(2004) 07 AHC CK 0126

In the Allahabad High Court

Case No : IT Ref. No. 330 of 1982

Commissioner of Income Tax — APPELLANT

Vs

Jaiswal Grain Stores — RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:
Income Tax Act, 1961 — Section 68

Citation : (2004) 191 CTR 187 : (2005) 272 ITR 136

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Govind Krishna, for the Appellant; None, for the Respondent

Judgement

1. The Tribunal has referred the following question of law u/s 256(1) of the IT Act (hereinafter referred to as the Act) for opinion to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in taking the view that the deposits made by the partners on the first day of the accounting period could not be treated as the income of the assessee from unexplained sources ?"

2. Briefly stated the facts giving rise to the present petition are as follows :

The assessee, which is an AOP, runs a store in the name of M/s Jaiswal Grain Stores at Jaunpur. During the assessment proceedings for the asst. yr. 1976-77, the ITO noticed that the three partners invested Rs. 5,000 each on 1st Aug., 1975, the first day of the accounting period relevant to the assessment year in question. The ITO added the entire amount of Rs. 15,000 as income from undisclosed sources after, finding that the statement of the partners mother-in-law, Smt. Dueja Devi, was contradictory.

The assessee being aggrieved, came up in appeal before the AAC. It was explained that Rs. 5,000 each were given by Smt. Dueja Devi to the three partners who were her daughters-in-law. The money so given was said to have been received by Smt. Dueja Devi from her husband Sankatha Prasad (who died in 1971) and kept at home. However, the AAC held that the case of the assessee was not substantiated. He, therefore, confirmed the order of the ITO.

The assessee, being still aggrieved, came up in appeal before the Tribunal. The Tribunal was of the view that since the assessee had no business prior to the assessment year in question and the deposits were made by the partners on the first day of the start of the business, the question of treating them as the unexplained income of the assessee could not arise. The contention put forward on behalf of the assessee that the question of addition could, if at all, be considered in the hands of the individual partners, was upheld. In this view of the matter, the addition was deleted.

3. We have heard Shri Govind Krishna, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee. Learned counsel for the Revenue submitted that u/s 68 of the Act, once an explanation offered by the assessee regarding the deposit has been disbelieved, the natural corollary is that it should be treated as income of the assessee of that year. He relied upon a Division Bench decision of this Court in the case of Commissioner of Income Tax Vs. Kapur Brothers, and of the Hon''ble Calcutta High Court in the case of C. Kant and Co. Vs. Commissioner of Income Tax, .

4. From a perusal of the order of the Tribunal, it does appear that the deposit of Rs. 5,000 by each of the partners was made on the first day of the start of the assessee''s business. On the first day of the business, it cannot be assumed by any stretch of imagination that the assessee, which is a firm, though assessed in the status of an AOP (Association of Persons) had unexplained income of Rs. 15,000. The decision of this Court in the case of Kapur Bros. and of the Calcutta High Court in the case of C. Kant & Co. (supra) are not applicable in the facts of the present case, inasmuch as in the aforementioned cases, the deposits/cash credits were made in the middle of the year when business had already got established, unlike in the present case, when the deposits were made on the 1st day of the start of business. The decision of this Court in the case of Kapur Bros. (supra) has been considered by this Court subsequently in the cases of India Rice Mills Vs. Commissioner of Income Tax, and Surendra Mahan Seth Vs. Commissioner of Income Tax, and has been distinguished.

5. In view of the foregoing discussions, we are of the considered opinion that the Tribunal had rightly deleted the addition. Accordingly, we answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. Since nobody has appeared on behalf of the assessee, there shall be no order as to costs.

