
(2012) 03 RAJ CK 0023
In the Rajasthan High Court
Case No : IT Appeal No. 48 of 2006

Commissioner of Income Tax

APPELLANT

Vs

H.S. Builders (P) Ltd.

RESPONDENT

Date of Decision : 03-03-2012

Acts Referred:

Income Tax Act, 1961 — Section 131, 133, 133(6), 143(3), 148

Citation : (2012) 211 TAXMAN 116

Hon'ble Judges : Dinesh Maheshwari, J;C.M. Totla, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant; Anjay Kothari, for the Respondent

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—This appeal by the Revenue under s. 260A of the IT Act, 1961 ("the Act") is directed against the common order dt. 18th Oct., 2004 as passed by the Tribunal, Jodhpur Bench, Jodhpur in cross-appeals (ITA Nos. 50/Jd/ 2002 and 73/Jd/2002), filed respectively by the assessee and the Revenue. This appeal has its genesis in the assessment order dt. 30th March, 2001 relating to the respondent-assessee for the asst. yr. 1994-95, as passed under s. 143(3) /148 of the Act, whereby the Dy. CIT, Circle-Bhilwara ("the AO") disallowed the cash credits and interest thereupon, as pertaining to 28 different creditors, and made the addition of an amount of Rs. 17,85,243 in the total income of the assessee. However, by the order dt. 8th Nov., 2001, the CIT (A), Ajmer partly allowed the appeal (No. 149 of 2001-02) preferred by the assessee and deleted the addition relating to 25 creditors. Then, by the impugned common order dt. 18th Oct., 2004, the Tribunal dismissed the appeal filed by the Revenue and maintained the order passed by the CIT (A) in relation to the said 25 creditors; and, while partly allowing the appeal filed by the assessee, further deleted the additions as made in relation to 2 of the creditors and remitted the matter to the AO in relation to the remaining 1 creditor.

2. In this appeal, the Revenue has assailed the deletions as made by the CIT (A),

which have been affirmed by the Tribunal and further deletions as made by the Tribunal while asserting that the AO had rightly made the additions on account of unexplained cash credits. This appeal came to be admitted on 3rd April, 2006 on the following substantial question of law: "Whether on the facts and in the circumstances of the case, the learned Tribunal is justified in law in deleting the additions as above made by the AO on account of unexplained cash credits holding that the assessee has submitted the accounts of returns, computations of income and balance sheets of creditors and also supplied information of income tax ward, etc., whereas the AO on scrutiny of bank accounts of creditors found as a fact that the creditors deposited cash equal to the loan amount on the date of giving loans and on examination of some of the creditors the source of cash was not satisfactorily explained and the confirmations of all the creditors furnished by the assessee were also stereotyped ?"

3. The learned counsel for the appellant-Revenue has argued that the AO made the additions on relevant considerations when source of the credit in dispute was not satisfactorily explained and deletion thereof by the appellate authorities had not been justified. On the other hand, the learned counsel for the respondent-assessee has argued that no substantial question of law is involved in this case when the CIT (A) and the Tribunal have deleted the questioned additions after proper appreciation of the record and on sound reasonings; and that the question as formulated is purely a question relating to facts. In this regard, the learned counsel has referred to several of the decisions including those in Commissioner of Income Tax, Orissa Vs. Orissa Corporation (P) Ltd., , CIT Vs. Chandra Prakash Rana and Commissioner of Income Tax Vs. Bhawani Oil Mills (P) Ltd., .

4. After having heard the learned counsel for the parties and having perused the material placed on record, we are inclined to uphold the contentions urged on behalf of the respondent-assessee and in consequence, to dismiss this appeal.

