

(2014) 01 GUJ CK 0137
In the Gujarat High Court
Case No : Tax Appeal No. 52 of 2013

Commissioner of Income Tax

APPELLANT

Vs

Odedara Construction

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 68, 69, 69B

Citation : (2014) 362 ITR 338

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Pranav G. Desai, Advocate for the Appellant

Judgement

Akil Kureshi, J.—The Revenue is in appeal against the judgment of the income tax Appellate Tribunal (hereinafter referred to as "the Tribunal") dated August 31, 2012, raising the following substantial questions of law:

(i) Whether, in the facts and in the circumstances of the case and in law, the Appellate Tribunal is justified in coming to the conclusion that the cash credit appearing in the books of the assessee-firm in the name of its partner u/s 68 of the Act cannot be made application in the case of the assessee-firm?

(ii) Whether, in the facts and in the circumstances of the case and in law, the Appellate Tribunal is justified in coming to the conclusion that there is no law that any unexplained cash credit appearing in the books of the firm in the name of its partners must necessarily be assessed in the hands of the firm itself or in the hands of the partners alone?

(iii) Whether, in the facts and in the circumstances of the case and in law, in holding that the assessee-firm has discharged its onus u/s 68 of the Act?

Though three questions are framed, in essence the issue is common, namely, the additions made by the Assessing Officer u/s 68 of the income tax Act, 1961 (hereinafter referred to as "the Act") in the hands of the respondent-assessee-

firm. During the course of the assessment for the assessment year 2007-08, the Assessing Officer noticed certain capital introduced by the partners, as also deposits made by the partners in the firm. Holding that such capital and deposits represented the unaccounted cash credits of the firm, the Assessing Officer made corresponding additions. The issue was carried in appeal by the assessee. The Commissioner of income tax (Appeals) allowed the appeal basing reliance on the decision of this court in the case of Pankaj Dyestuff (income tax Reference No. 241 of 1993). The Commissioner of income tax (Appeals) held that the capital brought in by the partners could not be assessed in the hands of the firm as the Assessing Officer did not bring any material to show that the said amounts represented unaccounted income of the firm and that the partners had no capacity to make such investments.

2. The Revenue carried the issue further in appeal before the Tribunal. The Tribunal also relied on the decision in the case of Pankaj Dyestuff (*supra*) and also on the decision of the Allahabad High Court in the case of Commissioner of Income Tax Vs. Jaiswal Motor Finance, making the following observations:

We have heard both the parties. The impugned addition has been made by the Assessing Officer on the ground that the assessee has failed to satisfactorily explain the nature and source of impugned investment. It is, however, not the case of the Assessing Officer that the impugned investment has not been recorded in the books to make the investments. u/s 69, investments, which are not recorded by the assessee in his books, can be considered nor addition if the assessee is unable to satisfactorily explain the nature and source of investment. Thus, section 69 covers only those investments which are not recorded in the books. Similarly, the amount of investments, etc., not fully disclosed in the books of account can be considered for addition u/s 69B if the assessee is unable to satisfactorily explain the nature and source of investments declared if, the books cannot be treated as unexplained unless a finding is recorded that investments have either not been fully declared in the books. In the absence of such a finding in the assessment order, the action of the Assessing Officer in treating an investment as unexplained cannot be sustained. In this view of the matter, the order of the Commissioner of income tax (Appeals) deleting the impugned addition is confirmed. Ground No. 3 taken by the Department is dismissed.

3. Having heard the learned counsel, Mr. Pranav Desai, for the Revenue and having perused the orders, we see no reason to interfere. In view of the findings of the Commissioner of income tax (Appeals) and the Tribunal, it clearly emerges that the capital was introduced by the partners. The Assessing Officer did not bring any material to indicate that the partners had no capacity to introduce such capital. In other words, the Assessing Officer did not hold that the capital was, in fact, not introduced by the partners but it was only in disguise the cash credit of the firm. Significantly, the partners were also subjected to tax assessment. Their assessment orders were placed on record, which showed that in the return of income, they declared the income from agricultural operations. They have

produced extracts of 7/12 and 8A of the lands in support of their claims. In that view of the matter, the Tribunal was perfectly justified in applying the ratio of the decision of this court in the case of Pankaj Dyestuff (supra), in which it was held and observed as under:

Applying the aforesaid principles to the facts of the present case, it is apparent that the assessee had furnished the details, which would discharge the onus which lay on the assessee. It is not the case of the Revenue that the partners of the assessee-firm are fictitious. The income tax Officer has not disputed that the credits in the accounts of the partners were not deposits from the partners. Moreover, it is an admitted position that this was the second year of the firm, and that it was running in loss. It is true that the income tax Officer did not accept the explanation given on behalf of the assessee in respect of the new deposits or cash credits in the accounts of the partners. The mere non-acceptance of that explanation does not, however, provide material for finding that the said sum represented income of the assessee-firm. As held by the Allahabad High Court in the case of CIT v. Jaiswal Motor Finance (supra), in the absence of any material to indicate that there were profits of the firm, the amount credited to the partners' accounts could not be assessed in the hands of the firm. Once the partners have owned that the monies deposited in their accounts are their own, the income tax Officer is entitled to and may proceed against the partners and assess the same in their hands, if their explanation is not found satisfactory.

In the result, the tax appeal is dismissed.