
(2007) 01 RAJ CK 0017
In the Rajasthan High Court

Aravali Trading Co.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (2008) 220 CTR 622 : (2010) 187 TAXMAN 338

Hon'ble Judges : Rajesh Balia, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is filed against the order of the Tribunal, Jodhpur Bench, Jodhpur, dt. 8th Nov., 2002. The following substantial questions of law were framed while admitting the appeal:

1. Whether in the facts and circumstances of the case, once the assessee has established the identity of the creditors in whose names cash credit is found in the books of account namely, Smt. Ramkanwari Devi, Smt. Santosh Sharma, Shri Dinesh Sharma and Atul Kumar Patel and the said creditors have admitted having advanced the aforesaid sum to the appellant assessee and the said creditors have also been assessed to Income Tax, the Tribunal was justified in holding that the assessee has failed to discharge his onus u/s 68 of the IT Act, 1961?

2. Whether in the facts and circumstances of the case the rejection of explanation furnished by the appellant, explaining the cash credits of persons named in question No. 1, for the reasons are perverse by ignoring the objective material available to the assessee?

3. Whether in the facts and circumstances of the case the additions made by the AO, on account of the aforesaid cash credits while relying upon the statement of persons examined at the back of appellant and without giving him any opportunity to cross-examine them and sustained by the Tribunal, are justified in

law?

2. The substratum of the facts appear from the questions.

3. If we go into details which relates to additions made in the income returned by the assessee for asst. yr. 1993-94 in respect of cash credits found in the names of Smt. Ramkanwari Devi, Smt. Santosh Sharma, Sh. Dinesh Sharma and Sh. Atul Kumar Patel totalling Rs. 3,15,000, the assessee had filed affidavits from all the four creditors before the AO. In the affidavits the deponents have owned deposits made by them. All the depositors are assessed to tax. Thus, existence of depositors as real persons is not in dispute. Each one has owned to have deposited the respective sums found in the book of the assessee firm and each one is an assessee are not the facts in dispute. Sh. Dinesh Agarwal and Sh. Atul Paliwal were examined on being produced before the AO in which also they have admitted that they advanced amount as per the account stated in the books of the assessee. Smt. Ram Kanwari and Smt. Santosh Sharma could not be produced by the assessee but as per the findings of the AO he has made his own enquiries by referring to certain parts of the statement concerning the sources from where the respective creditors have acquired the money which they claimed to have deposited with the assessee respectively, and found that the creditors have not been able to explain the sources where from each of them had acquired the amount deposited with the assessee. On the failure of the depositor to explain sources of his/her investment with assessee, the explanation furnished by the assessee about the deposits received from all the four persons were rejected and in terms of Section 68 of IT Act of 1961 the amount stated to have been received from the aforesaid four persons were added as assessee's income from undisclosed sources. These additions were affirmed successively by the CIT(A) and the Tribunal.

4. It is pointed out by the assessee that even from the statements recorded by the two ladies in the absence of the assessee at his back (which) are taken into account, Smt. Ramkanwari has stated that main source of her income is annual sale of fodder of Rs. 2.5 lacs to 3 lacs and she has stated that her accounts are kept by her husband and he only knows about all her financial matters and that she is lending money for last four to five years and earning interest thereon. She admitted to have lent Rs. 60,000 to some Merta party also, details of which she could not divulge because her husband looks after her money matters. However, while alluding the statement of Smt. Ramkanwari, all these matters have not at all been noticed but only the statement out of context have been noticed where she has pleaded ignorance about the details.

5. The AO has clearly ignored that lady had repeatedly stated that her financial matters are looked after by her husband.

6. Similarly, in her statement Smt. Santosh Sharma has stated that she earns income from tuitions but from last 2 and 3 years she is not earning from tuitions. She is assessed to tax. She has lent sum of Rs. 1,20,000, she admitted to have

opened the bank account and admits that while money was deposited the assessee had accompanied from the bank and that money was earned by savings from tuitions and commissions. The said money earlier was given to other parties and was deposited in the bank account after taking back from those parties. She further stated that she also does stitching work. On the occasion of her own marriage, she received Rs. 5,000 to 6,000 thousand rupees and annually she gets about two thousand to three thousand as gifts from her parents' house. She further accepted that she had deposited Rs. 60,000 also with M/s Merta Oil Mills (P) Ltd. on which she did not get any interest. Her husband Sh. Dinesh Sharma, manages her affairs and he keeps all details.

