

(1985) 10 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 137 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Khalsa Engineering Works.

RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1986) 55 CTR 71 : (1987) 163 ITR 436 : (1986) 28 TAXMAN 160

Hon'ble Judges : S.P. Goyal, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; Bhagirath Dass and Romes Kumar, for the Respondent

Judgement

Gokal Chand Mital, J.—M/s. Khalsa Engineering Works (hereinafter called "the assessee") filed a return showing an income of Rs. 24,565. During the assessment proceedings, in response to notice u/s 143(2) of the Income Tax Act (hereinafter called "the Act"), it was found that the assessee had taken overdrafts from certain banks. The assessee was asked by the Income Tax Officer to furnish certificates from the concerned banks confirming the overdrafts with details of the securities pledged with them to secure the overdrafts. As per the certificates, it was disclosed that on March 31, 1971, the following stocks stood pledged with the two banks :--

s. no.

Name of the bank

Particulars of the stock pledged

1.

Allahabad bank

185.3 tons of pig iron 41 slabs of tin

2.

Punjab National Bank

31 slabs of copper.

2. With the State Bank of India, small stocks of pig iron and tin-slabs were pledged, but that is no longer the subject-matter of dispute.

3. The question of pledge of 41 slabs of tin with the Allahabad Bank and 31 slabs of copper with the Punjab National Bank came up for pointed consideration before the Income Tax Officer, because those stocks were not found entered in the stock register and account books of the assessee. On getting information from the concerned banks, it was found that on April 10, 1970, 43 ingots of tin were pledged with Allahabad Bank of the value of Rs. 71,983 and out of that two tin ingots of the value of Rs. 3,348 were taken back on April 11, 1970, and the balance of 41 tin ingots remained pledged with the bank till the end of the financial year, i.e., till March 31, 1971. As regards 31 copper slabs, it was found that the same were pledged with the Punjab National Bank on February 26, 1971, and they remained pledged till March 31, 1971.

4. In this case, we are only concerned with 41 tin ingots and not with copper slabs, because the question of addition of value of copper slabs has been decided by the Tribunal in favour of the Revenue and it is in application by the Revenue u/s 256(1) of the Act in regard to the deletion of the value of 43 tin ingots. Therefore, detailed reference will be made in regard to this material with regard to 43 tin ingots and brief reference will be made regarding 31 copper slabs.

5. The statement of the proprietor of the assessee concern was recorded. The assessee also filed a reply through his counsel in response to the notice issued by the Income Tax Officer. The stand taken therein was that the assessee did not make any purchase of tin in financial year 1970-71 and that tin weighing m.t. 1,991, 43 pieces/ingots were purchased from M/s. Nyal Chand Moti Chand & Co. P.B. No. 114, 101, King Street, Penang (Malaya) vide Bill No. 221/69, dated October 3, 1969, which were received on November 27, 1969, and were consumed on March 24, 1970, the receipt and consumption of which are reflected in the stock register for the financial year 1969-70. When the tin ingots are shown to have been pledged with Allahabad Bank, in fact no stocks were pledged and only a fictitious representation was made by the assessee on the basis of Invoice No. 221/69, dated October 3, 1969, referred to above. The bank did not physically verify the stocks and went by the trustworthiness of the client.

6. The Income Tax Officer did not accept the plea of the assessee, because the pledge of 43 ingots worth Rs. 71,983 on April 10, 1970, with Allahabad Bank, Civil Lines, Jullundur, was proved according to the bank's books. A similar finding was recorded in regard to 31 copper slabs. Consequently, the value of both the items was included as income from undisclosed sources and the assessment proceeded on that basis. Against the order of the Income Tax Officer, the matter

was taken up in appeal before the Appellate Assistant Commissioner of Income Tax. The appellate authority accepted the plea of the assessee that it had defrauded the two banks. As regards tin ingots, it was stated that no tin ingot was pledged and as regards the copper slabs, it was found that an inflated value had been put when, in fact, the value was only Rs. 10,000. Accordingly, the appeal was allowed and addition was made to the extent of Rs. 10,000. Against the order of the appellate authority, the Commissioner of Income Tax took the matter in appeal before the Income Tax Appellate Tribunal, Amritsar, whereas the assessee filed cross-objections. The Tribunal by order dated November 29, 1970, modified the decision of the Appellate Assistant Commissioner in regard to the addition of value of 31 copper slabs and ordered an addition of Rs. 45,880 instead of Rs. 10,000. In doing so, the following finding was recorded.

