
(1981) 09 KL CK 0016

In the High Court Of Kerala

Case No : Income-tax Reference No's. 46 and 47 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Ashok Textiles (P.) Ltd.

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1983) 35 CTR 387 : (1983) 141 ITR 785

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; K. Sukumaran, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; P. Balachandran, P.K. Kurien and K.A. Nayar, for the Respondent

Judgement

Subramonian Poti, Actg. C.J.

1. The following four questions have been referred to this court by the Income Tax Appellate Tribunal, Cochin Bench, and these questions concern two assessment years 1959-60 and 1960-61 :

"1. Whether, on the facts and in the circumstances of the case, and particularly in view of the admission made by the assessee-company in its declaration that the stock kept in the godown of Vijayakumar Cotton Press, Coimbatore, and pledged to the bank by the assessee as security for the loan of Rs. 5,99,865, is the absolute property of the assessee, the Income Tax Appellate Tribunal was right in law in casting the burden of proving the ownership of undisclosed stock on the Income Tax Officer and not on the assessee ?

2. Whether, on the facts and in the circumstances of the case, the finding of the Income Tax Appellate Tribunal that the ownership of the undisclosed stock lay with Vijayakumar Cotton Press and not with the assessee-company is based on mere conjectures or surmises, and is unreasonable, arbitrary and perverse ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal had any material before it to come to the finding that the

declaration made by the assessee-company to the bank was only a mere formality and that no weight can be attached to the document given by the assessee-company while pledging the stock and taking the loan of Rs. 5,99,865 for its business ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in deleting the addition of Rs. 5,37,810 assessed as income of the assessee from undisclosed sources for the assessment year 1959-60, and Rs. 54,375 and Rs. 68,950 assessed as income of the assessee for the assessment year 1960-61 ?"

2. The assessee is a private limited company engaged in the manufacture and sale of yarn at Alwaye in the Kerala State. In the accounting years ending on December 31, 1958, and December 31, 1959, as well as the years prior to them one Mr. G. Krishnan of Coimbatore, his wife and relatives had absolute control over the affairs of the company by virtue of the number of shares and the position they held. Sri Krishnan was managing a business under the style of Vijayakumar Cotton Press at Coimbatore for and on behalf of his minor son. The original assessment for the years 1959-60 and 1960-61 were completed. The relevant accounting years were those; ending on December 31, 1958, and December 31, 1959, respectively. For these years losses of Rs. 8,67,317 and Rs. 12,62,626 were determined. Later, the ITO reopened the assessments for both the years u/s 147(a) of the I.T. Act, 1961, on information that secret profits had been introduced by the assessee into the business. It was found that there were borrowings from the Indian Overseas Bank Ltd., Coimbatore, on the hypothecation of stock. On obtaining details of the stock as pledged and comparing such details with the stock account of the company the ITO noticed that 1,379 bales of Cambodia cotton outside the books of the assessee had been pledged by the assessee with the Indian Overseas Bank Ltd., Coimbatore branch, during the period, from November 25, 1958, to December 27, 1958, and this remained unsold at the end of the accounting year ending on December 31, 1958. Similarly he noticed that a quantity of 125 bales of Cambodia cotton have been pledged by the assessee to the said bank during the accounting year ending on December 31, 1959. This too was not reflected in the stock account of the assessee and was evidently outside such stock account. The assessee had declared to the bank that the aforesaid quantities of cotton bales belonged to him. But since these were outside the accounts of the assessee the ITO called upon the assessee by letter dated March 15, 1967, to explain the position. In that letter it was mentioned by the Department that the representatives who had gone through the bank's statement and who also took time till March 13, 1967, to verify the position could not give any satisfactory explanation except a vague description that this cotton might be the property of Vijayakumar Cotton Press. The assessee sent his explanation which is annex. B to the reference. There the assessee did not offer any proper explanation but only stated that " it was not unlikely that as and when the limited company required finance, the stocks of Vijayakumar Cotton Press to be sold to Ashok Textiles Ltd. were offered as