7. However, likewise in the case of Ramkanwari, these facts were not noticed by the AO but only truncated portions about the statement of the lady pleading ignorance about details, have only been considered.

8. All the money have been received by the assessee through account payee cheques or account payee pay orders. In other words the existence of each of the depositors was proved beyond doubt. Each of the depositors accepted and owned to have deposited the money with the assessee. Money was received through bank. Thus, before assessee firm received money, it was already with the bank deposited by the depositors. Only basis on which the explanation of assessee has been rejected is that the depositors have not been able to explain the sources where from the money deposited with the assessee came to the depositors. This is apart from the fact that the statements referred to above have been made by the respective depositors is not in dispute.

9. Therefore, central issue arising from the three questions framed above, is whether it is incumbent upon the assessee before his explanation can be accepted, to prove the sources of income or to say source where from the depositor could have acquired the money or once the assessee establishes the existence of the real person who had deposited the money in question with the assessee and those persons owned to have deposited such money with the assessee, assessee's burden does not extend further to establish the source of the depositors from where they could have acquired the money.

10. The answer to us appears to be no more res integra. Neither the provisions of Section 68 of the IT Act nor on general principle, it can be said that once the existence of persons in whose name credits are found in the books of the assessee is proved and such persons own such credits with the assessee still the assessee is to further prove the source from which the creditors could have acquired money to be deposited with him.

11. The fact that the depositors' explanation about the sources where from they acquired the money is not acceptable to the AO, it cannot be presumed that the deposits made by such creditors is the money of the assessee himself. There is no warrant for such presumption. In such event if the creditors explanation is found to be not acceptable about such deposits, the investment owned by such

persons may be subjected to the proceedings for inclusion of such investment as their income from undisclosed sources or if they have been found Benami, the real owner can be brought to the tax net. But in order to fasten liability on the assessee by including such credits as his income from unexplained sources a nexus has to be established that the sources of creditors' deposit flow from the assessee. In the absence of any such link, additions of cash credits found in the books of account of the assessee cannot be considered to be unexplained income of the assessee, where existence of depositors of such credits is established and such deposits/advance/loan is owned by such existing person. On such proof the assessee's onus is discharged.

12. Somewhat like question arose in Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull, , before Supreme Court. In that case partner of the assessee firm, had obtained a fixed deposit receipt of Rs. 5,00,000 issued by the Central Bank, Jamnagar branch against the like sum tendered at Calcutta branch.. The said receipt along with letters of guarantee and letter of continuity about overdraft facility were obtained by the firm. After the partner's death the fixed deposit receipt of B was adjusted by the overdraft of the respondent firm. The receipt of fixed deposit of Rs. 5,00,000 was treated as undisclosed sources because the explanation furnished by B about the source where from he could have obtained a fixed deposit of Rs. 5,00,000 on the date of which the receipt was found to be false. Addition was made for Rs. 5,00,000 in the income of the firm.

13. The CIT(A) in appeal had deleted the amount from the assessment but the Tribunal restored the additions by holding that the explanation furnished by B about the sources where from he obtained receipt of Rs. 5,00,000 was false. On the reference being made to the High Court it found the conclusion reached by the Tribunal to be perverse and deleted the additions in the income of the firm.

14. In these circumstances the appeal was before the Supreme Court. The High Court found the explanation furnished by B to be false and to that extent findings of the Revenue was held to be justified but yet about the liability of the firm to be assessed to such amount on account of the falsity account of the creditors was not accepted. Supreme Court referred to the decision of the High Court and found no cogent reason to take a different view. The Court said:

the falsity of the above explanation of the Biswanath, in the opinion of the High Court, did not warrant the conclusion flaw or infirmity in the above reasoning of the High Court. The question which arose for determination in this case was not whether the amount of Rs. 5,00,000 belonged to Biswanath, but whether it belonged to the respondent-firm. The fact that Biswanath has not been able to give a satisfactory explanation regarding the source of Rs. 5,00,000 would not be decisive even of the matter as to whether Biswanath was or was not the owner of that amount. A person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the

source of money furnished by A, in whose name the money is lying in deposit, has been found to be false, it would be a remote and far-fetched conclusion to hold that the money belongs to B. There would be in such a case no direct nexus between the facts and the conclusion drawn therefrom.

