
(2010) 08 P&H CK 0511
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 86 of 2003

CIT

APPELLANT

Vs

Deepak Iron and Steel Rolling Mills

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2011) 336 ITR 307

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 Revenue u/s 260A of the income tax Act, 1961 (for short, "the Act") against the order dated November 28, 2002 passed by the income tax Appellate Tribunal, Chandigarh Bench "A", in I. T. A. No. 213/Chandi/97 for assessment year 1993-94, proposing to raise the following substantial question of law :

Whether on the facts and in the circumstances of the case, the Hon"ble income tax Appellate Tribunal was right in law in upholding the order of the learned Commissioner of income tax (Appeals) deleting the addition of Rs. 22,01,000 made by the Assessing Officer on account of unexplained NRI gifts allegedly received by the partners and brought into the books of account of the firm through capital accounts of partners ?

2. The assessee is a manufacturer having eight partners. During assessment, it was noticed that there were deposits in the capital accounts of the partners out of gifts received from NRIs. The said gifts were treated to be unexplained income of the assessee, rejecting the plea that the gifts were genuine and were received through banking transactions. On appeal, the Commissioner of income tax (Appeals) held that irrespective of the genuineness or otherwise of the gifts, the partners being separate assesseees, deposits in their capital account were liable to be treated as their income and not the income of the ffcn. Accordingly, addition to the income of the firm was deleted. This view was upheld by the Tribunal.

3. We have heard learned Counsel for the parties and perused the record.

4. The contention raised on behalf of the Revenue is that the amounts covered by the entries, though shown to be gifts, represented unexplained income of the assessee. The transaction could be gift if there was genuine love and affection, which was not established. Learned counsel for the Revenue referred to the finding recorded by the Commissioner of income tax (Appeals) noticing the proceedings before the Assessing Officer that the amounts were received by the assessee-firm from NRIs. The NRIs who purportedly made the gifts were not produced. The partners in whose account the amount was credited were also not produced except three. The donors were strangers and had no relationship with the said partners. The partners were also not familiar to the NRIs who allegedly made the gifts. There was corresponding deposit in the accounts of the NRIs even before the gifts were made. The said gifts were merely an arrangement and not genuine and the amount represented unaccounted income. This was a device to bring back undisclosed profit of the firm from the accounts. It was submitted that after recording this finding, the Commissioner of income tax (Appeals) was not justified in holding that the gifts were received by partners and then brought into accounts in the books of the firm and in such a situation, the amount represented income of the partners only.

5. On the other hand, learned counsel for the assessee submitted that the question before the court was not whether the gifts were genuine but the only question was whether the gifts represented unexplained income of the partners or of the firm and a finding has been rightly recorded that the amount represented unexplained income of the partners which was taxable in the hands of the partners only and not in the hands of the firm. Reliance has been placed on the following judgments :

(i Commissioner of Income Tax Vs. Burma Electro Corporation,

(ii) Commissioner of Income Tax Vs. Metachem Industries,

(iii) Deputy Commissioner of Income Tax Vs. Rohini Builders,

(iv) Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull, and

(v) CIT v. Diamond Products Limited (2009) 21 DTR 9 (Del).

6. We have thoughtfully considered the arguments of the learned counsel for the parties.

7. The assessee had claimed that the partners of the firm had received gifts" from NRIs as per details given below :

Rs.

1.

Sh. Sewa Singh

2,44,000

2.

Sh. Parkash Singh

5,50,000

3.

Sh. Ajit Singh

2,50,000

4.

Sh. Rarabjit Singh

1,00,000

5.

Sh. Gajinder Singh

2,57,000

6.

Sh. Sarabjit Singh

5,70,000

7.

Sh. Jaswinder Singh

3,00,000

8. The Assessing Officer, after appreciating the evidence, had concluded that the gifts from the NRIs were not genuine. The relevant observations read thus :

