(2018) 08 P&H CK 0446

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Appeal No. 122 Of 2018

Pawan Kumar Garg APPELLANT

Vs

Commissioner Of Income Tax, Hisar RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:
Income Tax Act, 1961 — Section 68, 131, 133(6), 260A

Citation : (2018) 08 P&H CK 0446

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Divya Suri

Final Decision : Dismissed

Judgement

1. The assessee has filed the present appeal under Section 260A of Income Tax Act, 1961 [for short 'the Act'] against the order dated 09.08.2017 (Annexure A-8) of Income Tax Appellate Tribunal, New Delhi [for short 'the Tribunal'] dismissing the appeal of the assessee. The assessment year involved is 2012-13.

2. According to the assessee, following substantial questions of law arise for consideration in appeal :-

I. Whether under the facts & circumstances of the case, the addition u/s 68 of the Act can be made without granting any reasonable opportunity afforded to the creditor for producing the documents despite of assurance, creditor being the witness of the AO and unwarranted actions of the revenue are against the principles of natural justice?

II. Whether under the facts & circumstances of the case, the addition can be made u/s 68 despite 'request before the AO' for getting the statement of the creditor & none action by the AO, can be construed as the denial of the assessee's right of opportunity in-built u/s 68 of the Act available to it?

III.Whether under the facts & circumstances of the case, the addition can be made even 'identity', 'creditworthiness' and 'genuineness of the transaction' has been substantiated and the 'onus' stands discharged by the assessee u/s 68 of the Act and the same shifted on the revenue?

3. The brief facts necessary for adjudication of the present appeal are that the assessee filed return declaring an income of Rs.8,03,170/-. The case was selected for scrutiny. The Assessing Officer (AO), inter-alia, made additions of Rs.30,91,580/- vide order dated 30.12.2014. Aggrieved of the assessment order, the assesee filed an appeal before the Commissioner of Income Tax (Appeals) [for short 'CIT(A)']. The CIT(A) partly allowed the appeal vide order dated 14.10.2016. The additions made amounting to Rs.10,70,000/- and Rs.4,00,000/- were upheld. Further appeal was filed before the Tribunal.

The appeal was dismissed vide order dated 09.08.2017. Hence, the present appeal by the assessee.

4. Learned counsel for the appellant-assessee submitted that the additions made are bad in law and against the record. He submitted that the identity of Ishwar Singh and his capacity to pay was proved. The authorities have not provided any opportunity to Ishwar Singh to produce further documents. His grievance is that Urmila Devi, wife of the assessee was never summoned under Section 131 of the Act.

5. After hearing learned counsel for the appellant-assessee, we do not find any merit in the appeal.

6. After the case was taken up for the scrutiny, notice was issued to the assessee and he was provided ample opportunity to explain the difference in books of account of Rs.10,70,000/- and to prove the creditworthiness and genuineness of unsecured loans of Rs.4,00,000/- taken from his wife.

7. During the assessment proceedings, the AO noted that credit liability was shown in the name of M/s Surya Roshni Ltd. Information was sought under Section 133(6) of the Act and from the books of M/s. Surya Roshni Ltd. it was found that there was no such credit balance of the appellant. On the verification of the entries of books of account of M/s Surya Roshni Ltd., it was found that there was a debit entry of Rs.7,666/- but there was no such entry in the books of account of the assessee. The AO found that there was difference of Rs.10,70,000/- in the books of the account of the assessee.

8. The assessee was put to notice and the assessee replied that the amount of Rs.10,70,000/- was received from Ishwar Singh in cash as advance for sale of ancestral property situated at Village Sarsana, District Hisar. Ishwar Singh was produced before the AO and his statement was recorded. From his reply to questions, it appeared that he had no Permanent Account Number (PAN). He stated that he purchased six shops and one house from the assessee but he never remembered the date of transactions. Neither any sale deed nor any agreement to sell was executed. He had paid the amount after selling the JCB

Machine for Rs.14,25,000/-, the consideration was received by him in cash. Ishwar Singh was not able to adduce any evidence to establish that there was a transaction of sale and purchase of property. Moreover, the assessee had never disclosed that he had sold any ancestral property during the relevant assessment year.

