

(2005) 12 DEL CK 0123

In the Delhi High Court

Case No : IT Appeal No. 22 of 2005 A.Y. 1994-95 20 December 2005

Bhartesh Jain

APPELLANT

Vs

Dy. Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Citation : (2006) 201 CTR 483

Hon'ble Judges : T.S. Thakur, J;B.N. Chaturvedi, J

Bench : Full Bench

Advocate : KR. Manjani, for the assessee R.D. Jolly, Ajay Jha and Deepak Shukla, for the Revenue, for the Appellant;

Final Decision : Dismissed

Judgement

1. For the assessment year 1994-95, the appellant- assessed claimed to have borrowed two loans, one for a sum of Rs. 4,00,000 from M/s Elite Stock Management (P) Ltd. and the other for a sum of Rs. 19,00,000 from M/s Sujata Securities (P) Ltd. The assessing officer, upon appreciation of the oral and documentary evidence assembled in the course of the assessment proceedings, came to the conclusion that the genuineness of both the loan transactions had not been established by the assessed. The assessing officer was of the view that the amounts allegedly borrowed by way of loans were actually assessed's own money which was pumped into his business in the garb of loans. The said amounts were, Therefore, added back to the taxable income of the assessed in terms of section 68 of the IT Act, 1961. Aggrieved by the said order, the appellant- assessed appealed to the CIT(A) who affirmed the view taken by the assessing officer and held that the genuineness of the two loan transactions had indeed not been proved satisfactorily. In a further appeal filed by the assessed before the Tribunal, the said view has been affirmed. The Tribunal has, while dealing with the loan transaction of a sum of Rs. 4,00,000 allegedly borrowed from M/s ESMPL, observed that the alleged creditor had itself denied having given any loan to the appellant. The loan transaction had thus not been proved

to be genuine according to the Tribunal. The Tribunal observed :

"We have heard both the sides and considered the materials on the file. We are of the view that on the facts and in the circumstances of the case and for the reasons given in the impugned appellate order, the learned CIT(A) was justified in confirming the addition of Rs. 4 lakhs on account of unexplained credit in the name of M/s ESMPL. The AO/learned CIT(A) found that no such amount was shown debit in the account of the assessed in the books of M/s ESMPL and M/s. SSPL. The assessed had introduced his own undisclosed money through colourable device of showing it as loan from the said parties. The statement of Shri Jaswinder Singh, manager accounts, was also contradictory. He had also categorically stated that no loan was given to the assessed. His statement about issue of cheque in favor of the assessed for and on behalf of M/s SSPL was also contradictory. The assessed had failed to satisfactorily and convincingly prove the genuineness of the loan. We, Therefore, uphold the order of the learned CIT(A)." (Emphasis, italicised in print, supplied)

2. Insofar as the second loan transaction with M/s SSPL was concerned, the Tribunal similarly held that the genuineness of the said transaction had also not been established and that the assessed's undisclosed money had in fact got routed through the bank account of M/s SSPL, the Tribunal in that regard observed :

"We have heard both the sides and considered the materials on the file., We are of the view that on the facts and in the circumstances of the case and for the reasons given in the impugned appellate order, the learned CIT(A) was justified in confirming the aforesaid addition. The transactions were not genuine and were managed through colourable device. The sources of the deposits in the aforesaid bank account of M/s SSPL were not satisfactorily explained and proved. Therefore, the amount shown as credit in the books of the assessed from M/s SSPL through cheques issued on the same bank account was rightly treated by the AO/CIT(A) as assessed's, undisclosed money routed through the said bank account of M/s SSPL. We, Therefore, uphold the order of the learned CIT(A). "

3. Mr. Manjani, counsel appearing for the appellant, argued that the findings recorded by the Tribunal in regard to both the loan transactions were perverse inasmuch as the same were unsupported by any evidence whatsoever. We regret our inability to accept that submission. As noticed earlier, the Income Tax authorities and the Tribunal have concurrently come to the conclusion that the loan transactions relied upon by the appellant to explain the credit entries in his account books had not been satisfactorily established and the burden that lay heavily upon him u/s 68 of the Act was not discharged. The authorities have, while arriving at the said conclusion, placed reliance upon the available material which comprised statements of Sh. Jaswinder Singh, manager accounts, of one of the alleged creditors and Shri Madhup Jain, director of the other. The authorities have, on a proper appreciation of the said evidence and the fact that the alleged loan transactions were not recorded in the books of account of the

creditors, concluded that the genuineness of the loan transactions had not been established. In the light of the said material which the authorities below have appreciated and relied upon in support of their conclusion, it is difficult to see how the finding regarding the genuineness of the loan transactions can be described as perverse. It is also not possible in the light of the said evidence to hold that the finding regarding the non-genuineness of the transactions was so irrational that no reasonable or prudent person could have arrived at the same.

4. In the totality of these circumstances, Therefore, and in view of the clear findings of fact recorded by the authorities that the alleged loan transactions had not been proved by the assessed and the burden that lay upon the assessed was not discharged in terms of section 68 of the Act, we see no reason to interfere especially when no substantial question of law arises for our consideration. The appeal accordingly fails and is hereby dismissed.