Chief Justice's Court

Case:- INCOME TAX APPEAL No. - 86 of 2024

Appellant:- The Pr Commissioner of Income Tax and another
Respondent:- Sushil Kumar Sharma
Counsel for Appellant:- Gaurav Mahajan, Sr. Standing Counsel

Hon'ble Arun Bhansali, Chief Justice
Hon'ble Vikas Budhwar, J.

1. This appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') is directed against judgement and order dated 14.05.2024 passed by the Income Tax Appellate Tribunal (for short 'the Tribunal') whereby the appeal filed by the assessee has been allowed and appeal filed by the revenue has been dismissed against order dated 30.03.2023 passed by the National Faceless Appeal Centre, Delhi against the order of assessment passed under Section 143(3) of the Act.

2. The assessee, who was engaged in the business of providing security, housekeeping, manpower supply since 2009, during the financial year 2016-17, under an Agreement as Business Correspondent with First Rand Bank (for short 'the FRB'), a South African company, registered as foreign company in India under the Companies Act, carried out business of banking as the scheduled commercial bank after obtaining licence from the Reserve Bank of India. In terms of the Agreement executed between the FRB and the assessee, the arrangement *inter-alia* included collection of loan instalments from the micro borrowers who are thousands in number spread all over the region in Mumbai and its suburb, the assessee collected monthly instalments from the borrowers on behalf of the FRB in terms of the arrangement, whereafter the amount collected from the borrowers was deposited in assessee's bank account

maintained with ICICI, HDFC and Axis Bank. The money in turn was deposited by the assessee with the account of the FRB. The assessee was charging fees and monthly bills were raised. During the financial year, the assessee earned fees of Rs. 8.91 crores from the FRB which was subjected to service tax and TDS.

3. During the course of assessment proceedings, when the Assessing Officer (for short 'the AO') sought explanation for huge cash deposits made in the bank account, the assessee produced documents explaining the source of cash deposits made in the bank account. However, the AO proceeded to determine the total income of assessee at Rs. 89,78,73,732/- by taking *inter-alia* cash deposit as income in terms of provisions of Section 69A of the Act.

4. Feeling aggrieved, appeal was filed. The Commissioner of Income Tax (Appeals) [for short 'the CIT(A)'], by its order proceeded to delete the addition partially on account of cash deposits after appreciating *modus operandi* adopted by the assessee. The CIT (A) deleted the addition made qua cash deposits made during the period 01.04.2016 to 08.11.2016 and 01.01.2017 to 31.03.2017. However, for the period of demonetization i.e. 09.11.2016 to 31.12.2016 maintained the additions. Aggrieved by the order passed by the CIT(A), both the assessee and the department filed appeals.

5. The Tribunal, after hearing the parties and going through the Agreement between the FRB and the assessee, came to the conclusion that the plea raised by the department that the cash collected from the borrowers was supposed to be deposited in the account of the FRB as the assessee was supposed to open a bank account with the said Bank but without depositing the money in the account of the FRB, the assessee had deposited the cash in his bank account and thereafter transferred the money to the account of the FRB, was totally irrelevant consideration inasmuch as ultimately the money had reached the account of the FRB where there is absolutely no dispute with regard to the recovery of any money due from the assessee. The Tribunal was also of the opinion that the department

had no reason to assess income in the hands of the assessee only on account of assessee not depositing the amount in the account of the FRB when there is no dispute between the parties concerned. The Tribunal also was of the opinion that the amount deposited during the demonetization period i.e. 09.11.2016 to 30.12.2016 as excluded by the CIT(A) also was not justified as it was not the case of the revenue that the assessee was not in receipt of Specified Bank Notes from the customers of the FRB during the period 09.11.2016 to 30.12.2016 and consequently passed order as noticed hereinbefore.

6. Learned counsel for the appellant made submissions that the Tribunal was not justified in passing the order impugned, inasmuch as it is an admitted fact that huge cash was deposited in the bank account of the assessee, which was totally contrary to the arrangements with the FRB and, therefore, the provisions of Section 69A of the Act were attracted. Submissions have been made that as the violation of the Agreement took place, the explanation provided by the assessee, which was contrary to the said Agreement, could not be accepted and, therefore, on that count the order impugned passed by the Tribunal gives rise to a substantial question of law.

7. We have considered the submissions made by learned counsel for the appellant and have perused the material available on record.

8. The CIT(A) and the Tribunal have recorded the objection of the department that the account of the assessee was contrary to the Agreement wherein he was supposed to deposit the money in the account of the FRB instead he deposited the cash in his bank account and thereafter transferred the money to the account of FRB which brings the deposit within the mischief of Section 69A of the Act. The CIT(A) and the Tribunal were justified in coming to the conclusion that only on account of purported infraction of the Agreement between the FRB and the assessee, without there being any dispute regarding the amount collected by the assessee which, in turn, has been deposited with the FRB, the deposits in the bank account of assessee cannot be termed as unexplained cash deposits by the

assessee. Both the authorities have concurrently found that the amount indeed has been collected from the micro borrowers of the FRB and after deposit in the bank account has been transferred to the FRB. The said finding of fact recorded by the two authorities, cannot and does not give rise to any substantial question of law as projected.

9. So far as the fact regarding the period of demonetisation is concerned, the CIT(A) only on assumption, that the deposit was in infraction of the Agreement that the appellant was not authorised to collect money in Specified Bank Notes, rejected the appeal, the Tribunal came to the conclusion that merely because certain cash deposits in the Specified Bank Notes by the assessee during the demonetization period, the same did not make the deposit as tainted when the very same transactions were being made by the assessee in the past and have been accepted by the CIT(A). The Tribunal was also of the opinion that it was not the case of the revenue that assessee was not in receipt of Specified Bank Notes from the customers of the FRB during the period 09.11.2016 to 30.12.2016. The findings recorded by the Tribunal, are in consonance with the material available before it and by no stretch of imagination the deposits received by the respondent assessee from the micro borrowers of the FRB can be termed as unexplained cash deposits in his bank account. The findings recorded by the Tribunal do not give rise to any substantial question of law.

10. The appeal has no substance. The same is accordingly dismissed.

Order Date :- 27.11.2024
AHA/RK

(Vikas Budhwar, J) (Arun Bhansali, CJ)