
(2014) 02 JH CK 0056
In the Jharkhand High Court
Case No : Tax Appeal No. 45 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Anand Kumar Modi

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 131, 145(2), 65, 68

Citation : (2014) 2 JLJR 325

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Deepak Roshan, Advocate for the Appellant; B. Poddar, Sr. Advocate, Darshana Poddar, Mahendra Choudhary, Piyush Poddar and Amrita Sinha, Advocate for the Respondent

Judgement

1. Being aggrieved by the order passed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi in I.T.A. No. 205/Pat/2000 dated 14.6.2006, the Revenue has preferred this appeal raising the following questions of law:-

(i) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that there was no justification for rejection of accounts in spite of the fact that the A.O. had clearly noted that sales were not verifiable from the accounts and the Bombay High Court had held in the cases of Bombay Cycle Stores Co. Ltd. Vs. Commissioner of Income Tax, Madhya Pradesh and Bhandara, Nagpur, & A. Moosa and Sons, Bombay Vs. Commissioner of Income Tax, Bombay City, that rejection of account books was valid under these circumstances?

(ii) Whether on the facts and in the circumstances of the case the ITAT was justified in holding that addition u/s. 68 was not correct particularly in respect of the cash creditors viz. Shailendra Singh, Radheshyam Kunwar, Ram Babu Singh & Ram Singh?

2. The assessee is a coal dealer. In course of the assessment proceedings for the

assessment year 1996-97, the Assessing Officer found that there were some defects in the books of accounts of the assessee and they were not properly tick-marked and the Assessing Officer, therefore, doubted the correctness of the books of accounts of the assessee and rejecting the same u/s 145(2) of the I.T. Act, has raised the sale amount by 20% and the gross profit has been taken at 10% as against 5.92%. Such action of the Assessing Officer has resulted in an addition of Rs. 7,21,717/-.

3. In the appeal preferred by the assessee, C.I.T.(Appeals) deleted the addition of Rs. 7,21,717/- made u/s 145(2) observing that the addition has been made by the Assessing Officer entirely on mere suspicion and since the assessee is maintaining the accounts at regular basis and there is no deviation from any known system of accounting during the year under consideration as well as in the earlier years, the addition made by the Assessing Officer was not justified and accordingly C.I.T.(Appeals) deleted the addition.

4. The Assessing Officer, during the course of assessment proceedings, observed that the assessee has taken loan from certain persons and after summoning such creditors u/s 131 of I.T. Act, the Assessing Officer arrived at a conclusion that these loan creditors shown by the assessee were not genuine and accordingly made an addition of Rs. 9,83,935/- as unexplained credit u/s 68 of the I.T. Act.

5. In so far as Rs. 9,83,935/- made as unexplained credit u/s 68 of the I.T. Act, the C.I.T.(Appeals) observed that since most of the creditors responded to the notices issued by the Assessing Officer u/s 131 and the income tax particulars of the persons concerned were also filed before the Assessing Officer, the Assessing Officer was not justified in doubting such loan creditors only on the basis of the inability to earn income and thereafter lending the same to the assessee and the C.I.T.(Appeals) deleted the addition of Rs. 9,83,935/-.

6. Appeal preferred by the Revenue before the I.T.A.T., the Tribunal dismissed the appeal upholding the order of C.I.T.(Appeals) and rejecting both the grounds taken by the Revenue.

7. Learned counsel appearing for the Revenue, Mr. Deepak Roshan, submitted that inspite of the fact that Assessing Officer had clearly noted that sales were not verifiable from the accounts and inspite of the fact that the Assessing Officer had pointed out the serious defects in the books of accounts, the C.I.T.(Appeals) and I.T.A.T. were not justified in deleting the addition made by the Assessing Officer. The learned counsel further submitted that even the Assessing Officer in paragraph (15) of the assessment order had clearly summarized the serious defects and held that the sales are unverifiable because of serious defects noticed and while so, C.I.T.(Appeals) was not right in making observation that the addition has been made by the Assessing Officer entirely on mere suspicion and the Tribunal has not considered this aspect in proper prospective.

8. We have heard Mr. B. Poddar, learned senior counsel appearing for the respondent-assessee and Mr. Deepak Roshan learned counsel for the Revenue.

9. Learned senior counsel has drawn our attention to the appellate order passed by C.I.T.(Appeals) and submitted that the C.I.T.(Appeals) recorded a factual finding that the appellant is maintaining books of account, which have been duly audited by a competent auditor and such factual finding has been confirmed by the I.T.A.T. and there is no substantial question of law arises in respect of deletion of addition made u/s 145(2) of the Income Tax Act.

10. In paragraph 15 of the assessment order, the Assessing Officer has summarized the serious defects like, which are as under:

(i). Cash book not maintained on day-to-day basis;

(ii). The cash book not checked thoroughly by the tax auditors because of the very fact that no normal "Tick Mark" was found on the entries made in the cash book;

(iii). No concrete explanation given with respect to the account of South Eastern Coal-Fields Ltd as appearing in page 132 wherein the stock of coal amounting of Rs. 12,36,189/- was directly transferred to the Trading A/c. did not show this credit entry. Instead the purchase a/c. was credited. Which of the two entries is correct is not known. It can be said that by crediting purchase a/c. the assessee has manipulated the effect in profit and that too after the year close;

(iv). No certificate given for the purpose of confirming the Opening Stock, as well as, Closing Stock to substantiate through independent evidence regarding the Closing stock and the Opening Stock;

(v). The sales remaining unverifiable because of the fact that it does not take into account the demand and supply of coal on day-to-day basis and also does not take into account the escalation in price effected by Coal India Ltd. December, 1995 onwards;

(vi). The method adopted by the assessee at Cost +30/- for determining the Selling Price is also not test to, reasons because of the fact that coal is an item which has got a very high demand in the market and, therefore, the selling price cannot be uniform for each and every day through out the year.