security and these have been subsequently invoiced to the company". The ITO estimated the value of 1,379 bales of cotton and included it in the taxable income for the assessment year 1959-60. Similarly for the assessment year 1960-61, he included the value of 125 bales of cotton. Besides, he estimated the profit on the sales of the quantity of 1,379 bales adopting a uniform rate of Rs. 100 per candy and included that also in the income. This resulted in the taxable income of the assessee being determined as Rs. 1,10,284 for the assessment year 1959-60 and Rs. 98,999 for the assessment year 1960-61.

3. The assessee took up the matter in appeal to the AAC. He did not accept the case of the assessee. The AAC found that the assessee had failed to establish that the quantity of Cambodia cotton pledged with the Indian Overseas Bank Ltd. and outside the books of account were not shown to belong to Vijayakumar Cotton Press or that the same was purchased in later years. The additions were confirmed. Thereupon the assessee filed appeals to the Tribunal. The Tribunal allowed the appeals finding that the fact that this quantity of cotton is not seen accounted for in the accounts of Vijayakumar Cotton Press is not material against the assessee because it may as well be that it was the concealed stock of Vijayakumar Cotton Press. It found that the non-examination of any one concerned with Vijayakumar Cotton Press was a default. The fact that the assessee sometimes used to stock his goods in the godown of Vijayakumar Cotton Press will not by itself give any indication that the goods seen pledged with the bank are also the goods of Vijayakumar Cotton Press. All the same the Tribunal was of the view that the declarations to the bank and the advance of amounts to the assessee on the strength of the declaration which was the principal material for the ITO to hold against the assessee were of no consequence in this case. It was noticed that the two concerns were at the material time under the control of the same person and, therefore, a situation of obtaining loan for one concern by declaring that the goods of the other concern was that of the borrower cannot be ruled out. It further found that huge amounts had been advanced against the security of the goods, that even the bank had advanced loans equal to 100% of the value and that perhaps showed the eagerness of the bank to satisfy their client. The Tribunal also found that the fact that the assessee failed to prove that in subsequent years it purchased those goods from Vijayakumar Cotton Press also is of no consequence because what the Tribunal had to find was only whether the goods belonged to the assessee in the particular accounting year. Further, it was noticed that the pledged goods were movables and in the custody of Vijayakumar Cotton Press so much so that " unless the contrary is proved by the person who alleges it, it is to be presumed that it is owned by the person in whose custody it is found." On this approach the Tribunal allowed the appeal by the assessee.

4. The declaration by the assessee to the Indian Overseas Bank has been extracted in the order of the Income Tax Appellate Tribunal. It is categorically mentioned in the declaration, " we also certify that all stocks in the godown are our own bona fide property." What is more interesting is that the assessee has

no case that the assessee did not pledge the goods. The pledge having been categorically admitted and the declaration being that such goods are that of the assessee-company the burden of proof to show that it is otherwise is upon the assessee. It is only because the goods were declared to be that of the assessee that the bank advanced the loan on the strength of such declaration. The interesting fact is that even in the notice issued, copy of which is annex. A, there is a categorical mention that the assessee's representative was not able to explain how the assessee happened to pledge outside the stock in the books of account. Annexure B is the explanation submitted by the assessee. That makes very interesting reading. We will extract the relevant portion of annex, B reply dated March 25, 1967 :

"It was not unlikely that as and when the limited company required finances, the stocks of Vijayakumar Cotton Press to be sold to Ashok Textiles Ltd. were offered as security and these have been subsequently invoiced to the company. We have filed a statement of closing stock with you from which it will be seen that the stocks lying in Coimbatore has been shown at 456 bales together with lot numbers. Subsequently, Vijayakumar Cotton Press have supplied following bales of Cambodia cotton as per invoices drawn on 31-8-1959 :

