(2013) 09 P&H CK 0527

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 189 of 2012

Dulari Digital Photo Services (P.) Ltd. APPELLANT

Vs

CIT RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 219 TAXMAN 126

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—The appellant challenges order dt. 9-3-2012 passed by the Tribunal, "A" Bench, Chandigarh, setting aside order dt. 23-4-2010 passed by the Commissioner (Appeals)-II, Ludhiana, and restoring order dt. 31-12-2008 passed by the assessing officer.

2. Counsel for the appellant submits that as the appellant disclosed an income of Rs. 25,25,120, including Rs. 11,19,765, as commodity income, the assessing officer as well as the Tribunal have erred in holding that as this amount does not relate to income as defined u/s 14 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), it has to be considered as income u/s 68 of the Act. It is further argued that Rs. 11,94,315 shown as "commodity income" falls within the definition of "income from other sources" as defined u/s 14 of the Act. The expression "income from other sources" is to be assigned a wide meaning, whereas the respondent has assigned a narrow meaning by ignoring relevant judgments, provisions of the statute and holding that commodity income has to be assessed u/s 68 of the Act.

3. Counsel for the appellant submits that the following questions of law arise for consideration:

(i) Whether under the facts and circumstances of the case, the residuary head of income namely Income from other sources contained in Chapter IV in Part F, u/s 14 of the Act can principally be assigned a narrow meaning while interpreting the word chargeable income u/s 5 regarding source or head of income?

(ii) Whether the true and correct interpretation of the statute can be rendered in accordance with the principle of law for determining the legislative intent according to Pearless General Finance & Investment Co. Ltd. v. Reserve Bank of India & Ors. (1987) 1 SCC 424?

(iii) Whether on the true and correct interpretation of the decision of Union of India (UOI) and Others Vs. Brigadier P.S. Gill, , in accordance with the elementary rule of construction no provision of a statute should be construed in isolation but it should be construed to give consistent and harmonious meaning relating to the subject-matter?

''(iv) Whether on the true and correct interpretation of the provisions of law, both charging and computation steps are altogether distinct aspect of consideration in accordance with decision of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another,

(v) Whether under the facts and circumstances of the case, the source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of and definite return of income?

4. Counsel for the Revenue, however, submits that the income shown as "commodity income" was a sham transaction, not relatable to any business activity was, therefore, rightly excluded from "income from other sources". It is further submitted that as the Tribunal has considered the provisions of sections 14 and 68 of the Act and only thereafter recorded findings against the appellant. The substantial question of law framed by the appellant does not arise for consideration. The appeal may, therefore, be dismissed.

5. We have heard counsel for the parties, perused orders passed by the Tribunal, Commissioner (Appeals) and the assessing officer, but before proceeding to record our opinion on the arguments addressed, would narrate, in brief, the facts of the present controversy.

6. The appellant filed a return of income. A sum of Rs. 11,19,765 was shown as "commodity income" received from Shivam Commodities Services Ltd. The assessing officer provided an opportunity to the appellant to establish the bona fides of this transaction and after forming a prima facie opinion, the appellant has not been able to prove the bona fides of the transaction, the alleged income from commodities is without any plausible explanation etc. and called upon the appellant to explain the matter in detail. The appellant, in response, filed a reply and made an attempt to explain the income, but as the assessing officer was not satisfied, proceeded to hold as follows:

Undersigned has considered the contentions put forth by assessee and the same are rejected since assessee has not been able to prove the authenticity/ genuineness of alleged profit/commodity income from trading of derivatives of commodities. Accordingly, deduction of Rs. 74,550 is not allowed and the same is held to be part of assessees taxable income.

Conclusion--From the above discussions and considering the totality of facts, I hold that WRT sum of Rs. 11,94,315 found credited in the books of assessee company maintained for previous year 2005-06, explanation offered by it about the nature and source thereof is not satisfactory, the sum so credited (Rs. 11,94,315) has to be charged to income tax as the income of assessee company of previous year 2005-06 relevant to assessment year 2006-07 u/s 68 of the Income Tax Act, 1961............

In the present case the nature and source of income from derivative trading of commodities remains bogus. Mens rea of assessee is proved beyond doubt. Assessee is hand in gloves with broker/dealer and it has made conscious efforts to introduce its income from undisclosed sources in the garb of bogus profit from trading of derivative commodities. The broker notes are bogus, the entire transaction is a sham, assessee has not been able to give a credible evidence to prove the source of Rs. 11,94,315 credited into its books. Just because the income is credited by assessee does not make the income genuine the nature and source remains unexplained. The income would necessarily required to be taken as chargeable income u/s 68 of Income Tax Act, 1961 only because all the prescribed sources including income from other sources concludes at section 59 of the Income Tax Act, 1961 (last section of Chapter IV).

7. Aggrieved by this order, the appellant filed an appeal which was allowed by the Commissioner (Appeals) by holding that the appellant has been able to prove the nature of the transaction and as he had declared this income at the time of filing his return, his income has to be assessed as "income from other sources", u/s 14 and not u/s 68 of the Act. The Revenue, thereafter, filed an appeal before the Tribunal, which was allowed by reversing the order passed by the Commissioner (Appeals) and restoring the order passed by the assessing officer. A relevant extract from the order passed by the Tribunal reads as follows:

In view of the foregoing, the appeal filed by the Department is allowed.