11. After summarising the above defects, the Assessing Officer proceeded to observe that the assessee wanted to show for manipulating the profit and on this finding the Assessing Officer made an addition of Rs. 7,21,717/- u/s 145(2) of the I.T. Act.

12. The C.I.T.(Appeals), in detail, has considered the various defects pointed out by the Assessing Officer in the books of accounts. The C.I.T.(Appeals) in paragraph (18) while deleting addition of Rs. 7,21,717, has recorded the following findings:

I also find that the appellant is maintaining books of account which have been duly audited by a competent auditor. Such books of account have been impounded by the Assessing Officer himself. No suppression of purchase has

been found out. No suppression of sales have been found out. All the quantitative details are available which has not been assailed by the Assessing Officer as bogus. It is because of confusion in regard to advance coal companies vis-a-vis closing stock that cast a pall of doubt and suspicion over the mind of the Assessing Officer. The accounts are regularly maintained and there is no deviation from any known system of mercantile system of accounting or even from earlier year. In view of this matter I hold that the addition of Rs. 7,21,717/- is totally unfounded and uncalled for. I, therefore, delete the addition.

13. After referring to the above, the I.T.A.T. has considered the above factual findings recorded by the C.I.T.(Appeals) and observed that C.I.T.(Appeals) has recorded factual findings that since assessee is maintaining the accounts at regular basis and there is no deviation from any known system of accounting during the year under consideration as well as in the earlier years, the addition made by the Assessing Officer was not justified and on this finding, the I.T.A.T. confirmed the order of C.I.T.(Appeals) deleting the addition of Rs. 7,21,717/- made u/s 145(2) of the Act.

14. We are of the view that the C.I.T.(Appeals) has observed that all the quantitative details are available in the books of Accounts and that the accounts are regularly maintained and on those factual findings deleted the addition made by Assessing Officer, which was confirmed by the I.T.A.T. and we are of the view that no substantial question of law arises in respect of deletion of addition of Rs. 7,21,717/- made u/s 145(2).

15. The Assessing Officer has made an addition of Rs. 9,83,935/- as an unexplained credit u/s 68 of the Income Tax Act. During the course of assessment proceedings, the Assessing Officer, observed that the assessee has taken loans from certain persons and after summoning such creditors u/s 131, the Assessing Officer has arrived at a conclusion that these loan creditors shown by the assessee were not genuine and has accordingly made the addition.

16. In so far as the addition of Rs. 9,83,935/- made as an unexplained credit u/s 68 of the Act, the C.I.T.(Appeals) considered the matter in respect of each of those creditors. In its detailed order, the C.I.T.(Appeals) has observed that the Assessing Officer has simply relied upon human probability and discarded the documentary evidence in the shape of Income Tax assessment particulars, copy of accounts or bank accounts. The C.I.T.(Appeals) at paragraph 29 of the order has discussed the same and recorded the factual findings, which read as under:

I have considered the facts and circumstances of the case and before I proceed further, a few case laws should be noted first so that ratio can be applied on the facts of the case. I must simply relied on human probability and discarded evidences in the shape of I.T. assessment particulars, copy of accounts, or bank accounts. There is no gain saying that the onus is squarely lies on the appellant to prove the identity, creditworthiness and genuineness of the cash credits. In the case of Addl. Commissioner of Income Tax Vs. Bahri Bros. P. Ltd., , the

Hon"ble Patna High Court has held "if the loans are given by an account paying cheque, it amounts to identification of the parties and discharge of burden by the borrower." Here, I find that the major creditors namely, S/sri Shailendra Kumar Singh, Radheshayam Kunwar and Ram Babu Singh were summoned u/s 131 of the I.T. Act and in respect of other creditors who are mainly ladies, the assessment particulars as also bank accounts were laid before the Assessing Officer for his determination. The Assessing Officer has merely disbelieved the version of the cash creditors and has come to the conclusion that they have no creditworthiness or means to advance loans to the appellant. It has been held in the case of (1997) 63 ITD 63 by the third member Sri T.V. Rajgopala Rao, President of the Hon"ble Tribunal that "mere falsity of an explanation or not believing an explanation cannot lead to a conclusion that the borrowed amount is the income of the assessee (borrower) from some undisclosed sources."

17. As pointed out by the C.I.T.(Appeals), the cash creditors including the ladies creditors appeared before the Assessing Officer and their income particulars were filed before the Assessing Officer. The Assessing Officer disbelieved all those documents and statement of those creditors for one reason or the other. The C.I.T.(Appeals) rightly held that the Assessing Officer was not justified in making addition of Rs. 9,83,935/- as an unexplained credit u/s 65 of the I.T. Act.

18. Having regard to the definite findings of fact recorded by C.I.T.(Appeals), the I.T.A.T. was right in confirming the order of deleting the addition of Rs. 9,83,935/- made u/s 68 of the I.T. Act. So far as deletion of addition of Rs. 9,83,935/- made u/s 68 of the I.T. Act is concerned, we do not find any substantial question of law involved.

19. Learned Senior counsel for the respondent-assessee relied upon a case rendered in the case of Commissioner of Income Tax Vs. Laul Transport Corporation, and submitted that in view of the pure findings of fact recorded by the Tribunal with regard to identity, creditworthiness, capacity of creditors to advance money/impugned order has to be upheld.

20. Considering the concurrent findings recorded by C.I.T.(Appeals) and I.T.A.T., we do not find any substantial question of law arises for consideration, therefore, the Tax Appeal, preferred by the Revenue is dismissed.