

Goel Die Cast Ltd. Vs The Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 10, 2010

Acts Referred: Income Tax Act, 1961 "Section 154, 260A, 68

Citation: (2011) 335 ITR 141 : (2011) 333 ITR 141 : (2012) 209 TAXMAN 115

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the Assessee u/s 260A of the Income Tax Act, 1961 (for short, "the Act")

against order dated 29.1.2010 of the Income Tax Appellate Tribunal, New Delhi in I.T.A. No. 1247/DEL/2009 proposing to raise following

substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal acted illegally and perversely in reversing the Order passed by the

CIT(A) u/s 154 of the Income Tax Act, 1961 which was in conformity with the judgment rendered by the Hon'ble Supreme Court in the case of

CIT v. Lovely Exports P. Ltd. (2008) 216 CTR 195 as well as the Tribunal's own Order in the case of the Appellant for the assessment year

2003-04?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in reversing the Order of the CIT(A) passed u/s 154

of the Income Tax Act, 1961 thereby sustaining the addition on account of the amount of share capital being income from undisclosed sources of

the Appellant contrary to the stand of the Appellant which stand having been accepted by the Department/Revenue for the assessment year 2003-

04 in view of the Order of the Tribunal for the said assessment year having attained finality?

(iii) Whether the impugned Order passed by the Tribunal reversing the Order of CIT(A) is not sustainable in view of the applicability of principle of

judicial consistency and judicial discipline?

(iv) Whether the impugned Order passed by the Tribunal reversing the Order of CIT(A) thereby having the effect of sustaining the addition u/s 68

of the Income Tax Act, 1961 is based on irrelevant findings, illegal, perverse and a result of wholly erroneous approach not permitted by law?

2. During the course of assessment, the Assessing Officer made addition to the declared income of the Assessee, holding that the amount

representing share capital was undisclosed income of the Assessee. The said finding was affirmed by the CIT(A), against which, the Assessee filed

appeal before the Tribunal. During the pendency of the appeal, the Assessee filed an application for rectification before the CIT(A) on I.T.A. No.

223 of 2010 the basis of observations in the judgment of the Hon'ble Supreme Court CIT v. Lovely Exports (P) Ltd. [2008] 216 CTR 195. The

said application was allowed by the CIT(A), but the Tribunal accepted the plea of the revenue that there was no case for rectification. The finding

recorded by the Tribunal is as under:

We also found that in the original appellate order of the CIT(A) has confirmed the addition not only on the basis of creditworthiness but also on the

basis of identity as well as genuineness of the transaction, however, in the order passed u/s 154, the CIT(A) has just observed that in view of the

decision in the case of Lovely Exports (supra), the addition and enhancement made in the hands of the Assessee on account of lack of

creditworthiness of share applicants, cannot be made. Whereas in the original appellate order addition was confirmed not only on the basis of

creditworthiness but also on the basis of identity and genuineness of the transactions of the share applicants. There was no change in the facts

insofar as identity and genuineness of the transaction which was held to be not proved by the CIT(A) during the course of original appellate

proceedings. In the order u/s 154, the CIT(A) has not spoken about the identity of share applicants and the genuineness of the transaction. Since the

identity itself has not been established, there is no reason to apply the proposition of law laid down in the case of Lovely Exports (supra). u/s 154,

only mistake apparent on record can be rectified and the considered decision taken on facts cannot be reversed unless wrong recording of facts

are found subsequently. Change in the conclusion amounts to I.T.A. No. 223 of 2010 review of the order passed earlier and which is not

empowered u/s 154 of the Act.

3. We have heard learned Counsel for the parties.

4. In view of the finding of fact recorded by the Tribunal, reproduced above, which is not shown to be perverse, no substantial question of law

arises and this appeal cannot be entertained against the impugned order and is disposed of accordingly.

5. It is, however, made clear that this order will not affect the remedy of the Assessee in appeal against the order of the CIT (A) dated

28.11.2007, which was earlier dismissed only on the ground that during pendency thereof, the Assessee had succeeded in the rectification

proceedings. While dismissing the appeal, the Tribunal itself had observed in its order dated 16.2.2009 that if appeal of the revenue succeeds

against order of rectification, the Assessee would be at liberty to revive its appeal. Learned Counsel for the Assessee points out that in pursuance

of the said liberty, the Assessee has already filed Misc. Application No. 122 of 2010. If that is so, the Tribunal may consider the said application in

accordance with the liberty already granted.