"The assessee's counsel urges that its registers conclusively prove that the manufacture done up to March 31, 1971, included this stock, namely, 31 copper slabs and without them, so much manufacture would not have been done. From this circumstantial evidence, the assessee wants us to believe its case. No positive evidence has been furnished to show that the 31 copper slabs pledged with the bank on February 26, 1971, were really taken in the month of March, 1971. In the absence of positive evidence, it is difficult for us to hold that the pledged goods were released to it in the month of March, 1971. The books of the Punjab National Bank clearly show that the goods pledged on February 26, 1971, were released to the assessee on June 2, 1971. There is no evidence to hold that the bank books are not reliable. It is for the assessee to prove that the goods pledged on February 26, 1971, were released to it in the month of March, 1971, and there was nothing to be released on June 2, 1971.

It is contended that the assessee remained in possession of the key of the bank godown and, therefore, it was possible for it to take out the goods from the bank's godown from time to time. There is no cogent evidence to prove that the goods were really taken out by the assessee from time to time in the month of March, 1971, from the bank's godown. The assessee cannot discharge its burden simply by creating a doubt in the mind of the authorities, but the burden cast on the assessee is to be discharged by positive evidence, which is not available on record"

7. As regards 43 tin ingots, the Tribunal agreed with the decision of the Appellate Assistant Commissioner. The Department filed an application u/s 256(1) of the Income Tax Act, 1961, for referring two questions of law for the opinion of this court, one relating to 43 tin ingots and the other relating to 31 copper slabs.

8. The Tribunal was of the opinion that questions of law did not arise Against the dismissal of the application, this application u/s 256(2) of the Act has been filed for issuing mandamus.

9. After considering the matter, we are of the view that the second proposed question does not arise because the matter has been decided in favour of the

Department, and it was for the assessee to have sought a reference. Since the assessee has not raised any grievance, the second question does not arise for consideration.

10. As regards the first question, we are of the view that a question of law does arise which would be apparent from the following facts.

11. The case of the assessee was that 43 tin ingots were pledged with the Allahabad Bank on November 27, 1969, and they were received back from the bank on December 12, 1969, and were consumed in entirety before March 31, 1970, in the manufacturing process. During the assessment, it was found that the assessee had pledged with the Allahabad Bank on April 10, 1970, 43 tin ingots of the value of Rs. 71,983. The assessee was called upon to explain them. The explanation furnished was that it had pledged 43 fake and imitation tin ingots with the good offices of the officials of the Allahabad Bank but represented to the bank as if the pledged ingots were the same which were imported earlier vide Bill No. 221/69, dated October 3, 1969. However, it is not disputed that on pledging the so-called fake and imitation tin ingots, the assessee obtained financial help from the bank on the basis that the pledged tin ingots were of the value of Rs. 71,983. It has to be seen on the facts and in the circumstances of the case as to whether the assessee's plea that it defrauded the bank can be accepted so as to escape the liability under the Act. Hence, it has to be seen whether the Tribunal was justified in upholding the decision of the Appellate Assistant Commissioner, deleting the addition of Rs. 71,983. Accordingly, we direct the Income Tax Appellate Tribunal, Amritsar Bench, to state the case on the following question of law for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the decision of the Appellate Assistant Commissioner, deleting the addition of Rs. 71,983 representing the value of 43 tin ingots which were admittedly pledged by the assessee with Allahabad Bank on which it obtained financial help from the bank ?"

S.P. Goyal, J.

12. I agree.