

(1984) 08 KL CK 0037

In the High Court Of Kerala

Case No : Income-tax Reference No. 209 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Asok Textiles (P) Ltd.

RESPONDENT

Date of Decision : 08-08-1984

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1985) 154 ITR 838

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

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

Judgement

Kochu Thommen, J.—The assessment year in question is 1959-60. The original assessment was completed on January 31, 1963, on a loss of Rs. 6,78,145. However, the ITO noticed certain cash credits of Rs. 2,00,000 and Rs. 1,50,000, respectively, in the names of two hundi bankers, M/s. Radhakrishnadas Ramchand and Chatrulal Muralidhar (hereinafter referred to as the "bankers"). Accordingly, proceedings were initiated u/s 147(a) of the I.T. Act, 1961. The officer held that the total sum of Rs. 3,50,000 stated to have been received from these bankers was the undisclosed income of the assessee and an addition was accordingly made of that sum. The officer also added Rs. 23,900 as interest alleged to have been paid to the hundi bankers. " The assessee filed an appeal to the AAC. The AAC accepted the contention of the assessee that the amounts in question had been received by it from the bankers. He further held that the assessee was not the beneficiary of the money as it had been, at the instance of Krishnan, the managing director of the assessee-company, passed on to Vijayakumar Cotton Press, a concern solely managed by Krishnan. For this reason, the AAC deleted the addition of Rs. 3,50,000 and Rs. 23,900. The Revenue appealed to the Tribunal. The Tribunal rejected the contention of the assessee that the amounts in question were received by it from the bankers. The Tribunal specifically found that the entries in the books of account of the

assessee regarding receipts of the amounts from the bankers were fictitious as they were in the nature of accommodation loans. The Tribunal thus held that no amount had been received by the assessee from the bankers. The Tribunal further found that the assessee transferred a total sum of Rs. 3,50,000 to Vijayakumar Cotton Press. Subsequently, the Tribunal found that Vijayakumar Cotton Press, at the instance of Krishnan, credited the bankers with these amounts and a corresponding entry in their accounts was made in the name of Krishnan. As a result of these entries, the Tribunal stated that the assessee became a debtor to Krishnan to the extent of Rs. 3,50,000, but, at the same time, the assessee's books of account showed that a sum of Rs. 3,50,000 was due to it from Vijayakumar Cotton Press.

2. The substance of the Tribunal's findings is that the assessee received no money from the bankers, the credit entries in their names being purely fictitious and, at the very same time, the assessee transferred a sum of Rs. 3,50,000 to Vijayakumar Cotton Press which is a concern in the exclusive management of Krishnan, who is the managing director of the assessee.

3. It must be noticed that the case of the assessee before the ITO was simple and, on the face of it, straightforward. It received a sum of Rs. 2,00,000 from one of the bankers and another sum of Rs. 1,50,000 from the other banker; this total sum of Rs. 3,50,000 was transferred by it to Vijayakumar Cotton Press ; this was not an income in its hands as it was money borrowed by it and lent to a third person. The Tribunal rejecting the findings of the ITO and a part of the findings of the AAC, disbelieved the first limb of the assessee's case, namely, receipt of the amounts from the bankers, but believed the second limb, namely, transfer of the amounts in question to a third person. In other words, the question of law which emerges from the finding of facts is whether or not the Tribunal was in error in holding that the assessee did not have in its hands undisclosed income in the sum of money which it was found not to have received from the bankers, but which it was found to have transferred to a third person.

4. The Revenue requested the Tribunal to refer to us the following two questions :

"(1) Whether, on the facts and in the circumstances of the case, and having found that "the explanation that these amounts were genuine loans has to be rejected", the Tribunal is right in law and fact in holding that the cash credits were not the income of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, and for the reasons mentioned in paragraph 13 of its order, the Tribunal is right in law and fact in deleting the additions made by the income tax Officer?"

5. These two questions were, however, not referred by the Tribunal. The Tribunal combined them into a composite question, and referred it to us in the following words:

"Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the amount of Rs. 3.50 lakhs could not be included in the assessment of the assessee for the assessment year 1959-60?"

6. In Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad, , the Supreme Court stated:

".....where there is an unexplained cash credit, it is open to the income tax Officer to hold that it is income of the assessee and no further burden lies on the Income Tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed."

