firm M/s. Lal Chand Ganga Sahai as also at the residential premises of one of the partners, namely, Shri Anant Ram. In the course of the search and seizure operations as also in the course of the subsequent assessment proceedings, the assessee stated that the land for the house property was purchased in 1969 for a sum of Rs. 15,000 and that the investment in the property had been disclosed in the name of Lalit Kumar Goel, HUF, viz., the present assessee. It was also stated that the investment had been made over a period of three financial years relevant to the assessment years 1986-87, 1987-88 and 1988-89 to the tune of Rs. 8,84,543. As regards the source, the assessee stated that the amounts had been taken from various individuals and entities including the funds of the HUF and also Shri Lalit Kumar Goel, individual. It is a matter of record that the Income Tax Officer referred the matter to the Valuation Officer for purposes of determining the investment in the house property and the said Valuation Officer vide his report dated March 16, 1991, estimated the same at Rs. 81,64,000. The Income Tax Officer further expressed dissatisfaction with the replies and explanations given about the sources of the funds from which the property had been constructed. He also highlighted another aspect of the matter and that being the claim made by the different individuals from whom the assessee purported to have received the funds ; that the amounts withdrawn by them had been utilised for household purposes. It was also observed in the assessment order that there was no reference whatsoever, in any document to the effect that the withdrawals had been made for the purpose stated, viz., house construction. The Income Tax Officer also referred to the explanation given by the assessee to the effect that a major chunk of the investment in the construction of the house property had been financed by M/s. Anant Ram Prem Prakash, viz., Rs. 6,11,000. According to the Income Tax Officer, the Department had not accepted the existence of the aforesaid entity. In the final analysis, he treated the entire investment in the house property, viz., Rs. 8,84,543 as warranting an addition u/s 69 of the Act. For the assessment year 1986-87, an addition of Rs. 3,83,000 was made and the corresponding figures for the assessment years 1987-88 and 1988-89 were Rs. 4,58,000 and Rs. 43,543.

4. In appeal the Commissioner of Income Tax (Appeals) deleted the addition made u/s 69 of the Act on the ground that the investment in construction of the house has been properly explained by the withdrawals shown by the respondent-assessee which were also found at the time of search on October 14, 1987. The Tribunal has upheld the finding given by the Commissioner of Income Tax (Appeals).

5. We have heard Sri R.K. Upadhyaya, learned standing counsel for the Revenue and Sri Amitabh Agrawal, learned Counsel appearing for the respondent-assessee.

We are of the considered opinion that the finding recorded by the Tribunal, which is to the following effect, is based on evidence and material available on record:

We are wholly in agreement with the views expressed by the Commissioner of Income Tax (Appeals) and these having been arrived at after considering the submissions of the assessee''s counsel with reference to the evidence and material available on record and also considering the submissions of the Income Tax Officer who was present during the appeal proceedings. We need only refer to one particular aspect and that being the finding of the Income Tax Officer in the assessment order to the effect that the withdrawals made from different sources ''might have been utilised for purposes of meeting household expenses''. The Commissioner of Income Tax (Appeals) found the aforesaid inference drawn by the Income Tax Officer to be ''preposterous'' and observed that the entries recorded in the seized material clearly suggested that ''the money for construction of house property flowed from various sources..., mentioned above and undisclosed books of the entities M/s. Anant Ram Prem Prakash which have also been put to tax after seizure of the books of account separately either in the hands of Anant Ram Prem Prakash or in the hands of M/s. Lal Chand Ganga Sahai''. The aforesaid evidence recorded by the Commissioner of Income Tax (Appeals) has not been rebutted by the learned Departmental representative in the course of the arguments advanced before us. In the final analysis, we confirm the order passed by the Commissioner of Income Tax (Appeals) vis-a-vis the addition on account of investment in the house property in the three assessment years under consideration.

The findings of fact recorded by the Tribunal cannot be interfered in the reference filed before this Court u/s 256 of the Act. We, accordingly, answer all the questions referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There will be no order as to costs.