We also see no cogent ground to take a different view from that of the High Court that the other circumstances, namely, the transfer of the amount of Rs. 5,00,000 from Calcutta to Jamnagar for fixed deposit in the name of Biswanath and the use soon thereafter of the said fixed deposit receipt as security for the overdraft facility to the respondent firm.

15. The aforesaid principle was applied by this Court in *Late Mangilal Agarwal through LRs Vs. Assistant Commissioner of Income Tax*, It was a case about the primary gold found in possession of A in which he explained that primary gold found in his possession was belonging to certain other persons who had deposited with him old ornaments for remaking them. The said ornaments were melted and primary gold was delivered to petitioner by respective goldsmiths for further processing. The AO relying upon Section 69A has made additions of value of such bullion in the income of assessee by rejecting his explanation by resorting to Section 69A which reads as under:

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery, or other valuable article, or the explanation offered by him is not, in the opinion of the AO, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

16. Section 69A in like terms, as u/s 68, permits the AO, where assessee's explanation about the bullion and other valuable articles found in possession of the assessee is not found satisfactory, to include its value in the income of assessee from undisclosed sources in the assessment year during the relevant previous year of which assessee was found in possession of such bullion or other valuables.

17. The assessee has produced the persons who had delivered ornaments to him, the goldsmiths who have melted such ornaments and delivered primary gold so obtained from ornaments to the assessee for further processing. The AO considered the value of such bullion to be assessee's investments from undisclosed sources and made additions of such value as income of the assessee from undisclosed source of the Income of the assessee. The scope or ambit of the assessee's liability and the burden u/s 69A to prove source of acquisition is identical as in the case of Section 68 which relates to the cash credits found in the books of the account of the assessee. Section 69 relates to the assets,

investment or bullion or other valuable found to be owned by the assessee.

18. The real question before the authority in Mangikd's case (supra) was whether the primary gold and the gold ornaments found in possession of the assessee on 14th Oct., 1987, were owned by the assessee. The assessee has explained the transactions through which the primary gold and the gold ornaments came in his possession when the search of the customs took place at his residence and the same were seized. In support of said explanation, he has produced said three persons, who had brought the ornaments to him and have furnished their affidavits admitting such fact. After finding that the explanation furnished by three persons and their affidavits admitting the ownership of gold found in possession of assessee (they) were asked about the sources of acquisition of said gold and the respective persons asserted them to be owners of gold found in possession of the assessee but the explanation furnished by each of them was not accepted as satisfactory by the AO. On such premise value of the primary gold found in possession of the assessee during the search of the customs was added in the income of the assessee as income from undisclosed sources.

19. This Court held by the parity of reasonings which prevailed in Daulat Ram Rawatmull's case (supra) that it can well be said that merely because the explanation furnished by Shri Bhopal Singh, Om Prakash Gupta and Shri Gauri Shanker Singhal, about the purpose for which the gold ornaments were delivered for making new ornaments and that the ornaments were belonging to their family was found to be not acceptable, could not have provided any nexus for drawing inference therefrom that the primary gold and gold ornaments belonged to the assessee.

20. This principle is fully applicable to the present case. The fact that the explanation furnished by the aforementioned four creditors about the sources where from they acquired the money was not acceptable by the Revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.

21. Accordingly the Tribunal, and the AO had seriously erred and misdirected themselves in law by not correctly appreciating the legal principle about necessity of establishing such nexus once the assessee has discharged his onus by proving the existence of the depositors and the depositors having accepted their deposits with the assessee. Once this onus is discharged the presumption raised u/s 68 stands rebutted and it becomes burden of Revenue to prove that source of such deposits is traceable to assessee before the same can be treated as undisclosed income of the assessee concerned.

22. In view of the aforesaid discussion, this appeal must succeed. Accordingly,

the appeal is allowed. The orders passed by the Tribunal, the CITtA) and the AO are set aside to the extent additions of Rs. 3,15,000 in respect of the aforesaid cash credits found in the books of the account of assessee were added in the income of the assessee. The additions made in the income of the assessee of the aforesaid account are directed to be deleted and demand notice to be accordingly modified.

23. There shall be no order as to costs.