

(1981) 01 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 49 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Jay Textile Mills

RESPONDENT

Date of Decision : 13-01-1981

Acts Referred:

Income Tax Act, 1961 — Section 251(1), 252(2)

Citation : (1981) 21 CTR 115 : (1981) 128 ITR 480

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Vimal Gandhi, for the Respondent

Judgement

B.S. Dhillon, J.—In the course of assessment proceedings for the assessment year 1967-68, relevant to the accounting "period ending on March 31, 1967, the ITO found the following cash credits in the account books of the assessee:

No. Name of the party

Amount

Date of receipt

Date of return

Rs.

(i) M/s. Tola Singh Inderjit Singh, Majith Mandi, Amritsar.

10,000

22-12-66

28-9-67

(ii) M/s. Amritsar (a)

General Mills, (b)

Amritsar. (c)

9,000

10,000

9,000

23-11-66

17-1-67

3-12-66

28-9-67

26-9-67

26-9-67

_____ 38,000 _____

2. In order to prove the genuineness of the cash credits in question, the assessee produced evidence, documentary as well as oral. The ITO rejected the evidence produced by the assessee by observing that M/s. Tola Singh Inderjit Singh and M/s. Amritsar General Mills, Amritsar, were mere name-lenders, that various parties had surrendered the cash credits appearing in their names and that the transactions in question were not genuine. He, therefore, added a sum of Rs. 38,000 to the income of the assessee as income from undisclosed sources.

3. On appeal, the AAC set aside the order of the ITO and directed him to make a fresh assessment, by observing as follows :

"I have considered the explanation of the appellant. I find that though the Income Tax Officer has stated in the assessment order that both the above-said creditors have admitted that they advanced the loans in question to the appellant but he has not relied on the statements of the creditors only referring that same parties of Amritsar have surrendered cash credits standing in their books of account in the name of the above-said parties. The Income Tax Officer has not even mentioned the names of these parties. I am of the view that by merely stating that same parties have surrendered the cash credits, addition cannot be made in the hands of the appellant unless the Income Tax Officer proves to the hilt that credits, appearing in the account books represent the appellant's own money in the garb of spurious cash credits. The assessment is set aside to be made de novo with the direction that the Income Tax Officer should find out as to whether the facts in the cases (sic) who surrendered the cash credits in the names of creditors in the appellant's case were the same or the facts were different. The Income Tax Officer is further directed to gather cogent material in case he wants to make the above-said addition in the appellant's hands and the

appellant should be given full opportunity in the matter."

4. In appeal before the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal"), the Tribunal came to the conclusion that the AAC exceeded the bounds of reason and acted arbitrarily in setting aside the assessment order and directing the ITO to decide the case afresh. The Tribunal further directed the AAC to decide the appeal on merits on the evidence already on record. The first finding was recorded on the ground that since the assessee had not complained to AAC of lack of opportunity to produce his evidence, therefore, there was no justification for the AAC to have remanded the case to the ITO for deciding the same afresh.

5. At the instance of the revenue, following two questions of law have been referred to this court for its opinion:

"(i) Whether, on the facts and circumstances of the case, the Tribunal has rightly held that the Appellate Assistant Commissioner had acted arbitrarily in setting aside the assessment order and directing the ITO to decide the case afresh ?

(ii) Whether, on the facts and circumstances of the case, the Tribunal has rightly set aside the order of the Appellate Assistant Commissioner and restored the case to his file for deciding the same on merits on the evidence already on record ?"

6. After hearing the learned counsel for the parties and going through the record, we are of the opinion that both the questions referred to us have to be answered in the negative, i.e., against the assessee and in favour of the revenue. The powers of the AAC are contained in Section 251 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), which are as follows :

"251. (1) In disposing of an appeal, the Appellate Assistant Commissioner [or, as the case may be, the Commissioner (Appeals)] shall have the following powers:--

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner [or, as the case may be, the Commissioner (Appeals)] and after making such further enquiry as may be necessary, and the Income Tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Appellate Assistant Commissioner [or, as the case may be, the Commissioner (Appeals)] shall not enhance an assessment or a penalty, or reduce the amount of refund unless the appellant has had a reasonable

opportunity of showing case against such enhancement or reduction....."

7. A bare reading of this provision would show that the AAC while deciding an appeal, is clothed with very wide powers so as to do justice to the assessee and also to watch the interests of the revenue. It is not disputed before us that the AAC in proper cases has the power to remand the case to the ITO to decide it afresh. The only question to be seen is whether the power so exercised by the AAC in this case has been rightly exercised or not. The reason given by the Tribunal that by passing a remand order, the revenue has been given an opportunity to prove its case and, therefore, the remand order is bad, is wholly untenable. As already observed, the powers vested in the AAC are wide enough to protect the interests of the revenue and the powers are appellate as well as revisional. Moreover, on the facts and circumstances of the present case, the AAC recorded a finding that the ITO had not even mentioned the names of the parties who surrendered the cash credits standing in their books of account in the name of the parties in question. The AAC came to the conclusion that the finding recorded by the ITO that the amounts in question were the assessee's own money, was not based on proper material and appreciation of evidence. The view taken by the Tribunal that the case could not be remanded by the AAC as the remand order was arbitrary, does not appear to be correct. The Tribunal, while discussing this question, ignored the provisions of Section 251 of the Act, which clothe the AAC with appellate as well as revisional power. Even if for argument it be held that by passing a remand order the revenue had been given a chance to bring the same material on the record to show that the amounts in question were the assessee's own money, still no fault can be found with the remand order.

8. The learned counsel for the assessee has relied on a decision of their Lordships of the Jammu and Kashmir High Court in Mohd. Ahsan Wani Vs. Commissioner of Income Tax, , in which a decision of their Lordships of the Supreme Court in The Commissioner of Income Tax Vs. Shapoorji Pallonji Mistry, has also been discussed. This authority is of no help to the assessee. Even in this case, it was observed that the AAC could issue a direction for determining the income from the property because this was not a new source of income, which had been considered by the ITO. In the present case, admittedly, no new source of income was ordered to be enquired into by the remand order. In our view, the finding recorded by the Tribunal that the remand order passed by the AAC was arbitrary is not sustainable. Further, the direction given by the Tribunal that the AAC should decide the case on the material already on record, is also not sustainable in the eye of law. The AAC, if he wanted to decide the appeal himself, had ample power to record further evidence with a view to do justice between the parties and this power, which has been vested in him by the statute, could not be restricted by the Tribunal by giving a direction that the AAC should decide the matter on the material already on record. Since we are reversing the view of the Tribunal on the first question as well, the second question is not of much consequence, but anyhow we are supposed to answer both the questions.

9. For the reasons recorded above, we answer both the questions in the negative, i.e., against the assessee and in favour of the revenue. There will be no order as to costs.