(2018) 07 RAJ CK 0079

In the Rajasthan High Court

Case No : Income Tax Appeal No. 135 of 2018

Dinesh Kumar Laddha @APPELLANT@Hash Assistant Commissioner Of Income-Tax

Date of Decision : 02-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0079

Hon'ble Judges : KALPESH SATYENDRA JHAVERI, J;VIJAY KUMAR VYAS, J

Bench : Division Bench

Advocate : Gunjan Pathak, Aditya Bohra

Final Decision : Dismissed

Judgement

Declared Income Additions-,Rs.784816/-

1. Trading addition,"Rs.13,87,305/-

2. Interest Expense,"Rs.3,98,025/-

3. Interest Expense incurred on

Immovable Property","Rs.4,52,332/-

4. Unsecured Loan from Sh. Sunil

Agarwal Section 68","Rs.5,00,000/-

5. Gift received from Sister Section

68","Rs.10,00,000/-

6. Gift received from Sisterâ??s

Daughter Section 68","Rs.10,00,000/-

7. Vehicle Depreciation and

Insurance","Rs.33,854/-

8. Household Expenses and

Foreign Tour Expenses","Rs.3,42,200/-

Total Assessed Income,"Rs.58,98,530/-

be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment",

runs contrary to the Judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent Judgment in Mangilal's",

case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in",

Mangilal's case (supra).,

4.3 In Aravali Trading Co. vs. Income Tax Officer (2010) 187 Taxman 338, it has been held as under:-",

10. The answer to us appears to be no more resintegra. Neither the provisions of Section 68 of the IT Act nor on general principle, it can be said that",

once the existence of persons in whose name credits are found in the books of the assessee is proved and such persons own such credits with the,

assessee still the assessee is to further prove the source from which the creditors could have acquired money to be deposited with him.,

11. The fact that the depositors' explanation aboutthe sources where from they acquired the money is not acceptable to the AO, it cannot be",

presumed that the deposits made by such creditors is the money of the assessee himself. There is no warrant for such presumption. In such event if,

the creditors explanation is found to be not acceptable about such deposits, the investment owned by such persons may be subjected to the",

proceedings for inclusion of such investment as their income from undisclosed sources or if they have been found Benami, the real owner can be",

brought to the tax net. But in order to fasten liability on the assessee by including such credits as his income from unexplained sources a nexus has to,

be established that the sources of creditors' deposit flew from the assessee. In the absence of any such link, additions of cash credits found in the",

books of account of the assessee cannot be considered to be unexplained income of the assessee, where existence of depositors of such credits is",

established and such deposits/advance/loan is owned by such existing person. On such proof the assessee's onus is discharged.,

20. This principle is fully applicable to the presentcase. The fact that the explanation furnished by the aforementioned four creditors about the sources,

where from they acquired the money was not acceptable by the Revenue could not provide necessary nexus for drawing inference that the amount,

admitted to be deposited by these four persons belonged to the assessee. The assessee having discharged his burden by proving the existence of the,

depositors and the depositors owing their deposits, he was not further required to prove source of source.",

21. Accordingly the Tribunal, and the AO hadseriously erred and misdirected themselves in law by not correctly appreciating the legal principle about",

necessity of establishing such nexus once the assessee has discharged his onus by proving the existence of the depositors and the depositors having,

accepted their deposits with the assessee. Once this onus is discharged the presumption raised under Section 68 stands rebutted and it becomes,

burden of Revenue to prove that source of such deposits is traceable to assessee before the same can be treated as undisclosed income of the,

assessee concerned.,

4.4 In Commissioner of Income Tax vs. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj.), it has been held as under:-",

20. When we peruse the facts hereinabove, it isan admitted position that all the cash creditors have affirmed in their examination that they had",

advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the",

money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition",

cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO,

has been able to prove that the money actually belonged to none but the assessee himself. The action of the AO appears to be based on mere,

suspicion.,

21. Accordingly, in our view, the Tribunal, afterappreciation of evidence has rightly come to the aforesaid conclusion and when there is appreciation of",

evidence, then it is purely a finding of fact and no question much less substantial question of law can be said to emerge out of the said order of the",

Tribunal and we do not find any infirmity or perversity in the order of the Tribunal so as to call for any interference of this Court. In our view, no",

substantial question of law arises out of the order passed by the Tribunal.,

22. Consequently, the appeal, being devoid ofmerit, is hereby dismissed in limine. No order as to costs.",

4.5 In Sarogi Credit Corporation vs. Commissioner of Income Tax (1976) 103 ITR 344, it has been held as under:-",

It may be noticed from the facts of the Northern Bengal Jute Trading Company's case that the credit entries in question in that case were standing in,

the names of either employees of the assessee or an associate firm, Messrs. Surajmull Nagarmull. That being the position, it was held, on the facts of",

that case and the surrounding circumstances obtaining therein, that the initial onus had not been discharged by the assessee.",

