(1993) 08 CAL CK 0024

In the Calcutta High Court

Case No : IT Reference No. 134 of 1992

Commissioner of Income Tax APPELLANT

Vs

Rameswar Sirkar RESPONDENT

Date of Decision : 23-08-1993

Acts Referred:
Income Tax Act, 1961 — Section 144A, 256(2), 68, 69, 69A

Citation : (1994) 74 TAXMAN 294

Hon'ble Judges : Nure Alam Chowdhury, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(2) of the income tax Act, 1961 (''the Act'') for the assessment year 1985-86 the following question has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the deletion of addition of Rs. 8,99,086 made as income from undisclosed source and Rs. 3,49,903 as income from other sources u/s 69A of the income tax Act, 1961, and whether the findings relating to such deleting are unreasonable or perverse ?

The facts, briefly stated, are that in the capital account of the assessee there was a sum of Rs. 8,99,086 shown as addition thereto. The assessee explained that the amount was introduced in the capital account out of the proceeds of the fixed deposits. The assessee was not able to produce the fixed deposit receipts before the ITO for verification. Therefore, the ITO held that the source for the addition in the capital account was not explained and proceeded to assess the amount as cash credit u/s 68 of the Act. On appeal, the assessee produced the fixed deposit receipts before the Commissioner (Appeals). The balance sheet was also produced before him. The assessee also pointed out the transfer entries made in respect of the said amount from his personal account to his business account. The personal account had been considered in the wealth-tax assessment of the assessee. After going through the assessment records and the materials produced by the assessee, the Commissioner (Appeals) found that the amount of Rs. 8,99,086 had in fact been transferred to the capital account from the assessee''s personal account. He, therefore, deleted the addition. On appeal by the department, the Tribunal agreed with the findings of the Commissioner (Appeals) and dismissed the ground.

2. During the assessment year in question, the assessee received advance of Rs. 3,49,903 against orders from various parties. The ITO found that the assessee did not file details of such advances and could not furnish names and addresses of the parties from whom they were taken. The assessee asked for some time to furnish the details. However, this was not allowed. The amount of advance was added in the assessment u/s 69A. The assessee filed an appeal to the Commissioner (Appeals) who found that the ITO was under a misconception regarding the provisions of section 69A. He perused the balance sheet and found that the assessee had received the advances from various parties. He further found that the amount was shown as liability in the balance sheet in the same way as they appeared in the balance sheets for all the years prior to and subsequent to the years under appeal. He noticed that the fact that the assessee had received advances was never disputed in the assessment in any of the earlier years. He found that the advances were duly reflected in the balance sheet and were shown as liabilities in the balance sheet year after year which was also accepted in the assessments. The Commissioner (Appeals) also held that the names and addresses of the parties from whom the advances were received were mentioned and that the advances were received by the assessee for making gold ornaments. In this view of the matter he deleted the addition. On appeal by the department, the Tribunal agreed with the findings of the Commissioner (Appeals) and dismissed the appeal.

3. The learned counsel appearing for the revenue has drawn our attention to the order of the ITO and submitted that the finding was based on sufficient materials and the assessee did not in spite of several particulars given satisfactorily explain the source of the capital account or the advances received from various parties. Accordingly, the Commissioner (Appeals) and the Tribunal were not justified in deleting the addition made by the ITO. He has drawn our attention to the findings of the different authorities.

4. Since no one appeared for the assessee, at our instance Mr. S. Bagchi was appointed to assist the Court. He has drawn our attention to certain salient features of this case. He has submitted that the Tribunal was fully justified in arriving at the conclusion as it dealt. The ITO in his order in respect of the amount of Rs. 8,99,086 appearing in the capital account recorded as follows:

(a) On perusal of the capital account of the assessee it appears that Rs. 8,99,088 has been shown as addition to the capital account. The learned Inspecting Assistant Commissioner, R-XXI, Cal. has observed in his order u/s 144A as under:

As regards introduction of money in the capital account in the assessment year

1985-86, it is just like cash credit. The income tax Officer should give full opportunity to the assessee to explain the increase in the capital account and the same should be decided on merits.

On query it is stated that the sum has been introduced out of maturity value of the fixed deposit. But the assessee could not file the details of such fixed deposit, i.e., the fixed deposit No., amount of maturity and the bank on which such fixed deposits stand. It is also stated by assessee as under:

In any event since FDRs were not in the custody of the assessee it is not possible to furnish receipt No., etc.''. Thus, it is peculiar that the assessee could not file the fixed deposit No., even the bank with which such fixed deposits stand. In absence of the name of the bank and branch thereof the same could not be verified independently. Thus, the contention of the assessee is not proved and source thereof is not explained. Hence, I am treating it as unexplained cash credit in the capital account of the assessee. The same is treated as income from other source of the assessee as per provision of section 68 of the Act.

