(2015) 09 P&H CK 0448

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Appeal No. 267 of 2015

Motia Constructions Limited — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 132, 143(2), 153A

Citation : (2015) 09 P&H CK 0448

Hon'ble Judges : Rajive Bhalla and Navita Singh, JJ.

Bench : Division Bench

Advocate : Ravi Shankar, Advocate, for the Appellant

Judgement

Rajive Bhalla, J.—The appellant challenges order dated 21.1.2015 passed by the Income Tax Appellate Tribunal (for short "the Tribunal") dismissing an appeal relating to an assessment year 2004-05.

2. Counsel for the appellant submits that pursuant to a search and seizure on 25.2.2009 under Section 132 , of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Assessing Officer, passed an assessment order, dated 22.12.2010 adding development expenses, as the appellant could not furnish documentary evidence. The appeal filed by the appellant was dismissed by the Commissioner of Income Tax (Appeal)-1, Ludhiana on the same ground but at the time of filing of the appeal before the Tribunal, the appellant was able to trace relevant vouchers and, therefore, filed an application for additional evidence for producing the vouchers before the Tribunal. The Tribunal has, however, rejected the application for additional evidence as well as the appeal by doubting the authenticity of the vouchers. Counsel for the appellant further submits that the vouchers were in possession of Shri Pawan Bansal, a Director, who resigned from company on 02.01.2009 along with two other Directors Shri Kewal Bansal and Smt. Pinky Bansal. Shri Pawan Bansal was managing the affairs of the company and was in possession of the vouchers. The appellant could not produce the vouchers either before the Assessing Officer or before the

Commissioner of Income Tax (Appeal) but produced them before the Tribunal. The application for additional evidence and the appeal have been dismissed by doubting the authenticity of the vouchers and holding that the story put-forth by the appellant appears to be an after thought. The finding recorded by the Tribunal is clearly incorrect and gives rise to the following substantial questions of law:--

"i Whether on the facts and in the circumstance of the case ITAT is justified in declining to admit the additional evidence and in declining to remand the matter to AO for verification and proper enquiry, ignoring the judgment of Hon''ble Supreme Court in the case of Tek Ram (Dead Through LRs) v. CIT (supra) despite the fact that appellant was earlier unable being helpless to submit the relevant vouchers before the authorities below?

ii. Whether on the facts and in the circumstance of the case the ITAT is justified in rejecting the prayer of the appellant for admission of the additional evidence with a direction to the AO to verify the genuineness of the said expenses ignoring the plea of inability and relevance of additional evidence, which decision is against the mandate of the Hon''ble jurisdictional High Court in the case of CIT v. Mukta Metal Works (supra)?"

3. We have heard counsel for the appellant, perused the impugned order, the order passed by the CIT (Appeals)-1, Ludhiana, the order passed by the Assessing Officer as well as copies of some of the vouchers appended with the appeal but are unable to hold that the impugned orders call for any interference or gives rise any substantial question of law.

4. Admittedly, pursuant to search and seizure, under Section 132 of the Act, the Assessing Officer called upon the appellant to explain development expenses of Rs. 21,82,240/- but as the appellant could not produce any documentary evidence to support these expenses, the Assessing Officer passed assessment order, under Section 143(2) /153A of the Act disallowing the expenditure of Rs. 21,82,240/-. The appellant filed an appeal which was rejected by the Commissioner of Income Tax (Appeal), by holding that there is no evidence to support the expenditure of Rs. 21,82,240/- claimed by the appellant. The appellant, thereafter, filed an appeal before the Tribunal accompanied by an application for additional evidence by appending a large number of vouchers and pleaded that the vouchers were in possession of Shri Pawan Bansal, a Director, who had resigned on 02.01.2009. The appellant has now been able to trace these vouchers and as he was prevented by sufficient cause, the vouchers should be taken into consideration. The Tribunal has considered the application for additional evidence, the vouchers appended with the application and dismissed the appeal by holding as follows:--

"We have considered rival submissions. It is a fact that assessee has expressed inability to furnish any documentary evidences and primary vouchers for claiming deduction on account of development expenses before Assessing Officer. The

Assessing Officer also recorded this fact in the order-sheet and ultimately assessee did not produce any evidence of incurring development expenses for the purpose of business before the Assessing Officer. The same is the position before ld. CIT (Appeals) and assessee has not produced any evidence before ld. CIT (Appeals) also. Now the assessee has come up with the explanation of resignation of three of its Directors before passing of the assessment order and it is claimed that the vouchers of development expenses were in possession of the Director who have resigned from the assessee company. However, such fact was never pleaded before the authorities below. Therefore, it appears to be the after thought story made up by the assessee. If the documentary evidences in the shape of vouchers of development expenses were in power and possession of other Directors who have resigned, nothing had prevented assessee from explaining these facts before authorities below. Further, ongoing through the voluminous Paper Books which contain the ledger account and copies of the vouchers, we notice that none of the vouchers through which development expenses are stated to have been paid by assessee, have been signed on behalf of the assessee. The vouchers are not approved by the assessee company and no details have been mentioned as to how these payments were made for business purpose of the assessee and whether the same have been approved by and on behalf of the assessee company. In the absence of any signature on the vouchers on behalf of the assessee company, the genuineness of the vouchers itself is in doubt. Therefore, considering the facts and circumstances above and discussion, we are of the view that the additional evidences in the shape of vouchers should not be admitted. The request of assessee for admission of additional evidence is accordingly rejected."

5. We find no reason to accept arguments advanced by counsel for the appellant or to hold that the Tribunal has committed any error of law in dismissing the application for additional evidence as well as the appeal. The appellant could have easily told the Assessing Officer or the Commissioner of Income Tax (Appeals)-1, Ludhiana that the vouchers were in possession of another Director who had left the company. The explanation appears to have manufactured for the purpose of furnishing an explanation. The vouchers are not signed by and on behalf of the assessee and there is no evidence as to whether these payments were made for business purposes etc and, therefore, even otherwise, irrelevant. The substantial question of law based upon a judgment of the Hon''ble Supreme Court in TEK Ram (Dead) through L.Rs. Vs. Commissioner of Income Tax, Faridabad, is meaningless as documents produced by the assessee in the said case as additional evidence were found to be relevant. Reference to another judgment of this Court in Commissioner of Income Tax Vs. Mukta Metal Works, is not tenable as additional evidence produced in the aforesaid case was held to be necessary for adjudication of the pending lis.

6. Consequently, finding no merit in the appeal and as the substantial questions of law framed for adjudication, do not arise for consideration, the appeal is dismissed.