5. The relevant facts and background aspects of the matter are as follows: The assessee, a company incorporated in the year 1987, purchased a plot of land in the year 1988-89 and constructed thereat a commercial complex in the name of Murli Textile Towers in the financial year 1993-94. The company filed its return for the asst. yr. 1994-95 on 13th Nov., 1994. It was alleged that the said commercial complex project was financed by the loans received from various persons to the extent of about Rs. 24.14 lacs. However, certain incriminating documents were reportedly seized in a search and hence, a notice under s. 148 of the Act was served, and in response thereof, the return declaring loss of Rs. 2,450 was filed on 8th June, 1998. During the reassessment proceedings, the AO served the questionnaire and sought various details and also recorded the statements of some of the alleged creditors.

6. In his assessment order dt. 30th March, 2001, the AO grouped the creditors under different categories. In category (A), the AO considered the matter relating to 3 unsecured creditors namely, Shri Suresh Uppadhyaya (Rs. 40,000),

Shri Shyam Sunder Jhanwar (Rs. 30,000), and Shri Jagdish Chandra Somani (Rs. 75,000) who were not borne on income tax records. While rejecting the explanations furnished, the AO held in relation to each of them that creditworthiness had not been proved and treated the amount allegedly advanced by them as the income of the assessee and so also disallowed the payment of interest on such credits. The AO considered the cases of 25 other creditors by dividing them into the categories (B), (C), (D) and (E) with reference to the range of the amount said to have been advanced like those in category (B) being the persons said to have advanced the credits of more than Rs. 1,00,000; in category (C), the person said to have advanced the amount of Rs. 2,00,000; in category (D), the persons said to be standing in the credits between Rs. 50,000 to Rs. 1,00,000; and in category (E), the persons said to be standing in credits between Rs. 20,000 to Rs. 50,000. The AO, again, treated the amounts allegedly advanced by these creditors in categories (B) to (E) as the income of the assessee and so also disallowed the payment of interest on such credits while making common observations that though the creditors were said to be assessed to tax but mere filing of the details in respect of their PAN/GIR numbers or income tax returns with balance sheet was not sufficient. It was also taken into consideration that in almost all the cases, money had been deposited in cash in the bank account of the creditor before the amount was allegedly given to the assessee through cheque. The AO, ultimately, concluded that cash credits to the tune of Rs. 17,85,243, as relating to the said 28 persons, remained unexplained.

7. However, while dealing with the appeal preferred by the assessee in the order dt. 8th Nov., 2001, the learned CIT (A) did not approve of the additions as made in regard to the 25 creditors in categories (B) to (E); and observed that the AO made the additions on mere surmises and conjectures. It is noticed that the CIT (A) dealt with the cases of these creditors in meticulous details before finding the addition in relation to them wholly unjustified.

8. In relation to 13 persons standing in credit between Rs. 20,000 to Rs. 50,000 (category (E)), the learned CIT (A), after dealing with all the submissions in paras 6, 6.1 and 6.2 in detail and after considering the entire record, held as under:

6.3 On careful consideration of the details/evidence on record, it is seen that the AO has placed undue reliance on the stated non-attestation of the signatures of the creditors in the confirmations filed, particularly in the face of the other corroborating evidence of the IT returns filed/GIR/PAN etc. The confirmations have been signed by the creditors as well as Shri Mohd. Ayub, the director. The confirmations also contained details as the date, particulars of receipt, of interest, GIR/PAN and copy of account. After having received these details, it was for the AO to establish that the details were false or incorrect, if he had any doubts. Moreover, the observations made by him about the cash deposit on the same date in the bank account and of the improbability of the cash savings lying at home, in any case were not applicable or shown to be applicable in respect of

these creditors, listed at serial Nos. 1 to 13, as above. The reasons for non-service of the letter under s. 133(6) had also been explained in the reply dt. 23rd Feb., 2001. In these facts and circumstances, the addition of Rs. 3,18,896 made as per para E of the AO's order, is not sustainable and is therefore deleted.

