(2011) 02 DEL CK 0424

In the Delhi High Court

Case No : Income Tax A. No. 209 of 2011 and C.M. No''s. 1904 and 1906 of 2011

Krishan Kumar Sethi APPELLANT

Vs

CIT and Another RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 68

Citation : (2011) 333 ITR 16 : (2011) 203 TAXMAN 216

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Salil Kapoor, Sanat Kapoor and Ankit Gupta, for the Appellant; Deepak Anand, for the Respondent

Final Decision : Disposed Off

Judgement

1. C.M. Application No. 1904 of 2011 in I. T. A. No. 209 of 2011 Allowed, subject to all just exceptions.

2. The application is disposed of.

I.T.A. No. 209 of 2011 and CM No. 1906 of 2011 3. Notice. Mr. Deepak Anand enters appearance and accepts notice on behalf of the Revenue.

4. Having regard to the nature of arguments raised by the learned Counsel for the Appellant and the order we propose to pass, it is not necessary to take into consideration the facts of the case in detail. The issue pertains to the addition made u/s 68 of the income tax Act, 1961. There were certain deposits made in cash in the bank account from time to time. According to the assessing officer, the Assessee could not explain some of these entries and taking into account the peak of cash in hand, of Rs. 36.80 lakhs addition was made u/s 68 of the income tax Act. The Commissioner of income tax (Appeals), however, deleted this addition. In the circumstances, the Department preferred further appeal before the income tax Appellate Tribunal (hereinafter referred to as the Tribunal).

5. Learned Counsel for the Appellant has produced certain papers indicating that in the appeal notice was issued to the Assessee for January 11, 2010, when the Assessee appeared. However, on that date, the representative of the Department filed an application for adjournment on the ground that he wanted to see the assessment records, the case was adjourned to March 16, 2010. On that date again, the departmental representative sought an adjournment stating that he intended to file a paper book. Acceding to his request, the case was again adjourned to May 5, 2010. It is pointed out by Mr. Kapoor, learned Counsel for the Appellant, that paper book was not filed, which could have contained the material/ document on the consideration whereof the Commissioner of income tax (Appeals) had deleted the addition. However, on May 5, 2010, the appeal was heard without the paper book and without even giving chance to the Assessee to file the papers, the Tribunal has allowed the appeal inter alia stating that no evidence had been brought on record by the Assessee to suggest that the amount deposited on various dates had come out from the sale consideration received in advance from the prospective buyers. His submission is that there was sufficient evidence, which was produced before the Commissioner of income tax (Appeals) and since the Revenue was the Appellant before the Tribunal, it was for the Revenue to file the entire paper book. Even if the Revenue had not filed the paper book, it is submitted that in those circumstances a chance should have been given to the Assessee to place the papers on record.

6. After hearing the learned Counsel for the parties, we find substance in the aforesaid submissions. In these circumstances, without commenting upon the merits of the order passed by the Tribunal, we set aside the said order on the aforesaid ground giving liberty to the Assessee to file the paper book containing the documents on which the Appellant wants to rely in support of his submissions. The Tribunal shall hear the parties afresh and take into consideration the said material to decide the issue again.

7. The appeal and the application are disposed of with the aforesaid direction.