The last, but not the least, of all the situations favourable to the assessee, in which the Tribunal, by its appellate order, has placed it with regard to the",

source of income of the creditors, is by partly accepting the source to the extent of Rs. 5,000 and partly rejecting to the extent of Rs. 15,000. Having",

accepted the genuineness of the entries in the books of account; having accepted the explanation offered by the third parties with regard to their,

sources of money, in part at least, there was no material for the Tribunal to hold that the assessee had not discharged the onus, and the finding to that",

effect must be held to be without any evidence and hence wholly illegal, and conclusions drawn perverse.",

For the foregoing reasons, I would answer the first question referred to us in the affirmative and hold that, on the facts and in the circumstances of the",

case, the assessee discharged the onus within the meaning of Section 68 of the Act, for the cash credits. As a necessary corollary, the second",

question also must be answered in favour of the assessee and against the department and it must be held that the Tribunal was not justified in law to,

maintain the addition of Rs. 15,000 as the assessee's income from undisclosed sources. The assessee will be entitled to its costs. Hearing fee assessed",

at rupees one hundred only.,

4.6 In Jalan Timbers vs. Commissioner of Income Tax (1997) 223 ITR 11, it has been held as under:-",

9. On the basis of the cases cited above, it is to be seen whether in the present case the assessee could discharge the onus regarding the receipt of the",

cash credit. The Tribunal in its judgment indicated that the identity of the creditor was not enough. It is true that by proving the identity the assessee, cannot be said to have discharged its onus. In the instant case, the amounts were shown in the Income Tax return of the assessee. Besides, the",

creditors had also shown in the returns about the giving of the loan to the assessee. Strangely, the Income Tax Officer while making the assessment in",

respect of the three creditors above named accepted the returns. This itself will go to show that the amount received by the assessee was at least,

prima facie genuine. As the Income Tax Officer had accepted the returns of the three creditors it should go to mean that the amounts given by those,

creditors were also genuine. On going through the Tribunal's judgment, we find that the Tribunal observed thus :",

Of course, confirmation letter was filed but in the instant case, the Income Tax Officer went further and verified the assessment records of that",

creditor from which he found various facts as mentioned in the assessment order and as discussed by us above. Thus, in our opinion, identity of the",

creditor alone is not sufficient. It has also to be shown that the creditor had the capacity to advance the loan and that the loan itself was genuine."""",

4.7 In Commissioner of Income Tax vs. S. Kamaljeet Singh (2005) 147 Taxman 18, it has been held as under:-",

4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in,

question. The assessee discharged the onus by placing,

(i) confirmation letters of the cash creditors;,

(ii) their affidavits;,

(iii) their full addresses and GIR numbers andpermanent account numbers.,

It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credits was called for. In view of",

this finding, we find that the Tribunal was right in reversing the order of the AAC, setting aside the assessment order.",

5. The CIT(A) while considering the ground no.5 held as under:-,

Ground No.5,

4- /kkjk 68 ds rgr vk; esa o`f)%& dj fu/kkZj.k dh dk;Zokgh ds nkSjku djnkrk dks voxr djk;k x;k Fkk fd ;g oR;kiu gsrq Jh lqfuy vxzoky dks mifLFkr,

djk;s fdUrq djnkrk us lR;kiu gsrq izLrqr ugha fd;kA rRiâ??pkr djnkrk dks fnukad 29-12-2014 dks /kkjk 131 dk lEeu tkjh fd;k x;k ,oa fnukad 05-01-", 2015 dks Jh lquhy vxzoky ds c;ku mlds }kjk djnkrk dks nh xbZ jkfâ??k ds Jksr ds lR;kiu gsrq ntZ fd, x, ftudk fooj.k fuEu izdkj gS%& izâ??u%&",

d`i;k viuk iw.kZ ifjp; nhft,\ mRrj%& esjk uke lqfuy dqekj vxzoky iq= Jh ';ke fcgkjh vxzoky fuoklh vtjk xyh] pkSeq[kk cktkj] cwUnh esa jgrk gwaA ejs",

h vk;q 42 o""kZ gS o eSa d{kk X;kgjoha rd fâ??kf{kr gwaA izâ??u%& vkidks eS- y133Â¼6Â½ ds rgr uksfVl tkjh dj vkidh cfg;ksa esa muds [kkrs dh izfr o cSad [kkrs dh izfr o dj foojf.kdk dh izfr pkgh x;h Fkh] ks dh vkius izLrqr dh,

gSA vkids }kjk eSay[kkrs dks ns[kus ij Kkr gqvk fd vkids }kjk fnukad 08-112011 dks rFkk 9-11-2011 dks 11-2011 dks :- ikap yk[k Jh fnusâ??k yij Kkr gksrk gS fd bruh cMh jkfâ??k lEiw.kZ foRr o""kZ esa cSad [kkrs esa tek ugha djkbZ gS] d`i;k bl laca/k esa crk, fd bruh cMh jkfâ??k vkius",

dgka ls vftZr djds tek djkbZ gS] blds Jksr crk,a\ mRrj%& eSa- izksiVhZ Ã?;%& foÃ?; dk dk;Z djrk gwa] ftlls eq>s dehâ??ku dh izkfIr gksrh gS",

