(2009) 01 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

N.P. Garodia — RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 131, 143, 68

Citation : (2009) 310 ITR 62

Hon'ble Judges : Nawab Singh, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—The respondent-assessee was assessed to tax while taking into consideration the unexplained credits amounting to Rs. 29 lakhs as income u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The Assessing Officer had also declined the claim of the assessee in deduction of a sum of Rs. 3,25,735, claimed as interest, which had allegedly been paid by the assessee on the aforestated loans. In furtherance of a notice issued to the assessee u/s 143(2) of the Act, the assessee made available to the Assessing Officer confirmation letters and particulars depicting that he had taken the aforesaid amount of Rs. 29 lakhs as loans. He also revealed the source(s) from which the said loan(s) had been taken.

2.It is not a matter of dispute before us, that the loans under consideration were extended to the assessee by way of transactions through normal banking channels. It is also not a matter of dispute, that the loanees who had extended the loans to the respondent-assessee had extended similar loans for earlier years as well. In the aforesaid view of the matter, there cannot be any dispute about the fact that the nature and the source of the loans came to be appropriately disclosed by the respondent assessee to the Assessing Officer.

3. The case of the Revenue at the present juncture is that the assessee had not placed any material before the Assessing Officer depicting the creditworthiness of

the loanees. It is also the case of the Revenue in the instant appeal, that the veracity of the information furnished to the Assessing Officer by the respondent-assessee had not been verified on account of the fact that materials and particulars about the creditworthiness had not been furnished to the Assessing Officer, and as such, it was imperative for the Assessing Officer to take into consideration the amounts referred to hereinabove, as the income of the assessee, and to make him liable to pay tax thereon.

4. The final order passed by the Income Tax Appellate Tribunal dated February 22, 2008, which is the subject-matter of challenge at the hands of the Revenue through the present appeal, has taken into consideration the fact that the respondent-assessee had moved an application u/s 131 of the Act, requiring the Assessing Officer to summon the loanees, and since the Assessing Officer had taken no action whatsoever to do so, the respondent-assessee had not been afforded an adequate opportunity of discharging the onus placed on his shoulder u/s 68 of the Act.

5. Having given our thoughtful consideration to the determination rendered by the Income Tax Appellate Tribunal''s order dated February 22, 2008, we are satisfied, that it was imperative for the Assessing Officer to summon the loanees, and to record their statements under Sections 131 of the Act. It is only thereafter, that the totality of the material placed by the assessee before the Assessing Officer could be taken into consideration to determine the veracity thereof, u/s 68 of the Act. In these circumstances, we are of the view, that the Income Tax Appellate Tribunal, in its order dated February 22, 2008, having remanded the matter to the Assessing Officer, and having required the Assessing Officer to issue notices to the loanees u/s 131 of the Act, made way for the assessee to discharge the onus placed on his shoulder u/s 68 of the Act. It is only when the aforesaid statements are recorded that the Assessing Officer will be in an effective position to determine the veracity of the submission of the assessee. In the facts and circumstances of the present case, no detrimental action can be said to have been taken by the Income Tax Appellate Tribunal against the Revenue.

6. For the reasons recorded by us hereinabove, the assertion in respect of the cash credits and the veracity thereof, deduction of a sum of Rs. 3,25,735 claimed as interest paid on loans would depend on the outcome of the issue determined hereinabove.

7. For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is dismissed.