

(2006) 02 P&H CK 0179
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Kulwant Singh and Co.

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Income Tax Act, 1961 — Section 256, 68

Citation : (2008) 299 ITR 53

Hon'ble Judges : D.K. Jain, C.J.;Surya Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.—By this petition u/s 256(2) of the Income Tax Act, 1961 (for short, the Act), the Revenue seeks a direction to the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, the Tribunal) to state the case and refer the following question, for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in deleting the addition of Rs. 2,60,000 made by the Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) on account of unexplained credits in the capital accounts of partners?

2. At the outset, we may note that the present petition was dismissed vide order dated September 2, 1997, but subsequently on Revenue's moving an application, the said order was partly recalled on October 26, 1999. Under these circumstances the petition has now come up for hearing.

3. Briefly stated the material facts, giving rise to the present petition, are as follows:

4. During the course of assessment proceedings for the assessment year 1989-90, for which the relevant accounting period ended on March 31, 1989, the Assessing Officer noticed that in the capital accounts of the two partners,

namely, S/s. Kulwant Singh and Daljit Singh, amounts of Rs. 1,30,000 each, Rs. 1,00,000 by draft and Rs. 30,000 in cash had been credited.

5. The assessee-firm was asked to prove the genuineness of these two amounts. In furtherance thereto, wealth-tax statements of the partners copies of their assessment orders and pass books were furnished to the Assessing Officer. However, not being satisfied with the evidence produced, the Assessing Officer added the said amount of Rs. 2,60,000 to the returned income of the firm, as unexplained and ingenuine cash credits.

6. Aggrieved, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) but without any success. Not being satisfied with the decision of the Commissioner (Appeals), the assessee carried the matter in further appeal to the Tribunal. Inter alia, observing that the bank drafts had been obtained by both the partners from their respective savings bank accounts, copies whereof had been produced before the Assessing Officer; which fact was confirmed by the bank and the financial standing of both the partners was sound, one of them, namely, Kulwant Singh being in liquor business, by the impugned order, the Tribunal has deleted both the additions. The Tribunal has come to the conclusion that the initial onus with regard to the identity and the financial capacity, which lay on the assessee, u/s 68 of the Act stood discharged.

7. The Revenue's application u/s 256(1) of the Act having been dismissed by the Tribunal, the present petition has been filed.

8. Dr. N.L. Sharda, learned Counsel for the Revenue has vehemently submitted that the finding recorded by the Tribunal to the effect that the assessee has proved the creditworthiness and the genuineness of loan is perverse, inasmuch as the assessee had failed to adduce sufficient evidence to prove the capacity of the said parties. It is asserted that mere production of wealth-tax statements does not per se prove the genuineness of the transaction and, therefore, addition u/s 68 of the Act was warranted. It is pleaded that a question of law does arise from the order of the Tribunal and, therefore, the Revenue's application u/s 256(1) was wrongly dismissed.

9. We are unable to persuade ourselves to agree with learned counsel. As noticed above, the Tribunal has recorded in clear terms that the amounts found credited in the capital accounts of the partners came from the savings bank accounts of both the partners. The Tribunal has recorded that the copies of these accounts were also produced before the Assessing Officer. Thus, there being no doubt about the identity of the creditor and the source being the bank account, wherein sufficient credit balance was available, no fault can be found with the finding of the Tribunal that the assessee has discharged the onus to prove the identity and creditworthiness of the two creditors, who happened to be the partners of the assessee-firm. The finding that the onus has been discharged by the assessee is a question of fact.

10. As regards the plea of learned Counsel for the Revenue that while recording

the said finding, the Tribunal has ignored the relevant material, referred to by the Commissioner (Appeals) and, therefore, the findings recorded by it are perverse, is stated to be rejected on the short ground that no specific question in this behalf has been raised in the reference application. Having failed to do so, the Revenue cannot be permitted to urge the contention at this juncture.

11. As noticed supra, the findings recorded by the Tribunal are pure findings of fact giving rise to no question of law. The petition is dismissed accordingly.