

Case :- INCOME TAX APPEAL No. - 102 of 2006
(Assessment Year 1998-99)

Petitioner :- The Commissioner Of Income Tax-I, Lucknow
Respondent :- A.H. Khan Lucknow
Petitioner Counsel :- D. D. Chopra

AND

Case :- INCOME TAX APPEAL No. - 235 of 2006
(Assessment Year 1998-99)

Petitioner :- The Commissioner Of Income Tax - I Lucknow
Respondent :- A.H.Khan
Petitioner Counsel :- D.D.Chopra

Hon'ble Devi Prasad Singh,J.
Hon'ble Dr. Satish Chandra,J.
(Delivered by Hon'ble Dr. Satish Chandra, J)

The Income Tax Appeal No. 102 of 2006 has been filed by the department against the Tribunal's orders 28.10.2005 passed by the Income Tax Appellate Tribunal in I.T.A. No.508/Luc/2003 for the assessment year 1998-99 where the addition of Rs.18,14,151/- was deleted.

This appeal was admitted by this Court on 03.04.2004 on the following substantial questions of law:

1.Whether on the peculiar facts and in the circumstances of the case the unexplained investment in the shares of the company was not liable to be added under section 69 of the Income Tax Act, 1961, in the hands of the assessee.

2.Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was right in law in deleting the addition made by the Assessing Officer u/s 69 of the Income Tax Act, 1961 as unexplained investment in the hands of the assessee while directing to consider the same in the set aside proceedings in the case of the company in which the assessee was one of the directors.

3.Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified, in holding that the unexplained investment in shares can be considered in the hands of the company especially when the instant proceeding were initiated u/s 147 of the Income

Tax Act, 1961, in pursuance of the finding of the learned CIT (Appeals) in the appellate order of the company, wherein the said addition made in the hands of the company was the subject matter of the appeal, that the proper place of addition was in the hands of the assessee who introduced his own unaccounted money in the name of poor farmers.

Income Tax Appeal No. 235 of 2006 has been filed against the judgment and order dated 23.06.2006 passed by the Income Tax Appellate Tribunal in ITA No. 160/Luc/2006 for the same assessment year 1998-99, whereby the penalty under Section 271 (1) (c) was cancelled.

In quantum appeal, brief facts of the case are that the assessee is the Managing Director of M/s. Mehrab Auto Movers (P) Ltd. (hereinafter referred to as MAPL), which was incorporated on 22.12.1997.

During the assessment year under consideration, MAPL received deposits amounting to Rs.18,14,151/- for allotment of shares of MAPL from 27 persons.

The A.O. has verified the genuineness of the deposits for allotment of shares but it was found that the said money was deposited by the farmers, who were not having means to invest the money in question. So, the A.O. in its order observed that the said amount was unexplained investment of the assessee, who has introduced his own unaccounted money in the name of poor farmers.

Hence, addition was made in the hands of the assessee.

The CIT (A) has confirmed the same.

Though, the Tribunal has confirmed that this was unexplained money but observed that it was deposited in MAPL, so, the addition will have to be made in the hands of the company i.e. MAPL and not in the hands of the assessee.

Finally, with this direction, the Tribunal has deleted the addition.

Being aggrieved, the department has filed the present appeal.

With this background, Sri D. D. Chopra learned counsel for the appellant justified the order passed by the lower authorities.

He submits that the A.O. was right to make an assessment under Section 148 of the Act.

Since, the depositor farmers were not having the paying capacity, so creditworthiness of the creditors was not proved.

He also submits that the assessee is the Managing Director of the MAPL and has introduced his own money in the name of the said depositors who had deposited the money for allotment of shares.

So, the addition will have to be made in the hands of the assessee.

On the other hand, Sri Kabir Dixit holding brief of Sri Dhruv Mathur, learned counsel for the assessee justified the order passed by the Tribunal.

We have heard both the parties at length and gone through the material available on record.

By considering the rival submissions and on perusal of record, it appears that the M/s Mehrab Auto Movers (P) Ltd. is an independent legal entity.

The deposits were received by the company for the allotment of shares.

So, the addition will have to be made in the hands of the company MAPL.

The assessee who is the Managing Director is an independent assessee and no addition can be made in the hands of the assessee under Section 68 or 69 of the Income Tax Act.

The investment was made in the accounts of the company.

So, the Tribunal has rightly directed to make addition in the hands of the company.

Hence, we find no reason to interfere with the impugned order passed by the Tribunal.

The answer to the questions 1, 2, and 3 is in affirmative i.e. in favour of the assessee.

Income Tax Appeal No. 235 of 2006 is pertaining to the penalty.

When there is no addition in the quantum appeal, then there is no justification to levy the penalty under Section 271 (1)(c) of the Income Tax Act.

Hence, we decline to interfere with the Tribunal's order who has rightly cancelled the penalty.

The impugned order is hereby sustained.

In the result, both the appeals filed by the department are dismissed.

Order Date:- 17.08.2011

VNP/-