7. In A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad, , the Supreme Court observed (p. 810):

"Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case, the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the real owner. When both these explanations were rejected, as they have been, it was clearly open to the Income Tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

8. See also Radhe Shyam Tibrewal Vs. Commissioner of Income Tax, Assam and Others, , Commissioner of Income Tax Vs. C.P. Adam, and CIT v. P.R. Krishna Iyer [1967] KLJ 825.

9. The Tribunal in paragraph 13 of its order says that Vijayakumar Cotton press and Vijayakumar Mills were under the complete control and management of G. Krishnan. The assessee-company was closely held and controlled by Krishnan, who was its managing director and by the members of his family. The amounts in question were passed on by the assessee to Vijayakumar Cotton Press. The assessee had derived no benefit from the transaction in question. The amounts were returned by Krishnan to the bankers. He had also written letters to the assessee to debit the bankers and credit Krishnan with these amounts. However, these letters were not seen by the Tribunal as they were taken possession of by the police in connection with a criminal case against Krishnan involving a charge of counterfeit. The Tribunal says "however, we have seen the acknowledgment for having taken those documents by the police. These have not yet been returned to them. So we can take it that there were clear instructions from Shri Krishnan that he had paid the parties and so he should be given credit in the books. We wonder how the Tribunal understood the contents of these documents by seeing the acknowledgment of receipt by the police. Apparently, the Tribunal

without any documentary or other evidence accepted the contentions placed before it by the assessee's representative. The Tribunal concluded that the real beneficiary of these credits was Krishnan and the assessee derived no benefit from it.

10. We wonder how these conclusions were drawn by the Tribunal without any evidence whatever especially when the Tribunal disbelieved the assessee's contention that it received money from the bankers and at the same time believed its contention that it transferred the amounts to a third person.

11. Counsel for the assessee submits that the transactions in question are covered by fictitious entries and they do not represent any cash payment. He submits that the assessee neither received any money nor passed on any money. He, therefore, contends that the Tribunal was justified in concluding that the assessee derived no benefit from the transactions in question.

12. We cannot accept this argument for it is inconsistent with the case of the assessee and the facts and circumstances found by the Tribunal. The assessee had no case that it did not transfer any money. In fact, the case of the assessee was that the money which it received was duly transferred by it to Vijayakumar Cotton Press.

13. Counsel for the assessee further argues that the question referred does not raise any question of law, but only of fact, as found by the Tribunal, which is the highest authority on facts, and is, therefore, final.

14. Counsel for the Revenue rightly submits that the assessee gave no explanation whatever as to the source of money which it had admittedly passed on to a third person. This is particularly significant when the case of the assessee was that it had received the money from the bankers. Counsel further points out that the composite question referred is the Tribunal's abridgement of the questions which the Revenue wanted it to refer. In their two questions, the Revenue had raised the point as to whether or not the Tribunal could have rightly in law concluded that the amounts were not liable to be added as income of the assessee when the assessee's contention that it had received them from the bankers was rejected by the Tribunal, and particularly when it found that the amounts were transferred by the assessee to a third person. In other words, the question of law on which the Revenue sought a reference was whether, on the facts and In the circumstances found by the Tribunal, did it not err in law in holding that the amounts in question were not liable to be taxed in the hands of the assessee as its income. This, in our view, is the crux of the matter. We accordingly understand the question referred to us as a question of law.

15. In our view, the Tribunal misdirected itself in relying upon certain facts and circumstances which were not supported by any evidence produced before it. We are also of the view that the Tribunal misdirected itself in holding that the money which had been admittedly transferred by the assessee and the receipt of which the assessee was not in a position to explain to the satisfaction of the authorities

was not its income which was liable to be taxed in its hands. The findings of the Tribunal are not supported by either the contentions of the assessee or the evidence available to it and are contrary to the principles enunciated by the Supreme Court. In this connection, we must add that the decision of the High Court of Bombay in Commissioner of Income Tax, Bombay City II Vs. Deviprasad Khandelwal and Co. Ltd., , relied on by the Tribunal, has no application to the facts of this case because in that case it was found that certain amounts were received by the assessee for and on behalf of its shareholders. In the present case, the facts found by the Tribunal are to the contrary.

16. Accordingly, we answer the question referred to us in the negative, that is, in favour of the Revenue and against the assessee. We direct the parties to bear their respective costs in this tax referred case.

17. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.