9. The assessee had raised unsecured loan of Rs.4,00,000/-from his wife. In order to prove the genuineness and creditworthiness, the assessee produced details of bank account and copy of return. From the bank account, it was evident that cash deposit of Rs.4,00,000/-was made in the account of wife on 09.12.2012 and on the same very day the cheque was issued to the assessee. The assessee was asked to produce Urmila Devi (his wife) for recording the statement but it was replied that she is out of station and cannot be produced for recording the statement.

10. The CIT(A) while partly allowing the appeal of the assesee upheld only two additions of Rs.10,70,000/- and Rs.4,00,000/-. The CIT(A) noted that creditworthiness and genuiness of Ishwar Singh making payment of Rs.10,70,000/- to the assessee for purchase of ancestral property was not proved. He had no Permanent Account Number (PAN). He had not filed Income Tax Return. Neither the agreement to sell nor sale deed was produced and even the property allegedly sold by the assessee had not been reflected in his books of account. The unsecured loan of Rs.4,00,000/- taken from the wife of the assessee was not accepted as the bank statement of Urmila Devi showed the declared income of Rs.64,007/- only and the amount of Rs.4,00,000/- was deposited in cash in her account and on the same day the cheque of the said amount was issued in favour of the assessee. The relevant findings recorded by the CIT(A) in para 3.3 and 5.1 are reproduced below:-

"3.3 I have carefully considered the facts of the case. Appellant has relied on the fact that he had sold ancestral property situated at Village Sarsana, Distt. Hisar on 21.11.2011. That the amount of Rs.10,70,000/- was received from the Shri Ishwar Singh in cash as advance for sale of ancestral property. Here the plea of the appellant that it was not granted opportunity to cross examine Shri Ishwar Singh cannot be agreed to as Shri Ishwar Singh was the witness of the appellant itself. Appellant has claimed that Shri Ishwar Singh had given said advance of Rs. 10,70,000/- to the appellant out of sale proceeds received against sale of JCB Machine and as advance against sale of ancestral property for which possession was with Shri Ishwar Singh. Appellant has claimed that there was no requirement to form an agreement in writing, verbal agreement is more than sufficient. However, it is a fact on record that the creditor has not filed any return of income, did not have PAN, did not remember details of his bank account, did not remember date of transaction of property. The creditors also did not produce copy of agreement, sale purchase deed of the property or any other relevant documents relating to property in question. Even the sale consideration of JCB Machine was made in cash. The said property was not reflected in the books of the appellant. The said entry of Rs. 10,70,000/- was found credited in the books of M/s. Surya Roshni Limited Bahadurgarh. Thus it is found that the entry of cash credit found in the books of the appellant, the identity was of a different person and not M/s. Surya Roshni, the creditworthiness of the creditor could not be proved in as much as no evidence was brought on record and the genuineness of the transaction also could not be established by any documentary evidence. In view of the above facts, the faction of the AO in treating the said credit of Rs. 10,70,000/- as income from undisclosed sources u/s 68 is therefore, confirmed. This ground of appeal is dismissed.

5.1 Having examined the contentions of the appellant and the findings of the AO, it is found that the fact remains that cash was deposited on the same date on which cheque was issued to the appellant on 09.12.2012. In such circumstances, the onus is on the appellant to prove the genuineness of the transaction and the creditworthiness of the creditor. AO has recorded that opportunity to prove the creditworthiness of the creditor was granted to the appellant. However, the appellant failed to avail of such opportunity. The appellant has not produced any additional evidence to prove the genuineness of creditworthiness of the creditor during appeal proceedings as well. In the light of the fact, that cash was deposited in the account of the creditor on the same date on which cheque was issued and also the fact that income declared by the creditor is only Rs. 64,007/-, it is held that the creditworthiness of the creditor is not established. The action of the AO in adding Rs. 4,00,000/- received from Smt. Urmila Devi as unexplained cash credit u/s. 68 is therefore, confirmed. This ground of appeal is dismissed."

