(2012) 208 TAXMAN 252

Delhi High Court

Case No: ITA 469 of 2011

CIT		APPELLANT
	Vs	
Millenium Automations and Systems Ltd.		RESPONDENT

Date of Decision: Feb. 21, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 133(6), 260A, 41(1)

Citation: (2012) 208 TAXMAN 252

Hon'ble Judges: Sanjiv Khanna, J; R.V. Easwar, J

Bench: Division Bench

Advocate: N.P. Sahni, for the Appellant; A.S. Anand, for the Respondent

Judgement

Sanjiv Khanna, J.

The present appeal by the Revenue u/s 260A of the Income Tax Act, 1961 ("Act", for short) impugns the order dated 16.2.2010 passed by the Income Tax Appellate Tribunal ("Tribunal", for short). By the impugned order, the Tribunal has rejected the appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs. 1,63,37,365/- made by the Assessing Officer u/s 41(1) of the Act.

2. Ld. counsel for the Revenue has filed before us copies of the order sheets dated 23.10.2008 and 10.12.2008. It is submitted that the Assessing Officer may have wrongly invoked the provisions of Section 41(1) of the Act as the present case is of bogus purchases. Ld. counsel for the Revenue has referred to the address of Makkar Traders, namely, 2712, 2nd Floor, Gali Pattewali, Naya Bazar, Delhi-6 and submits that computer traders did not operate from the said area. He further submits that the authorized representative/chartered accountant of the respondent-assessee and Makkar Traders were the same.

3. Ld. standing counsel for the Revenue is raising new facts and grounds for the first time which were not referred to or stated in the assessment order. These facts/grounds, it is apparent, were not relied upon before the Tribunal. The assessee had no occasion to answer or contest the said contentions. The assessment order dated 29.12.2008 records as under:

On 10.12.2008, the authorized representative Shri B. L. Aggarwal attended and he has been intimated about the no response from M/s. Makkar Traders and above the return of the letter. The authorized representative was asked to file the response on 15.12.2008 and why the credit balance shown against Makkar Traders should not be taxed as income under "Cessation of liability" u/s 41(1) of the Income Tax Act. The assessee failed to produce the party and vide letter dated 15.12.2008 stated that M/s. Makkar Traders have not received the letter issued u/s 133(6) since it was sent to home address which was deliberately not received by family members. The authorized representative furnished another address of M/s. Makkar Traders from where the business in conducted. The authorized representative was asked to certify and confirmed the above credit balance shown by the assessee. However no confirmation was filed by the assessee even after given many opportunities. The assessee company was asked to submit a copy of profit and loss account of M/s. Makkar Traders for the financial year in which it had done business for an amount of Rs. 1,63,37,365/-. This the assessee company failed to do and the Authorized Representative did not attend the office of undersigned to submit requisite details.

4. The CIT(Appeals) called for the assessment record and found that several findings recorded by the Assessing Officer were factually incorrect. On 10.12.2008, the Assessing Officer had asked the respondent-assessee, as to why Rs. 1,63,37,365/- should not be taxed u/s 41(1) of the Act on account of cessation of liability payable to sundry creditors. The assessee on the same date was asked to furnish details with regard to the change in address and to furnish the proof of payment made to Makkar Traders in the following years and to explain the current status. On the examination of record, the CIT(Appeals) observed and found that the assessee had furnished copy of the income tax return of Makkar Traders for the assessment year 2006-07, with the copy of their income and expenditure account and balance sheet for the year ending 31.03.2006. The respondent-assessee had also furnished copy of the ledger account of Makkar Traders from 1st April, 2006 to 31st March, 2007. This ledger account has been produced before us also. Thus the latest address as well latest position of the account was furnished to the Assessing Officer. The relevant portion of the assessment order, quoted above, shows that the Assessing Officer did not refer to the said ledger account and did not make further enquiries. Ledger account shows that some payments in 2006 and 2007 were made to Makkar Traders by cheque/pay order. Other payments again by cheque were made to third parties on behalf of Makkar Traders. Thus, the findings recorded by the Assessing Officer were incorrect and wrong.

5. In view of the grounds/reasons given by the Assessing Officer and the factual matrix recorded by the CIT(Appeals) and the Tribunal, we do not find any reason to interfere. The appeal is dismissed. No costs.