9. In relation to category (D), the persons standing in credit between Rs. 50,000 to Rs. 1,00,000, the CIT (A), again, after dealing with all the submissions and considering the entire record in paras 7, 7.1, 7.2 and 7.3 found the AO unjustified in his approach and deleted the additions in the following:

7.4 On careful consideration of the details/evidence on record, it is seen that the AO has placed undue reliance on the stated non-attestation of the signatures of the creditors in the confirmations filed, particularly in the face of the other corroborating evidence of the IT returns filed/GIR/PAN etc. The confirmations have been signed by the creditors as well as Shri Mohd. Ayub, the director. The confirmations also contained details as the date, particulars of receipts, of interest, GIR/PAN and copy of account. The AO disbelieved the statements of Shri Pankaj Joshi and Shri Ramesh Chand and noted that these persons who had bank account for long could not have kept cash lying at their house and were not "men of means". From the statement of Shri Pankaj Joshi, it emerges, however, that the deposit of Rs. 50,000 was not by cash but by clearing entry. He was an existing assessee and details had been filed in his return for asst. yr. 1994-95. Shri Ramesh Chand was also an existing assessee whose computation of total income/details of tax paid by way of TDS/capital account/balance sheet had been filed. The identity of these two persons had been established. Both of them were existing assessees who accepted the fact of their having given loans to the assessee. In these facts, the decision in case of *Jalan Timbers Vs. Commissioner of Income Tax*, , and the decisions referred to in para 7.2 are applicable. The AO could have got initiated necessary action in respect of these two persons if their source was doubted by him, but as to how their credits was the income of the assessee has not been established by him. In the facts and circumstances, the addition of Rs. 3,00,032 made by the AO as per para D of his order cannot be sustained and is deleted.

10. In relation to the persons in category (B), standing in the credit of more than Rs. 1,00,000, the CIT (A), again, discussed the matter in thorough detail in paras 8, 8.1 and 8.2 and found the consideration of AO unjustified for the necessary particulars being available on record and proceeded to delete the said addition in the following:

8.3 On careful consideration of the details/evidence on record, it is seen that the AO has placed undue reliance on the stated non-attestation of the signatures of the creditors in the confirmations filed, particularly in the face of the other corroborating evidence of the IT returns filed/GIR/PAN etc. The confirmations have been signed by the creditors as well as Shri Mohd. Ayub, the director. The confirmations also contained details as the date, particulars of receipt, of interest, GIR/PAN and copy of account. After having received these details, it was

for the AO to establish, that the details were false or incorrect, if he had any doubts. Moreover, the observations made by him about the cash deposit on the same date in the bank account and of the improbability of the cash savings lying at home, in any case were not applicable or shown to be applicable in respect of these creditors, listed above. In these facts and circumstances, the addition of Rs. 8,00,032 made by the AO, is not sustainable and is therefore deleted.

11. In relation to the person in category (C), standing in the credit of above Rs. 2,00,000, the CIT (A), again, found the AO unjustified and deleted this addition in the following:

9.2 The details/explanations/facts on record were considered carefully. In his statement recorded on 12th March, 2001, Shri Roshan Lal, proprietor confirmed having advanced the amounts of Rs. 75,000 Rs. 75,000 + Rs. 50,000 (totalled to Rs. 2,00,000) to Mohd. Ayub, the director, whom he knew. He stated that the books of account are being produced but that the copy of bank statement has not been given by the bank, being of old period. He explained the source as out of his regular bank account and stated being an assessee in Ward-3, Bhilwara, and filing returns for last 12 to 13 years. In the copy of confirmation, the date/cheque number/amount of loan/amount of TDS/PAN has been given. Copy of the computation of income/capital account/TDS certificate had been filed. It is seen that the AO has placed undue reliance on the stated non-attestation of the signatures of the creditors in the confirmations filed, particularly in the face of the other corroborating evidence of the IT returns filed/GIR/PAN etc. The confirmations have been signed by the creditor as well as Shri Mohd. Ayub, the director. The confirmations also contained details as the date, particulars of receipt, of interest, GIR/PAN and copy of account. After having received these details, it was for the AO to establish that the details were false or incorrect, if he had any doubts. Moreover, the observations made by him about the possible cash deposit on the same date in the bank account and this possible deposit being unexplained, in any case, were not shown by him, with evidence, to be applicable in case of this creditor. The addition is, therefore, not sustainable and is deleted.

