(2009) 08 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Unique Autofelts (P.) Ltd. RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:
Income Tax Act, 1961 — Section 260A, 263

Citation : (2009) 08 P&H CK 0022

Hon'ble Judges : Daya Chaudhary, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of the Tribunal, Delhi Bench C Delhi passed in ITA No. 43/Del/2006, dated 31-7-2007 for the assessment year 2001-02, proposing to raise the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal was right in law in quashing the impugned order u/s 263 of the Income Tax Act, 1961 passed by the CIT, Karnal ?

2. The assessee is dealing in manufacturing of fabrics for export. Assessment was made u/s 143(3) of the Act and thereafter order of ratification u/s 154 of the Act was passed. The Commissioner (Appeals) in exercise of its power u/s 263 of the Act, cancelled the order of assessment and directed making of assessment de novo. On appeal, the Tribunal held that Commissioner (Appeals) was not justified in invoking its jurisdiction u/s 263 of the Act, as the assessing officer had duly applied his mind, made inquiries and examined the accounts. The observations of the Tribunal are as under:

The next issue on which power u/s 263 was invoked by the learned CIT relates to the share application money. The CIT has found that the share capital has been increased during the assessment order (sic) on account of share application money from various parties. He has, therefore, held the order to be erroneous and prejudicial to the revenue by observing that the assessee has failed to produce the shareholders along with their bank statements in original. Here again it may be pointed out that he has been influenced by the fact that before him the assessee failed to produce shareholders along with their bank statements.

So far as the examination of the issue at the assessment stage is concerned, we find that the assessing officer made specific query from the assessee in relation to this issue. The query is as under:

9. Share capital has increased from Rs. 19,78,000 to Rs. 33,28,000. Please furnish copies of accounts of persons, who have invested in shares and furnish complete description of such persons. Also prove the evidence of source of investment made by such persons.

In reply to this query the assessee had filed reply giving full details of the share application money. This reply has been made through letter dated 24-2-2003 and is available at p. 77 of the paper book. The assessee also filed the details of share application money as on 31-3-2001 which are available at p. 79 of the paper book. It was pointed out by the learned Counsel for the assessee that at serial No. 21 in place of Kansnite Capital Services, it should have been Kinetic Capital Services and that this mistake was typographical one. The assessee has filed confirmation from Kinetic Capital Services Ltd. Regarding share application money of Rs. 5 lacs before the assessing officer. With the confirmation the assessee also filed copy of acknowledgment for filing of the return by Kinetic Capital Services Ltd. Similarly, the assessee filed copy of letter confirmation from other share applicants along with the copy of acknowledgement for filing return and copies of bank statements etc. After going through this material, the assessing officer was satisfied and therefore, he did not consider it proper to make any disallowance on account of share application money. Therefore, it cannot be said that the assessing officer did not apply his mind. The findings of the learned CIT on this issue is also not based on the examination of record.

So far as the third issue relating to unsecured loan from Shri Pramod Khurana is concerned, on this issue the assessee has filed copies of account of Shri Pramod Kumar Khurana as mentioned in the reply dated 24-2-2003 available at pp. 77 and 78 of the paper book. Copy of acknowledgement of IT return of Shri Pramod Khurana is available at pp. 80 and 90 of the paper book which shows that the proper query has been made by the assessing officer in original assessment order and proper reply was given by the assessee. Thus the assessing officer has made the assessment only after examining the material produced before him. Order of the learned CIT holding that the order-of the assessing officer is erroneous insofar as it is prejudicial to the interest of the revenue because the assessing officer has not applied his mind, is not justified.

3. We have heard learned Counsel for the appellant.

4. Learned Counsel for the appellant submitted that the CIT rightly held that share capital had increased during the assessment order (sic) and the assessee failed to produce the shareholders but the assessing officer failed to draw adverse inference. The assessing officer also failed to draw adverse inference with regard to un-secured loan from Pramod Khurana. In the circumstances, power exercised u/s 263 was fully justified.

5. From the finding of the Tribunal, it is clear that the assessee had given proper explanation by filing the necessary confirmations. In view of such a finding, the Tribunal rightly held that power u/s 263 of the Act could be exercised where view taken by an assessing officer was erroneous. While exercising such power, the CIT was bound to take into account all relevant facts. If order invoking the said power proceeds on an erroneous assumption, the same could be set aside by the Tribunal. Finding of the Tribunal is not shown to be perverse. No substantial question of law arises.

6. The appeal is dismissed.