5. The Commissioner (Appeals) dealt with this aspect of the matter in the following terms:

7. For the sake of convenience the brief facts may be reproduced as follows:

The appellant is maintaining three accounts - (1) Account in respect of property, (2) Hire and service charges, and (3) in respect of P.B. Sarkar & Co., under which jewellery business is carried on. During the year under consideration the appellant transferred certain amount from his property account and Hire and Service Charges account to the business account amounting in all to Rs. 8,99,088 narrating the same to be addition during the year in the capital account in respect of P.B. Sarkar & Sons. That the above sum consisted of Rs. 40,000 from property account, Rs. 40,000 from Service Charges account amounting to Rs. 80,000. The appellant had also another account which may be taken as personal account. From the personal account Rs. 8,99,086 principal and interest consisting of Rs. 81,500 and Rs. 81,500 being the refund of CTD Rs. 60,000 principal and Rs. 21,500 interest, refund of compulsory deposit Rs. 57,586, Rs. 38,760 principal and Rs. 18,826 interest, Rs. 6,80,000 representing fixed deposit which was pledged with bank as collateral security which was so long not taken into business. The income tax Officer further stated in his order that the addition in the capital account though claimed to have been out of matured F.D. no details could be furnished as to the fixed deposit No., amount of maturity and the bank in which such fixed deposit stands. The submission of the assessee is that in any event since the FDRs were not in the custody of the appellant it is not possible to furnish receipt No., etc. Therefore, the explanation could not be accepted in the absence of verification of details in respect of source. Accordingly, the income tax Officer treated the amount of Rs. 8,99,086 as income of the assessee from other source as per provision of section 68 of the Act.

8. The submission of the learned counsel before me is that the capital account of

the appellant was credited with sum of Rs. 8,99,086 and they were fully explained by the auditor in the balance sheet itself stating that they were mere transfer of entries from the personal account to the business account. If the income tax Officer cared to look into the record, he would very well locate that these are all mere transfer entries from personal account to business account and this personal account was duly considered in the wealth-tax assessment of the appellant for the assessment year under consideration. The income tax Officer also failed to apply his mind in appreciating these entries and directed himself to proceed with some vindictiveness to make addition as he did. That the income tax Officer''s approach is totally wrong. He submitted further that the Inspecting Assistant Commissioner Range XXI in his direction has also misconceived to hold that these entries are mere cash credit although they are clearly explained that these are no cash credit but mere transfer of entries from personal account to business account. The income tax Officer and Inspecting Assistant Commissioner failed to take into consideration or failed to appreciate that the appellant is an individual who has some personal properties besides what is reflected in the business books year after year. But being individual and proprietor of the business the assessment was completed taking into consideration the entire aspect of the appellant relating to self as well as to business as per law. Besides that fixed deposits were lying in the custody of the bank from whom over-draft had been taken as those F.Ds were pledged as collateral security. The number of the F.Ds could not be easily furnished. So, however, the absence of F.D. Nos. will not be a reason for disbelieving the genuine state of affairs. Similarly, transfer of compulsory deposit withdrawals and transfer of CTD account from personal to business account cannot by any means be taken as cash credit. Under the circumstances the addition made by the income tax Officer is on wrong appreciation of the fact and, therefore, not justified and should be deleted.

9. On careful consideration of the income tax Officer''s order, submission of the learned counsel and the assessment records and materials thereon it is observed that the addition of Rs. 8,99,086 to the capital account of the appellant in the business of P.B. Sirkar & Sons has to be accepted as properly explained. This is so in view of the fact that the transfer of Rs. 40,000 from property account to business account as well as Rs. 40,000 from Hire and Service Charges account to Business account are borne out from the records of the appellant. In respect of F.D. also the income tax Officer had assessed in the preceding year, i.e., 1984-85 interest income of Rs. 67,000 on the F.D. of Rs. 6,80,000 with State Bank of India, Elgin Road Branch, Calcutta. The maturity of CTD Rs. 81,500 was also in respect of refund received on 16-5-1984 from G.P. of Calcutta account Rs. 1,76,569 and the date of registration is 11-5-1974 and refund of compulsory deposit amounting to Rs. 57,586 was also in respect of account No. ITP-1/75 from UBI, Chakraberia. In view of the above the addition of Rs. 8,99,086 is uncalled for and hence deleted.

6. On these facts found by the Commissioner (Appeals) the Tribunal confirmed

the aforesaid finding made by the Commissioner (Appeals). The Commissioner (Appeals) on the materials found that the assessee properly explained the said amount of Rs. 8,99,086 which appeared in the capital account. In our view, the Commissioner (Appeals) and the Tribunal were justified in holding that the authorities duly proceeded on a totally wrong footing. The basic facts were not appreciated by the income tax authorities. In our view, the findings of the Commissioner (Appeals) and the Tribunal are based on materials and cannot be said to be perverse.