12. The CIT (A), of course, sustained the addition in relation to 3 other creditors that has been dealt with in detail by the Tribunal as shall be noticed infra.

13. The Tribunal, in its order dt. 18th Oct., 2004, found the order as passed by the CIT (A) in relation to 25 creditors grouped in categories (B) to [E] fully justified and found no reason to interfere in the Department's appeal with the following findings and observations:

39. After giving careful thought, we give our findings as below. This is an undisputed fact that the assessee had submitted the accounts of returns, computation of income and balance sheet of the creditor and also supplied information of income, tax ward etc. where the creditors were being assessed. The money given to this assessee had been shown in their balance sheet and

accordingly the same is supported by availability of funds. All the persons who were called by the AO did affirm the fact of giving money and explained the sources. The AO had not brought on record any adverse material to show that the money credited in the name of these creditors is assessee's money only. The mere observation that the money was deposited in cash in the accounts of some of the creditors cannot lead to a conclusion that the money had been deposited by the assessee company only when some transactions were reflected in the balance sheets of the creditors. In the given facts and circumstances of this case, we do not find any reason to interfere with the order of the CIT (A). So, the ground of appeal filed by the Department is dismissed.

14. However, the Tribunal deleted the additions made in respect of 2 of the other creditors, Shri Suresh Uppadhya and Shri Jagdish Chandra Somani and restored the matter to the file of AO for further inquiry in relation to the remaining creditor Shri Shyam Sunder Jhanwar in the following:

31. We have given careful thought to the facts and circumstances and evidence available on record is evident from assessment order that the assessee vide his letter dt. 23rd Jan., 2001 requested the AO to issue summons to all the creditors for examination but the assessee called only 5 creditors out of total 40. He called Suresh Uppadhya, above named, out of 3 creditors who were not assessed to tax. The creditors explained the source of income as well as immediate source of making deposit with the assessee. The statements recorded have been placed in the paper book of the assessee. He explained that he recovered around Rs. 7,000 from his debtor Shri Pradeep Jain R/o 7H21, Azad Nagar and Rs. 10,000 from other debtor Shri Mahender Kothari R/o 7J13, Azad Nagar. He also explained that he had Rs. 17,000 with him out of savings and Rs. 7,000 was taken from his wife. He explained his source of income as salary income, agricultural income from 30 bighas agricultural land and his father's pension. He also stated that he could get good interest from this assessee, so he deposited with this assessee. It seems that no further question was asked by AO during the course of his statement. So, it appears that there is no reason to doubt the explanation given by the creditor. So the addition is uncalled for. So, we delete this addition standing in the name of Suresh Uppadhya by holding that the requirements of law have been proved.

32. With regard to the creditor Shri Jagdish Chandra Somani, direct enquiry under s. 133(6) was made by the AO. He affirmed the fact of giving the money of Rs. 75,000. This payment was made through cheque. He also explained the source of income and immediate source of the given money as recovery of amount from debtors. He claimed Rs. 50,000 being recovery from his debtors and Rs. 25,000 being his savings from tractor income. The AO did not make any further enquiry and simply made this addition when the creditor himself had replied in response to notice under s. 133(6), the question of doubting the identity of the creditor does not arise at all. Nothing has been brought on record by the AO doubting the money given by this creditor.

33. In case the AO had any doubt about the source of the explanation, he should have made further enquiry under s. 133(6) or he could have issued summons under s. 133 of the Act. It seems that the AO did not ask any specific query or question from the assessee. Also, in view of the settled issue that the AO cannot expect the assessee to explain source of source. So, in our considered opinion, without bringing anything on record to prove the explanation given by the creditor as false, this addition cannot be sustained in the hands of this assessee. So, we delete this addition as well.