In its memorandum of cross-objections, the assessee has taken the following grounds:

That the learned Commissioner (Appeals) has erred in not allowing deduction of loss of Rs. 74,550 from derivating trading of commodities against profit earned from the same source.

As already stated earlier, the assessee has claimed deduction for a sum of Rs. 74,550 representing loss form derivating trading in commodities against the total profits amounting to Rs. 11,94,315. The loss claimed by the assessee from derivating trading was disallowed by the assessing officer, which, on appeal, has been confirmed by the Commissioner (Appeals) with the following observations:

7.41 While dealing with above mentioned grounds of appeal it has been held that the transactions of the appellant with the broker in respect of earning the income from trading in derivatives of commodity were genuine. For deciding as above most important fact which was considered was that the transactions resulted in income which has been accordingly disclosed in the return of income by the appellant. However, the transactions involved in this regard are those transactions where the appellant claimed loss of Rs. 74,550. Therefore, for this the appellant was required to prove with necessary evidence that such loss was genuine loss. It is entirely different from the income which is otherwise disclosed in the return of income of the appellant. The very fact that the appellant could not get these transactions verified by producing the broker and producing his books of accounts before the assessing officer would fully justify the assessing officer in disallowing such loss. Therefore, though the learned counsels have contended as above, the claim of loss of Rs. 74,550 cannot be taken to have been proved with necessary evidence. Disallowance of loss of Rs. 74,550 by the assessing officer is, therefore, upheld.

We have heard both the parties. We are in agreement with the reasons given by the learned Commissioner (Appeals) for confirming his action of the assessing officer in disallowing the impugned loss. In this view of the matter, the order passed by the Commissioner (Appeals) in this behalf is confirmed.

8. The Tribunal has held that as the assessing officer has given detailed reasons while holding that transactions by the assessee with M/s. Shivam Commodities Services Ltd. are bogus and there is no material on record to rebut findings, recorded in the order passed by the assessing officer, the Commissioner (Appeals) should not have set aside the order passed by the assessing officer. As regards the appellants plea that the disputed income would fall under the head "Income from other sources and not u/s 68 of the Act, the Tribunal held as follows:

Thus what is taxed under Chapter IV is income from a known source including income from other sources. A source of income means a specific source from which a particular income springs or arises. Once a source giving rise to a particular income is identified, it has then to be placed under a particular head of income as specified in section 14. Thus income can be taxed under a specific head of income as enumerated in section 14 only when it is possible to peg the same to a known source/head of income. If the nature and source of a particular receipt is not known, it cannot then be pegged to a known source/head of income. Chapter IV contemplates computation of income arising from known sources/heads of income whereas Chapter VI, on the other hand, contemplates aggregation of the entire sum, the nature and sources of which are not known. The aforesaid two Chapters are completely different in their nature, scope and effect. Though the incomes assessable under them are part of total income as defined in sections 2(45)/4/5 of the Income Tax Act yet that does not mean that the income assessable u/s 68 has to be assessed u/s 56. In the case before us, source of unexplained cash credits is not known and hence they cannot be linked to any known source/head of income including income from other sources. In order to constitute income from other sources, the source, namely, the other sources has to be identified. Income from unexplained or unknown sources cannot therefore be considered or taxed as income from other sources.......

9. The learned Tribunal, thereafter, reproduced a judgment of the Gujarat High Court in Fakir Mohmed Haji Hasan Vs. Commissioner of Income Tax, and proceeded to restore the order passed by the assessing officer.

10. The five questions of law framed by counsel for the appellant may, in essence, be summarised as a single question of law, namely, whether commodities income declared by the appellant in his return can be considered as income from other sources u/s 14 or income u/s 68 of the Act.

11. A due consideration of findings recorded by the assessing officer as well as the Tribunal, leave no ambiguity that Rs. 11,19,765 claimed by the appellant as commodities income is not relatable to the business of the appellant and as held by the assessing officer, duly affirmed by the Tribunal, and is a sham transaction, recorded with the sole object of evading tax by claiming this amount as income from other sources. The appellant was unable to satisfactorily explain his dealings with M/s. Shivam Commodities Services Ltd. as bills and other documents produced did not inspire confidence and were rejected.

12. A perusal of findings recorded by the assessing officer reveals that the matter was considered in a great degree of detail and as referred to in preceding para (which we have reproduced). The expression "income from other sources" would come into play only where income is relatable to a known source. Where the income is not relatable to any known or any bona fide source, it would necessarily be brought to tax or considered as income of the assessee u/s 68 of the Act. Section 68 of the Act clearly provides that where a sum is credited in the books of assessee and the assessee is unable to offer any explanation about the nature and source thereof, or the explanation offered is not satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. What is brought to tax under Chapter IV of the Act is an income from a known source, i.e., a particular source from which the income flows but the source of a particular revenue receipt cannot be pegged down to any particular source, provisions of section 14 of the Act, particularly "income from other sources", would not apply and such income would necessarily fall u/s 68 of the Act, being unexplained cash receipts that do not fall within the definition of "income from other sources".

13. In view of what has been stated hereinabove, we find no merit in the appeal, much less that the Tribunal or the assessing officer have committed any error of law that would give rise to a substantial question of law inviting interference of this Court.