7. We shall now turn on to the second addition made by the ITO, being the advance received from various parties aggregating Rs. 3,49,903. The finding of the ITO on this aspect is as follows:

On perusal of the balance sheet I find that the assessee has received advance from various parties at Rs. 3,49,903. On query the assessee could not file the details of such advance taken from various parties nor he could file the name and address of the parties from whom such advance has been taken. The assessee in his letter dated 11-3-1988 para 7 has stated that this can be submitted if, of course, sufficient time is allowed. I already stated that the information was called for vide this office letters dated 16-1-1986,29-12-1987,4-2-1988 and finally on 4-3-1988. As such it is clear that sufficient time was allowed to furnish such details. Moreover, it is not clear that when advance has been taken from parties, in that case why name and address of those parties could not be provided. Thus, I find that the assessee has failed to explain the source of such amount found credited in his accounts. Thus, I am treating it as unexplained money as per provision of section 69A of the Act as income from other source.

8. It has been found by the Commissioner (Appeals) that advances appeared in the balance sheets for all the years prior to and subsequent to the year in question and were never disputed in any assessment in all the earlier years. This crucial fact was not considered by the ITO. The advances collected were in respect of innumerable customers when they came for making ornaments and jewelleries. That such advance collection in 1982-83 assessment was Rs. 4,34,088, in 1983-84 Rs. 2,99,758, in 1984-85 Rs. 3,83,866 and during the year under consideration Rs. 3,49,903. The names and addresses of those customers have been maintained in accordance with the Gold Control Act. No disallowance was made in the earlier years and subsequent year. On this fact, the Commissioner (Appeals) deleted the addition of Rs. 3,49,903 made u/s 69A. The Tribunal did not deal elaborately with that question as they agreed with the finding of the Commissioner (Appeals). The Tribunal observed as follows:

5. Ground No. 2 of the appeal is regarding deletion of addition of Rs. 8,99,086 as income from other sources u/s 68 of the Act. The assessee showed Rs. 8,99,086 as an addition to the capital account. The assessee explained that this sum was introduced in the capital account out of maturity value of the fixed deposit. However, the assessee could not produce the fixed deposit receipts before the income tax Officer and could not verify the same. The income tax Officer held

that the source was not explained and, therefore, he treated the same as unexplained cash credit in the capital account of the assessee and treated the same as income from other sources u/s 68 of the Act.

6. When the assessee disputed this before the Commissioner of income tax (Appeals), the fixed deposit receipts were produced and the Commissioner of income tax (Appeals) has examined the same. The balance sheet was placed before the Commissioner of income tax (Appeals). The entries from the personal account to the business account were pointed out. The income tax Officer did not look into these entries. The personal account was considered in the wealth-tax assessment of the assessee. The Commissioner of income tax (Appeals) went through the assessment records and materials therein and found that this amount was transferred to the capital account from the personal account of the assessee. He found that there was no ground to add this amount as income from other sources. The Commissioner of income tax (Appeals) was satisfied on evidence and after going through the balance sheet, the wealth-tax returns and the assessment order that the addition cannot be upheld. We agree with the view taken by the Commissioner of income tax (Appeals). We also do not find any good reason to interfere with the order of the Commissioner (Appeals) as he had considered the evidence on record and made the deletion.

7. ******

8. The income tax Officer found that the assessee received advances from various parties at Rs. 3,49,903. He held that the assessee could not file the details of such advances and could not furnish the names and addresses of the parties. The assessee asked for sufficient time to furnish the details. He held that sufficient time was allowed to the assessee. He held that the assessee failed to explain the source of such amount found credited in the account. Hence, he treated it as unexplained money u/s 69A.

9. When the assessee challenged this action of the income tax Officer before the Commissioner (Appeals), the Commissioner of income tax (Appeals) did not agree with the view taken by the income tax Officer and has deleted the said addition. The Commissioner (Appeals) held that the income tax Officer made this addition on misconception of provisions of section 69. He perused the balance sheet and found that the assessee had received advance of Rs. 3,40,908 from various parties. The Commissioner of income tax (Appeals) held that section 69A postulates any amount found in the possession of the assessee for making addition but does not postulate the amount credited in the books of account under the said section. This amount was shown as liability in the balance sheet in the same way as the advance appeared in the balance sheets for all the years prior to and subsequent to the year under appeal. This was never disputed in the assessments in all the earlier years. These amounts were credited in the books of account and reflected in the balance sheet. When those amounts have come from year to year showing liabilities in the balance sheet and they were allowed in the earlier year, there was no reason for the income tax Officer to make

disallowance for this year. The Commissioner of income tax (Appeals) also held that the names and addresses of the parties were mentioned and these advances were received for making gold ornaments under the Gold Control Act. The advance received to purchase the gold and to make the gold ornaments cannot be added as unexplained money to the income of the assessee. The income tax Officer was wrong in making the addition of such amount.

10. We have examined the facts and have considered the arguments. The Commissioner of income tax (Appeals) has rightly deleted the addition made on account of advances received from the customers for making gold ornaments.

For the reasons aforesaid, we are of the view that it cannot be said that the findings relating to the deletion of the amount in question are either unreasonable or perverse. We, therefore, answer the first part of the question in the affirmative and we further hold that the finding relating to such deletion are neither unreasonable nor perverse.

There will be no order as to costs.

Chowdhury, J.

I agree.