In the present case, the assessee has received the gifts from strangers who are not at all related to the assessee in any manner. The statements of the three donees clearly show that the donors are complete strangers to them. Thus there is no reason why the donors should gift a sum of Rs. 22,01,000 to the donees. As regards the means of the donors the assessee has failed to produce the donors and has failed to discharge his onus. For the reasons that the donors have not been examined it cannot be concluded whether the donors are men of means. However, from the statements of the three partners it appears that the donors are persons carrying out petty jobs and have gone to foreign countries mainly for earning their livelihood. Thus, they may not be men of means even. In the present case also there was no occasion for making such huge gifts. Thus, all the conditions in the cited case are satisfied in the present case. Though the assessee has received all the gifts through bank drafts but this is only a self-

serving evidence in possession of the assessee. In the cited case also the assessee had received the gifts through bank drafts which were rejected by the Hon'ble High Court. In the light of these facts and the decision of the Hon'ble Punjab and Haryana High Court referred to above, it is held that the alleged gifts are not genuine. It is held that the alleged gifts amounting to Rs. 22,01,000 received by the assessee are nothing but the income of the assessee from undisclosed sources. It may be mentioned here that this year the assessee has declared a gross profit rate of 2.90 per cent, as against 4.39 per cent, last year. The gross profit declared is Rs. 41.26 lakhs as against Rs. 57.17 lakhs declared last year. If the gross profit rate of 4.39 per cent, is adopted, the gross profit of the assessee this year should have been Rs. 62.57 lakhs as against the declared gross profit of Rs. 41.26 lakhs. Thus the assessee has declared less gross profit by Rs. 21.31 lakhs. The reasons advanced by the assessee for lower gross profit rate are not convincing. The assessee's partners have received alleged gifts amounting to Rs. 22,01,000 which amount is almost equal to the lesser gross profit declared by the assessee. The assessee therefore has understated his gross profit rate with a view to show the receipt of alleged gifts on which no tax was payable by the assessee. The trading results of the assessee are therefore rejected. Addition of Rs. 22,01,000 is therefore made to the returned income of the assessee as income from undisclosed sources.

9. The Commissioner of income tax (Appeals) and the Tribunal, however, held that even if the gifts to the partners were not genuine, no addition in the hands of the firm could be made. We are of the opinion that the orders passed by the Commissioner of income tax (Appeals) and the Tribunal cannot be sustained.

10. The question whether the addition on account of unexplained credit entry in the books of account of the assessee could be made to the income of the firm or the partner, depends on the facts and circumstances of each case. No doubt, a partner under the Act is a separate entity and where there is separate income, the same may not be liable to be taxed in the hands of the firm merely because the credit entry is made in the accounts of the firm. There is no rigid rule that whenever a credit entry is in the capital account of a partner, addition could not be made in the hands of the firm even when the credit entry is, on the face of it, bogus or a device to evade tax. A single factor may not be sufficient to record whether the assessee had employed a colourable device or whether the partner had unexplained income which was credited in the books of account of the assessee. It cannot always be held that merely because the entry in the capital account of the partner was identified as a source of undisclosed income, the firm was immune from being taxed, even where a colourable device was used by the firm by introducing its undisclosed income by way of deposit by a partner.

11. Now, advertent to the facts of the present case, a finding had been recorded by the Assessing Officer that in the previous year, the gross profit declared by the assessee was 4.39 per cent., i.e., Rs. 57.17 lakhs whereas it was 2.9 per cent. i.e. Rs. 41.26 lakhs in the current year. Applying the previous years gross

profit rate of 4.39 per cent, to the current year, it was noticed that the gross profit of the assessee would have been Rs. 62.57 lakhs as against the declared gross profit of Rs. 41.26 lakhs giving a difference of Rs. 21.31 lakhs. No plausible explanation had been furnished by the assessee for lower gross profit in the current year and the amount of alleged gifts amounting to Rs. 22,01,000 was almost equal to the lower gross profit declared. The trading results of the assessee were, thus, rejected and the addition of Rs. 22,01,000 was treated as undisclosed income of the assessee. The said finding has not been set aside by the Commissioner of income tax (Appeals) or the Tribunal. In view thereof, we are of the opinion that the alleged gifts received from NRIs by the partners were the undisclosed income of the assessee-firm in the facts and circumstances of the present case. The finding to the contrary by the Commissioner of income tax (Appeals) and the Tribunal is legally unsustainable and is accordingly set aside.

12. Suffice it to notice, the judgments relied upon by learned counsel for the assessee are not helpful to it and do not advance its case as those were cases which were decided on the individual fact situation and are, thus, distinguishable. Consequently, the substantial question of law is answered in favor of the Revenue and the orders of the Commissioner of income tax (Appeals) and the Tribunal are hereby set aside.

13. The appeal is disposed of.