Under invoice number Bales

30

370

26

33

23

281

24

180

Total

864

According to the stock statement, 456 bales were already lying at Coimbatore. These bales are moved as and when required to Alwaye from Coimbatore, by lorries and railways, but Vijayakumar Cotton Press has been drawing invoices at their convenience. "

5. Even the reference to the 864 bales of cotton said to have been sold on August 31, 1959, is very vague and there is no case that those are identical with the goods which were pledged. If that had been said, then whether any goods were sold on March 31, 1959, and if so, whether they were subsequently

transported and for that reason they could be said to be independent of the goods pledged with the bank could easily have been verified by reference to accounts. But there is no such case at all. In fact there was not even a categorical statement in answer. This is the state of the pleadings in answer to the notice, annex. A. As to proof there is none. No attempt was made by the assessee to substantiate the explanation, in case he had any. In view of the categorical admission involved in the declaration and the pledging of the goods and in the absence of any evidence to show that the pledge was of goods belonging to someone else the ITO was right in assuming, as he did, that the goods belonged to the assessee.

6. None of the circumstances mentioned by the Income Tax Appellate Tribunal in its order appear to be relevant or pertinent to the question that was before it. In para. 8 of its order it mentions the fact that the cotton is not seen accounted for in the accounts of Vijayakumar Cotton Press. This is not material at all. The assessee himself had no case that the cotton belonged to Vijayakumar Cotton Press. Even if he had such a case it cannot be said that if stock of such cotton is not accounted for in the accounts of Vijayakumar Cotton Press it helps the assessee's case. In the face of the explanation to which we have already adverted, there is no question of examining any person concerned with Vijayakumar Cotton Press. If at all, there was to be an examination, it was for the assessee to ask for opportunity for such examination or opportunity to adduce evidence. Evidently there is no complaint by the assessee that no opportunity was afforded. The fact that Mr. G. Krishnan was one of those in control of the assessee-company and was also the manager of Vijayakumar Cotton Press is, by itself, of no consequence at all. In fact the explanation sets up no case based on it. It is a case which has not been set up by the assessee that has been found by the Tribunal and that without any justification and without any material.

7. At any rate the Tribunal should have found that the circumstances of the declaration made to the bank in order to receive substantial loans, the bank acting upon them and issuing the loans was not to be taken lightly, particularly when no attempt was made to explain it. The Tribunal's approach to this is reflected in its statement, in para, 9 : "We shall presently point out that the declaration of stock in this case had actually dwindled down to that of a mere formality. " We do not see any reason to assume so, nor is there any material to favour such an assumption. In para. 11 of its order the Tribunal observes that " it is of no consequence that the assessee has not proved that it purchased some cotton from Vijayakumar Cotton Press the next year ". Of course it is of no consequence if the assessee has no such case. The reason why the Tribunal found that it was of no consequence was that " what we have to find is only whether the goods belonged to the assessee in the particular accounting year ". The assessee's case, if at all, could have been only that it was purchased later and not that it was purchased during the accounting year and, therefore, the Tribunal was setting up a case for the assessee which the assessee itself had not.

We need not go further into this. We think there was no material for the Tribunal to find against the view taken by the ITO on the questions before us.

8. Question No. 1 concerns the suppression for the year 1959-60. We must find that the Appellate Tribunal was not right in casting the burden of proof on the ownership of the undisclosed stock on the ITO. The facts and circumstances of the case would show that the burden of showing that the apparent tenor is not real is on the assessee. The question is answered in favour of the Revenue and against the assessee. In this view, questions Nos. 2 and 3 also have to be answered in favour of the Revenue and against the assessee. Question No. 4 concerns the assessment year 1959-60 partly and assessment year 1960-61 partly. The question is whether the Tribunal was justified in deleting the addition. Question No. 4 has also to be answered in favour of the Revenue and against the assessee. We do so.

9. A copy of this judgment, under the seal of the High Court and the signature of the Registrar, will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.