Assistant Commissioner of Vs. K.S. Shetty and Co.

Assistant Commissioner of Vs. K.S. Shetty and Co.

SooperKanoon Citation : sooperkanoon.com/72304

Court : Income Tax Appellate Tribunal ITAT Madras

Decided On : Oct-25-2002

Reported in : (2003)87ITD259(Chennai)

Judge : V Dongzathang, A Kalyanasundharam, S Vice-, K P Rao

Appellant : Assistant Commissioner of

Respondent : K.S. Shetty and Co.

Judgement :

1. This appeal is filed by the Revenue having been aggrieved by the order dated October 8, 1992, of the Commissioner of Income-tax (Appeals) for the assessment year 1990-91, relating to the assessee.

2. The Revenue has raised the sole issue relating to the aspect of treating the chit loss as admissible deduction on the ground that the same is contra to the ratio laid down by the High Court of Punjab and Haryana in the case of Soda Silicate and Chemical Works v. CIT [1989] 179 ITR 588.

3. Both parties were heard regarding the issue raised by the Revenue in this appeal and its legal implications in extenso.

4. The admitted facts of the case that are necessary for adjudicating the issue raised by the Revenue are that the assessee, a registered firm, has filed its return for the assessment year 1990-91, declaring a total income of Rs. 2,97,230. After hearing the assessee, the Assessing Officer has passed the assessment order under Section 143(3) of the Income-tax Act determining the total income of the assessee as Rs. 3,47,638 adding the amount of Rs. 50,408 being chit loss claimed by the assessee as business expenditure, relying on the decision of the High Court of Punjab and Haryana rendered in the case of Soda Silicate and Chemical Works v. CIT [1989] 179 ITR 588. Hence, the assessee has filed appeal before the Commissioner of Income-tax (Appeals). The learned Commissioner of Income-tax (Appeals), after hearing the assessee and the Assessing Officer and perusing the assessment records has passed the impugned order by deleting the addition made by the Assessing Officer basing on the decisions of the apex court in India Cements Ltd. v. CIT [1966] 60 ITR 52, basing on which the High Court of Kerala has held in the case of CIT v. Kottayam Co-operative Bank Ltd. [1974] 96 ITR 181 and the High Court of Andhra Pradesh in the case of CIT v.Kovur Textiles and Co. [1982] 136 ITR 61. Therefore the Revenue has filed this appeal aggrieved by the said impugned order.

5. The learned Departmental Representative has contended that the finding of the learned Commissioner of Income-tax (Appeals) is erroneous in deleting the addition in question, ignoring the latest decision rendered by the High Court of Punjab and Haryana in the case of Soda Silicate and Chemical Works [1989] 179 ITR 588, which was relied on by the Assessing Officer. He supported the view of the Assessing Officer on the ground that the chit business is nothing but a mutual accommodation and it cannot have any link with the business of the members thereof and consequently it cannot be treated as business expenditure allowable under Section 37 or any provision of the Income-tax Act.

6. Contrary to this, the learned representative of the assessee has contended that the books of account maintained by the assessee consisting of bank account and other related accounts, copies of which were placed before the departmental authorities, clearly showed that the amount received by the assessee from the chit fund concern was used by it for its business and it has paid the instalments from out of the earnings from its business. Besides that he relied on the instructions issued by the Central Board of Direct Taxes in its Instruction No. 1175 dated May 16, 1978, which has categorically said that the contributors to a chit who receive more than the amount contributed by them must offer the same as income derived from business whereas those who pay more than what they have received in view of earlier payment of the chit amount must be treated as loss incurred by them and the same is allowable as business expenditure. He further submitted that the said instruction was reaffirmed by the Central Board of Direct Taxes by its letter dated March 25, 1992, in reply to the letter of the Chief Commissioner of Income-tax II, New Delhi, who sought for the withdrawal of its instruction stated supra in view of the very same decision of the High Court of Punjab and Haryana rendered in the case of Soda Silicate and Chemical Works [1989] 179 ITR 588, and refused to withdraw the said instruction. Therefore, the Revenue has to follow the circulars and instructions issued by the Central Board of Direct Taxes as they are binding on them. In that view of the matter, the stand taken by the Revenue on this aspect in the matter of the assessee is nothing but disregarding the instructions of the Central Board of Direct Taxes which is impermissible under law. Therefore, he contended that the issue raised by the Revenue in this appeal is highly devoid of merits and deserves to be dismissed.

7. On careful scrutiny and consideration of the rival submissions of both the parties and the material placed before the Tribunal and analysing them in the light of the arguments advanced on behalf of both the parties, we find that the apex court while considering the provision contained in Section 37 (Section 10 of the Indian Income-tax Act, 1922) of the Income-tax Act, 1961, in the case of India Cements Ltd. v. CIT [1966] 60 ITR 52 has held that any income earned or expenses incurred by a person in the course of his regular business which is integral part of the same is to be taken as business income or expense as the case may be. Relying on this observation, the High Court of Kerala has held in the case of CIT v. Kottayam Co-operative Bank Ltd. [1974] 96 ITR 181 that the dominant motive in a chit fund is primarily intended to operate as a scheme for advancing loans from the common fund to the subscribers, their turns for getting loans being determined either by auction or by drawing lots, and thus the loss or income in the same is to be treated as business income or expenditure only. But the High Court of Punjab and Haryana has held in the case of Soda Silicate and Chemical Works v. CIT [1989] 179 ITR 588 that the surplus sum received from chit fund cannot be treated as income in the hands of the contributor and loss to him in the same cannot be allowed as business expenditure since the principle of mutuality is applicable and no member of the chit fund can incur loss or earn gain from mutual participation in the fund. It is not out of place to mention that the Central Board of Direct Taxes has issued Instruction No. 1175 dated May 16, 1978, stating that if any person organises chit funds and thereby earns anything is income from business and if incurs any loss then it should be business loss, and the unrecoverable dues from any of the members should be treated as bad debts, whereas in the hands of subscribers anything received more than their contribution is to be treated as income from business and if they incur any loss due to taking the money earlier and paying more than what they receive is to be treated as business loss. After the decision of the Punjab and Haryana High Court, stated supra, the Central Board of Direct Taxes has categorically stated that it is not going to withdraw the earlier Instruction No. 1175, stated supra, even in the light of the said decision of the Punjab and Haryana High Court, in a reply given to the clarification sought for by the Commissioner of Income-tax, Delhi, in its letter dated March 25, 1992. The principle contained in the said circular was also supported by the view taken by the High Court of Andhra Pradesh in the case of CIT v. Kovur Textiles and Co. [1982] 136 ITR 61. Considering all these propositions in the light of the facts and circumstances of the case on hand, we are of the considered view that the loss incurred by the assessee herein in the chit transaction is to be treated as business loss only, and hence we uphold the view of the Commissioner of Income-tax (Appeals) taken in the impugned order.

Thus, we find the issue raised by the Revenue in this appeal is devoid of merits and deserves to be dismissed.