(2014) 11 GUJ CK 0061

In the Gujarat High Court

Case No : Tax Appeal No. 325 of 2002

Maharashtra Packaging APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 260A, 68

Citation : (2014) 11 GUJ CK 0061

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Manish J. Shah for J.P. Shah, Advocate for the Appellant; Sudhir M. Mehta, Advocate for the Respondent

Judgement

K.S. Jhaveri, J.—This Tax Appeal u/s. 260A of the Income-tax Act, 1961 is filed against the judgment and order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench in ITA No. 561/AHD/2001 dated 17.04.2002 whereby, the appeal filed by the assessee was partly allowed.

2. Briefly stated, the assessee-firm is engaged in the activity of manufacturing corrugated boxes. This appeal is against the upholding of the capital contribution of the partner-Khimjibhai Patel of the assessee-firm of Rs. 1.70 Lacs and another partner-Bhimjibhai Patel of Rs. 2,01,000/- totalling Rs. 3,71,000/- as unexplained cash credit in the hands of the assessee-firm. During the year under account, partner-Bhimjibhai Patel and Khimjibhai Patel had introduced capital of Rs. 2,01,000/- and Rs. 1,70,000/- respectively in their capital account included in the audit report.

3. The return of income was filed on 31.10.1997 declaring total income of Rs. 35,122/-. Assessment scrutiny was undertaken and it was allegedly found that the assessee has not maintained day-to-day quantity tally of craft and other papers. The A.O. passed the order of assessment u/s. 143(3) on 31.03.2000.

4. Against the order of the A.O., appeal was preferred before the CIT(A). Vide

order dated 03.01.2001, the CIT(A) partly allowed the appeal by directing the A.O. to restrict the disallowance out of telephone expenses to the extent of 50% of the residential telephone expenses and make a disallowance of Rs. 10,000/- out of factory expenses and canteen expenses taken together. Being aggrieved by the order of CIT(A), the assessee preferred appeal before the Appellate Tribunal. Vide judgment and order dated 17.04.2002, the Appellate Tribunal partly allowed the appeal. Being dissatisfied with the same, the assessee has filed the present appeal.

5. While admitting the appeal on 23.12.2002, the following substantial question of law was formulated for our consideration;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that capital contribution of Rs. 3,71,000/- by two partners could have been added in hands of the assessee firm under section 68 of the Income-tax Act, 1961?"

6. We have heard learned counsel for both the sides. It was submitted by learned Counsel Mr. M.J. Shah appearing for the assessee that the issue involved in this appeal is concluded by the decision of this Court rendered in Income Tax Reference No. 241/1993 decided on 06.07.2005. He placed reliance upon the observations made by the Bench in Paras - 13 & 14 of the said decision, which is reproduced hereunder;

"13. 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 case of Commissioner of Income Tax, Allahabad 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.

14. In the facts and circumstances of the present case, both the Deputy CIT (Appeals) and the Tribunal have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The interest of the revenue is also

safeguarded as the Income Tax Officer has been given the liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners."

7. Learned Standing Counsel Mr. Sudhir Mehta appearing for the Revenue was not in a position to dispute the aforesaid proposition of law.

8. In view of the same, the issue is answered in favour of the assessee and against the Revenue. Since we are concurring with the view taken in the aforesaid decision, no elaborate reasons are assigned.

9. Accordingly, the appeal stands allowed.