

Additions upheld for cash credits as identity and creditworthiness of share applicants were doubtful

Summary – The High Court of Delhi in a recent case of Focus Exports (P) Ltd., (the Assessee) held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate withdrawals of money from bank, impugned addition made under section 68 was to be confirmed.

Facts

- During assessment proceedings, the Assessing Officer made addition to assessee's income under section 68 in respect of share application money received from various applicants.
- The Commissioner (Appeals) as well as the Tribunal opined that the assessee had been able to discharge the onus and prove the identity, creditworthiness of the share applicants, and genuineness of the transactions.
- Accordingly, the addition made by the Assessing Officer was deleted.
- On revenue's appeal:

Held

- Firstly, it was noticed that there was a big divergence on the aspect of PAN details, income tax returns, etc. as recorded in the assessment order and as per the findings recorded by Commissioner (Appeals) and the Tribunal. The assessment order records that assessee was pointedly asked to provide details, on the business activities carried out during the year; details of the share capital raised during the year; details of the investment made during the year; details of the loans and advances made during the year; job work income during the year; shareholding pattern, copy of all accounts of the company; list of bank accounts of Directors; and, a note justifying the expenses. Thereafter, the assessee did file some details but they were not exhaustive/complete.
- The Commissioner (Appeals) has recorded that the assessee had brought to his notice relevant pages of the paper book wherein confirmation of the respective share applicants, their income tax returns, their PAN card and election card, etc., were made available. Tribunal had proceeded on the findings recorded by the Commissioner (Appeals).
- On being queried in the Court, the assessee accepted that these details might not have been filed during the course of the reassessment proceedings but were filed during the course of the original assessment proceedings, which had resulted in an order under section 143(3). There is no such finding recorded by the Commissioner (Appeals) or the Tribunal. However, what is clear is that in the reassessment order passed under Section 144 read with Section 147, there is an unambiguous, assertive and decisive finding that the assessee had failed to cooperate and furnish the details.

- The assessment order records that summons under Section 131 were issued to the two directors of the company, seeking their explanation but the same were not complied with. The assessment order also records that the bank account statements of share applicants were examined and there was a transfer entry of Rs.4,95,000/- and a cheque in favour of the assessee was cleared on the same day.
- As noticed above, the assessee did not furnish complete details and particulars and virtually 'absconded' during the course of reassessment proceedings, resulting in a best judgment assessment. These facts have been completely ignored by both the Commissioner (Appeals) and the Tribunal. Obvious inference is that the assessee had intentionally tried to block and obstruct enquiries and hinder a thorough probe knowing the nature of the transactions. Thus, the reluctance and hesitation to appear in response to summons and produce documents is apparent and conspicuous.
- The facts mentioned in the reassessment order, *i.e.* failure to cooperate in filing details and responding to summons, have not been disputed or controverted by the Commissioner (Appeals) and the Tribunal. There is no adverse comment or finding regarding the validity of the best judgment assessment.
- In view of the aforesaid factual position and the copious material it was not considered appropriate to remand the matter to the Tribunal for fresh decision as the facts are crystal clear and are not debatable nor do they require further elucidation and examination.
- A bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be a sum during the previous year and if the assessee offers no explanation about the nature and source of such credit or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year. The expression no explanation is offered or the explanation offered is not satisfactory puts an onus on the assessee to offer a lucid, reasonable and acceptable explanation before the Assessing Officer and thereupon the Assessing Officer should form an opinion accepting or rejecting the explanation based upon appreciation of facts/materials and other attending circumstances.
- In view of the aforesaid discussion, the unmistakably apparent, patent, and conspicuous facts were ignored by the first appellate authority and the Tribunal. In the facts of the present case, section 68 was rightly invoked and is applicable. Thus, the order passed by the Tribunal affirming the finding of the Commissioner (Appeals) deleting the addition, is set aside.