
(1980) 12 BOM CK 0006

In the Bombay High Court

Case No : Income-tax Reference No. 82 of 1971

Dharmavat Provision Stores

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 68

Citation : (1981) 22 CTR 277 : (1980) 139 ITR 700 : (1981) 7 TAXMAN 90

Hon'ble Judges : M. Jagannatha Rao, J;Kania, J;D.P. Madan, J

Bench : Full Bench

Judgement

Kania, J.—This reference arises on a case stated by the Income Tax Appellate Tribunal under s. 256(2) of the I.T. Act, 1961 (referred to hereinafter as "the said Act"), at the instance of the assessee. The following question has been referred to us in this reference :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that section 68 of the Income Tax Act, 1961, was rightly invoked ?"

2. The facts giving rise to this reference are as follows :

The assessment year in question is the assessment year 1962-63 for which the assessee's relevant accounting year was S.Y. 2017 (October 20, 1960, to November 8, 1961). The assessee, an individual, was doing grocery and money-lending business in the name and style of M/s.Dhramavat Provision Stores. In the course of the assessment proceedings for the assessment year 1962-63, the assessee filed a balance-sheet as at the end of S.Y. 2016, which was the previous year for the assessment year 1961-62, and also a balance-sheet as at the end of S.Y. 2016, which was the previous year for the assessment year 1961-62, and also a balance-sheet as at the end of S.Y. 2017, the material accounting year. These balance-sheet were filed for the first time before the ITO during the course of the assessment proceedings for the assessment year 1962-63 as aforesaid.

The balance-sheet as at the end of S.Y. 2016 showed a credit balance of Rs. 24,604.95 in the assessee's personal account. The capital account stood at Rs. 26,000. In the next balance-sheet, namely, as at the end of S.Y. 2017, the capital account was unchanged, while the personal account stood at Rs. 24,903. After considering the explanation given by the assessee, the ITO held that the assessee could not have built up a capital of Rs. 26,000 by the end of S.Y. 2017, and assessed the entire amount of Rs. 26,000 appearing in the capital account as the undisclosed income of the assessee for the assessment year 1962-63. The ITO applied the provisions of s. 68 of the said Act in rejecting the contentions of the assessee. The ITO rejected the balance-sheet filed for the end of S.Y. 2016 as untrue. He also disbelieved the explanation given by the assessee to the effect that he had received Rs. 7,000 from his mother in S.Y. 2016, and added this amount also as the undisclosed income of the assessee in the relevant assessment year. He found that the said amount must have been credited in the personal account in the relevant assessment year. On an appeal by the assessee, the AAC restricted the additions made to Rs. 17,614, having regard to certain tangible additions made to the book profits in past years and by giving credit for some probable savings. The assessee preferred an appeal to the Tribunal which dismissed the appeal holding that the provisions of s. 68 of the said Act were rightly applied by the ITO to the case. One other fact which may be mentioned is that the order of the ITO shows that it was found by the ITO that the undisclosed income from the business to the extent of Rs. 26,000 had been brought by the assessee into the capital account.

3. The submission of Mr. Pandit, the learned counsel for the assessee, is that s. 68 of the said Act can be applied only when there is an actual cash credit entry in the account of the assessee for the relevant previous accounting year. It was further submitted by him that an item in the capital account in the balance-sheet does not represent any credit entry for any sum at all but merely reflects the investments in the shape of assets and, hence s. 68 cannot be applied in respect of such an entry at all.

4. In order to appreciate this contention, it is necessary to note the provisions of s. 68 of the said Act. The said section runs as follows :

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may charged to Income Tax as the income of the assessee of that previous year."

5. In this case, we find that in the balance-sheet for the S.Y. 2017, which is the relevant pervious accounting year, there is an item of Rs. 26,000 in "Bhandawal Khate", which, it is a common ground, is the capital account. It is clear that this item in the balance-sheet reflects the sum total of the credit and the debit entries in the capital account in the books of account of the assessee. The result would be that this entry shows that the credit entries in the capital account of the assessee for the said period aggregated to Rs. 26,000 more than the debit

entries. In view of this, the conclusion could only be that the sums credited in the capital account were in excess of the sums debited therein by the amount of Rs. 26,000. The fact that some of these sums in the said account relate to the cost of assets can make no difference. It is true that the marginal note against s. 68 says "Cash credits", but it is well-settled law, and this position is not disputed by Mr. Pandit, that the marginal note cannot restrict the plain meaning of the language used in the section itself.

6. It was next contended by Mr. Pandit that even the balance - sheet as at the end of S.Y. 2016 showed the sum of Rs. 26,000 as the balance in the capital account and, hence, it cannot be said that the capital account had gone up by this amount in the relevant accounting year. In our view, this balance-sheet and rejected it as untrue. This finding has been upheld by the AAC and the Tribunal. It is not for us to go into the correctness of that finding. Hence, we cannot proceed on the footing that in the balance-sheet of the previous accounting year there was a sum of Rs. 26,000 as the balance in the capital account at the end of the said accounting year.

7. We may point out that the AAC has, in fact, given certain relief to the assessee staking into account the amount of closing stock on an estimate basis in the earlier years as aforesaid and has restricted the addition on account of the undisclosed income to Rs. 17,614. However, that aspect of the matter is not relevant for the determination of the question before us.

8. In the result, the question referred to us is answered on the affirmative. The assessee to pay to the Department the costs of the reference.