(1983) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 121 of 1982

Commissioner of Income Tax APPELLANT

Vs

Ramdas Ramlal RESPONDENT

Date of Decision : 30-06-1983

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1983) 37 CTR 249 : (1984) 149 ITR 256 : (1983) 15 TAXMAN 28

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; M.S. Choudhary, for the Respondent

Judgement

Vijayvargiya, J.—As directed by this court by order dated October 30, 1980, in Misc. Civil Case No. 65 of 1977, the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the burden to prove that the agency agreement, in pursuance of which payment was made to Vinay Bhasin in the assessment year 1972-73, was genuine, was on the assessee ? "

2. The material facts giving rise to this reference as set out in the statement of case are as follows : The assessee, a registered firm, derived income mainly from wholesale business in cloth at Indore City and from sales outside Indore, In the assessment year 1970-71 the assessee-firm had two partners, Ramlal and Madanmohan. Ramlal''s share in the firm was 50% and that of Madanmohan was 25% in profits only. Rajiv, a minor grandson of Ramlal, was admitted to the benefits of the partnership to the extent of 25%. Ramlal died on November 21, 1969. On his death the firm was reconstituted and Ramlal''s widow, Smt. Krishnavanti, and his daughter, Smt. Shila Sethi, were made partners of the firm having 25% share each in the firm. Madanmohan remained the sole working

partner of the firm. In the assessment year in question the assessee claimed a deduction of the sum of Rs. 22,398 paid to Vinay Bhasin, son of Madanmohan, as commission. Vinay Bhasin, was constituted as agent for the entire previous year relevant to the assessment year 1972-73 by an agreement dated April 1, 1971.

3. The ITO came to the conclusion that the agreement entered into with Vinay Bhasin was sham and Vinay Bhasin did not render any service to the firm and the payment to him was bogus and without consideration. Similar finding was recorded by the ITO in respect of the deduction claimed by the assessee as commission having been paid to another son of Madanmohan, viz., Anil Bhasin, in the previous year. The case of Anil Bhasin has become final and we are not concerned with it. In appeal preferred by the assessee against the order of the ITO, the AAC held that the claim of the assessee for deduction of the amount of Rs. 22,398 paid to Vinay Bhasin was genuine. He accordingly deleted the addition of Rs, 22,398 from the hands of the assessee-firm, On further appeal by the Department, the Appellate Tribunal set aside the finding recorded by the AAC and held that it was not proved that the transaction was a genuine one or that Vinay Bhasin rendered any services to the assessee-firm as agent. Being aggrieved by the order of the Tribunal, the assessee sought a reference to this court. The application of the, assessee for that purpose was dismissed by the Tribunal. The assessee then submitted an application to this court u/s 256(2) of the I.T. Act, 1961, which was allowed. At the direction of this court the Appellate Tribunal has referred the aforesaid question of law for the opinion of this court.

4. We have heard the learned counsel for the parties. The assessee claimed deduction of Rs. 22,398 from its income on account of commission having been paid to Vinay Bhasin. It cannot be disputed that it was for the assessee to prove the fact that the said amount was wholly and exclusively spent by the assessee for purposes of its business. The assessee placed reliance upon the agreement executed between the assessee-firm and Vinay Bhasin appointing him as an agent of the assessee-firm on commission. The Tribunal examined the materials placed on record and held as follows:

" ......Similar is the statement of Vinay Bhasin. He stated that he used to sell goods of the assessee by going out of Indore but admitted that he had no record of any such visits and that he had absolutely no proof about his alleged visits or selling of goods of the assessee. When asked if he contacted any new party to introduce new customers to the assessee, he stated that he did not remember. There are other facts and circumstances brought in the statement of these persons which go to show that they did not render any service whatsoever to the assessee-firm in the respective assessment years. It may also be mentioned here that regarding the second duty assigned to these alleged agents, both of them admitted that they did not recover any debt of the assessee nor settle any dispute or claim of the assessee. Anil Bhasin in fact stated that there was neither any bad debt nor any dispute. Vinay Bhasin has also stated to the same effect. It may also be mentioned here that the assessee has not produced any iota of evidence in support of its claim that Anil Bhasin or Vinay Bhasin rendered any service whatsoever to the assessee in performance of the duties assigned to them as agents......

So far as the impugned order of the AAC for the A.Y. 1972-73 is concerned, the AAC took a superficial view of the entire matter at issue. He lost sight of the fact that the burden to prove the genuineness of the agreements and the payments being wholly and exclusively for business purposes lay on the assessee and there was no material worth the name on the record to justify a finding in that regard in favour of the assessee."

5. Thus, if the burden to prove the fact that the payment of the amount to Vinay Bhasin was wholly and exclusively for business purposes of the assessee was on the assessee, it cannot seriously be contended that the burden to prove the genuineness of the agreement upon which reliance was placed by the assessee to prove that the payment of commission was wholly and exclusively for business purposes of the assessee did not He on the assessee. The Tribunal, therefore, did not commit any error of law in holding that the burden to prove the genuineness of the agency agreement in pursuance of which payment was made to Vinay Bhasin in the assessment year 1972-73 was on the assessee.

6. As a result of the discussion aforesaid, our answer to the question referred to us is in the affirmative and against the assessee. In the circumstances of the case, the parties shall bear their own costs of this reference.