34. The credit in the name of Shyam Sunder Jhanwar was of Rs. 30,000 and interest of Rs. 1,260. The AO did not make any query and the creditor himself wrote a letter to him confirming the deposit to this assessee. Apparently, no enquiry has been made in the case of this creditor. Under these circumstances, we find that the matter needs to be enquired into by the AO. We, therefore, consider it just and equitable to restore this issue back to the file of the AO for considering it afresh.

15. It is at once clear from the perusal of the orders as passed by the CIT (A) and the Tribunal that so far the said 25 creditors already assessed to tax [categories (B) to (E)] were concerned, the CIT (A) perused the entire record and examined the explanations offered by the assessee and by the creditors in detail before accepting the same, and then, deleted the addition made by the AO with cogent reasons. The Tribunal has taken a holistic view of the matter on all the relevant aspects and affirmed this part of the order of the CIT (A) after finding that the assessee had submitted the accounts of returns, the computations of income, and the balance sheets of creditors and also supplied all their particulars; that the money given to the assessee had been shown in the respective balance sheets of the creditors; and that the creditors who were called by the AO did affirm the fact of giving money and explained the source.

16. In relation to the other three creditors not assessed to tax, the Tribunal has given cogent reasons after due examination and appreciation of evidence on record for not agreeing with the findings of the subordinate authorities and while deleting the addition in relation to two of such creditors, has remitted the question in relation to third one for proper inquiry.

17. It appears that the fact of deposition of cash in the bank account of some of the creditors before giving the cheques to the company was taken to be a circumstance adverse to the assessee by the AO. The CIT (A) and the Tribunal have found that such circumstance, by itself, would not lead to the conclusion that the money was deposited by the assessee company. It is also noticed that in almost all cases, the amount in question was owned up by the creditor concerned and the AO did not carry out necessary inquiry barring 5 of the creditors. The learned appellate authorities have taken the view and do not appear unjustified in doing so, that with the basic facts having been divulged and established by the assessee with furnishing of necessary details, it was for the AO to establish that the details were false or incorrect; and the additions could not have been made

merely on generalized observations or on suspicion. In an overall view of the matter, we find that the findings of facts have been rendered by the appellate authorities on the relevant considerations after due examination of record and do not appear to be suffering from perversity. On the question as formulated in the present case, we find no reason to enter into the factual inquiry so as to appreciate and evaluate the evidence over again.

18. In the matter of present nature, where the appellate authorities have dealt with the matter in accordance with law and have returned the findings after examining the explanations offered by the assessee and by the creditors, we are of opinion that no interference is called for in this appeal. The points as raised in the question formulated in the present case in regard to the deposit of the cash amount in the creditors' account or about similar nature of confirmations of the creditors, are all the matters relating to appreciation of evidence. These factors have been taken into account and considered by the appellate authorities before returning the findings in favour of the assessee. Similarly, the question as to whether the source of the credit has been satisfactorily explained or not, again, remains essentially within the realm of appreciation of evidence.

19. Worthwhile it would be to refer to some of the decisions cited by the learned counsel for the assessee where, in relation to acceptance of the explanation of the assessee, the Courts have held that the matter relates to appreciation and evaluation of evidence and does not give rise to any substantial question of law.

20. In the case of Orissa Corporation (P) Ltd. (supra), the Hon'ble Supreme Court held as under:

13. In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.

21. In the case of Chandra Prakash Rana (supra), this Court noticed similar nature of grounds urged on behalf of the Revenue and found the same not leading to any substantial question of law. This Court noticed, observed, and held as under:

7. Learned counsel for the appellant (Revenue) contended that firstly Tribunal erred in accepting the explanation offered by assessee in relation to source of

income. His second submission was that what was offered by assessee was no explanation and hence should not have been accepted and lastly learned counsel made sincere attempt on his part after taking us through factual scenario of the explanation and contended that it can never be taken as satisfactory explanation for deleting the addition made by AO. We do not agree to this submission for more than one reason.