11. The Tribunal also upheld both the additions. The Tribunal held that the creditworthiness of Ishwar Singh was not proved and the assessee failed to produce any documentary evidence to establish transaction of sale and purchase of ancestral property. It was further held that creditworthiness of Urmila Devi was also not established. The relevant portion of the order of the Tribunal is quoted below :-

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"I find that assessee had ancestral property situated at Village Sarsana, Distt. Hisar on 21.11.2011 and amount of Rs.10,70,000/- was received from Shri Ishwar Singh in cash as advance for sale of ancestral property. Assessee has claimed that Shri Ishwar Singh had given said advance of Rs.10,70,000/- to the assessee out of sale proceeds received against sale of JCB Machine and as advance against sale of ancestral property for which possession was with Shri Ishwar Singh. Assessee has claimed that there was no requirement to form an agreement in writing, verbal agreement is more than sufficient. However, it is a fact on record that the creditor has, not filed any return of income, did not have PAN, did not remember details of his bank account, did not remember date of transaction of property. The creditors also did not produce copy of agreement, sale purchase and deed of the property or any other relevant documents relating to property in question. Even the sale consideration of JCB Machine was made in cash. Even the said property was not reflected in the books of the assessee. The said entry of Rs.10,70,000/- was found credited in the books of M/s Surya Roshni Limited Bahadurgarh. Thus it was found that the entry of cash credit found in the books of the assessee, the identity was of a different person and not M/s Surya Roshni, the creditworthiness of the creditor could not be proved in as much as no evidence was brought on record and the genuineness of the transaction also could not be established by any documentary evidence. In view of the above facts, the addition of AO in treating the said credit of Rs.10,70,000/- as income from undisclosed sources u/s 68 was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and dismiss the issue in dispute raised by the assessee.

6.2 With regard to addition of Rs. 4,00,000/- is concerned, I find that fact remains that cash was deposited on the same date on which cheque was issued to the assessee on 9.12.2012. In such circumstances, the onus is on the assessee to prove the genuineness of the transaction and the creditworthiness of the creditor. AO has recorded that opportunity to prove the creditworthiness of the creditor was granted to the assessee. However, the assessee failed to avail of such opportunity. The assessee has not produced any additional evidence to prove the genuineness or creditworthiness of the creditor during appeal proceedings as well. In the light of the fact, that cash was deposited in the account of the creditor on the same date on which cheque was issued an also the fact that income declared by the creditor is only Rs. 64,007/-, it was held that the creditworthiness of the creditor is not established. The action of the AO in adding Rs.4,00,000/- received from Smt. Urmila Devi as unexplained cash credit u/s 68 was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and dismiss the issue in dispute raised by the assessee."

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12. The contention of the learned counsel for the assessee that identity of and capacity to pay of Ishwar Singh and Urmila Devi was duly proved deserves rejection in view of the categorical findings of facts recorded by all the three authorities. The contention that no opportunity was provided to Ishwar Singh to produce further documents is not well founded. No such request was made before AO.

Moreover, neither in first appeal nor in second appeal assessee sought permission to produce any document.

13. The assessee was asked to produce Urmila Devi, his wife for recording of statement, the assessee failed to produce her. No grievance can be raised by the assessee now that Urmila Devi was never summoned under Section 131 of the Act.

14. Section 68 of the Act is quoted below:-

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year : Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory: Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB)of section 10."

As per Section 68 of the Act, if the explanation offered by the assessee regarding nature and source of sum credited in his books of account is not found satisfactory by the AO, the said sum can be charged to income tax.

15. The explanations offered were not found satisfactory by all the three authorities below. The findings recorded by the Tribunal is based on material on record and after appreciating the evidence adduced. The order of the Tribunal does not call for any interference by this Court.

16. In view of the above, no substantial questions of law arise in this appeal.

17. The appeal is, accordingly, dismissed.