8. In the first place, it is a pure question of fact, what to say question of law, much less substantial question of law. Secondly, this Court cannot again in this appeal undertake the examination of factual issues nor can draw factual inferences on the basis of explanation offered by assessee. Thirdly, once the explanation is accepted by the two appellate Courts i.e. CIT (A) and Tribunal in this case, then in such event, a concurrent finding recorded on such explanation by two appellate Courts is binding on the High Court.

9. Perusal of impugned finding quoted supra would go to show that Tribunal did examine the explanation offered by assessee in detail and then recorded a finding for its acceptance. Such finding when challenged does not constitute a substantial question of law within the meaning of s. 260A *ibid* in an appeal arising out of such order.

10. In our opinion, therefore, once the CIT (A) and Tribunal accepted the explanation of assessee and accordingly, deleted certain additions made by AO holding the transaction of shares to be genuine, then it would not involve any substantial issue of law as such. In other words, this Court in its appellate jurisdiction under s. 260A *ibid*, would not again *de novo* hold yet another factual inquiry with a view to find out as to whether explanation offered by assessee and which found acceptance to the CIT (A) and Tribunal is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding recorded had been entirely *de hors* the subject, or that it had been based on no reasoning, or based on absurd reasoning to the extent that no prudent man of average judicial capacity could ever reach to such conclusion, or that it had been found against any provision of law, then a case for formulation of substantial question of law on such finding can be said to have been made out.

11. In our view, no such error could be noticed by us in the impugned order because as observed supra, the Tribunal did go into the details of explanation offered by assessee and then accepted the explanation by placing reliance on the documents filed by assessee. As a consequence thereof, the additions made by AO came to be deleted.

22. In the case of Bhawani Oil Mills (P) Ltd. (*supra*), another Co-ordinate Bench found similar nature of grounds not leading to substantial question of law in the following:

4. On perusal of the order passed by the Tribunal, we find that mere non-appearance of eight other persons in response to the notice given by the AO, by itself cannot be a reason to discard their version particularly when one of them

had appeared and admitted advancement of loan. Even if others have subsequently filed their confirmations supported by their affidavits, it cannot be assumed that they would not have made same statements, if they had appeared in response to the notice issued by the A.O. was required to have examined those confirmations and the contents of the affidavits on their merits treating as if they were statements given to him. Their version contained in the affidavits could not be treated as of a lesser importance than the statement given by one of the creditors i.e. Shri K.K. Sharma before the AO. Although, it is another matter that the AO would be entitled to evaluate reliability of such version on its own merit.

5. Even otherwise, we find that quantum of amount of Rs. 24,86,866 found to have been borrowed from eight different creditors by way of "unsecured loan" to the tune of Rs. 3,25,000 each from two creditors, Rs. 3,00,000 from one creditor, Rs. 1,00,000 each from four creditors and Rs. 11,36,866 from one creditor. Maximum amount that has been borrowed by assessee was Rs. 11,36,866 from Shri K.K. Sharma, director of the company. Tribunal in paras 7 and 8 of its judgment, which is running into four pages, has in detailed discussion dealt with the confirmations given by those creditors and observed that there was no reason to doubt correctness of the claimed cash credit amounting to Rs. 24,86,866 taken from the abovenamed creditors.

6. In our view, the matter therefore touches upon appreciation and evaluation of evidence and does not raise any question of law, much less any substantial of law, so as to justify interference by this Court in the matter.

7. Appeal being devoid of merit is accordingly dismissed in limine.

The ratio of the decisions aforesaid directly applies to the present case. Herein, as noticed, the appellate authorities have returned the findings in favour of the assessee after due appreciation of the evidence on record, on relevant considerations, and on sound reasonings. These findings have neither been shown to be suffering from any perversity nor appear absurd nor are of such nature that cannot be reached at all. Thus, no case for interference in the findings of the appellate authorities is made out on the question as formulated in this appeal.

In the result, the appeal fails and is, therefore, dismissed.