Â¼nykyh dehâ??kuÂ½] [ksrh tqvkjs ij ystk gwa blls Hkh vk; gksrh gSA ejs s iqjkuk xksMkmu gS mlls Hkh fdjk;s dh vk; gksrh gS] eSus] mDr,

xksMkmu dks nokbZ okys cksgjk dks fn;k gS ftlls eq>s ekfld 3000@& izfrekg fdjk;k vkrk gS] eSaus blds vfrfjDr vkSj Hkh iSls C;kt ij m/kkj fn;s gq,",

gSa mlls Hkh eq>s vk; gksrh gSA tqvkjs ij Jh eFkqjk yky] xzke&Qtyiqjk] vkdksnk] rg0&fg.Mksyh ls 22 ch?kk Ã'f""k Hkwfe tqvkjs ij yh Â¼;g Ã'f""k",

Hkwfe blds dCts esa gS mlds ukeÂ½ ftldk dksbZ lk{; esjs ikl miyC/k ugha gSA esjs }kjk fdu&fdu O;fDr;ksa dks m/kkj ij iSlk fn;k gqvk gS mldk Hkh,

fooj.k ;k O;fDr;ksa dh lwph esjs ikl ugha gSA C;kt dh nj fdlh ls ,d izfrâ??kr] nks izfrâ??kr o fdlh ls ugha Hkh fy;k tkrk gS tks jkfâ??k;ka m/kj nh",

gS os udn esa gh nh xbZ gSa izâ??u%& Ã'i;k crk;s fd vkids ikl [ksrh ds D;k&D;k lk/ku gS] ftuls vki Ã'f""k dk;Z djrs gS\ mRrj%& ejs s ikl Ã'f""k",

dk;Z djus ds dksbZ lk/ku ugha gS eSa nwljs ls [ksrh djok ysrk gwa fdUrq blds dksbZ lk{; esjs ikl miyC/k ugha gSa ejs s ikl [ksrh dh mit cspus ,oa",

[kkn&cht vFkkZr~ [kpksaZ ds dksbZ lk{; miyC/k ugha gSA izâ??u%& mijksDr c;kuksa ,oa miyC/k nLrkostksa ls cSad [kkrs ds voyksdu ls ;g Li""V",

gksrk gS fd vkius eS- ydj mUgsa ;kuh Jh fnusâ??k ymijksDr ls vkids }kjk nh xbZ jkfâ??k vFkok vkids }kjk vkidh Lo;a dh crkbZ xbZ jkfâ??k ds Jksr dh iq""Vh ugha gks ikbZ gS] vr% D;ksa ugh vk;dj",

vf/kfu;e 1961 dh /kkjk 147 ds rgr vkids izdj.k dks laoh{kk gsrq [kksyk tk;s] bl laca/k esa vkidks D;k dguk gSA,

mRrj%& tks Hkh mfpr dk;Zokgh le>h tk; oks dh tk;A,

Jh lqfuy dqekj vxzoky }kjk djnkrk dks fnukad 11-11-2011 dks : 500000@& fn;k x;k gSA Jh lqfuy dqekj ds cSad [kkrs dks ns[kus ij Kkr gqvk fd mlds,

}kjk fnukad 8-11-2011 dks 250000@& ,oa 9-11-2011 dks 250000@& udn cSad esa tek djk;s gSA lqfuy dqekj ds iwjs o""kZ ds cSad [kkrs dk voyksdu ij",

Kkr gqvk fd lqfuy dqekj us dHkh Hkh bruh cds ckjs esa izâ??u la[;k&2 esa iwNk x;k rks Jh lqfuy dqekj us dehâ??ku] [ksrh] tqvkjs ls vk; o xksnkjk fdjk;s dh vk; ls rFkk C;kt ij m/kkj fn, gq, C;kt",

jkfâ??k ls vkenuh gksuk crk;k gS Jh lqfuy dqekj }kjk 22 ch?kk Ã'f""k Hkwfe 1500@& izfr ch/kk ds fglkc ls tqvkjs ij ysuk voxr djk;kA ,oa Â¼;g",

Hkwfe fdlds dCts esa gS] dkÂ½ dksbZ lk{; miyC/k u gksuk crk;kA ftu O;fDr;ksa dks m/kkj iSlk fn;k gS mudk fooj.k Hkh miyC/k u gksuk c;kuksa,

esa crk;kA mijksDr c;kuksa ,oa lqfuy dqekj ds }kjk izLrqr cSad [kkrs ds fooj.k dks ns[kus ls Kkr gksrk gS fd Jh lquhy dqekj vxzoky :- 500000@& ds",

Jksr crkus esa foQy jgk gSA blls ;g fl) gksrk gS fd ;g jkfâ??k djnkrk }kjk Jh lqfuy dqekj dks nh xbZ gS ftls mlds }kjk cSad esa udn tek djkdj pSd,

djnkrk dks fn;k x;k gSA vr% djnkrk dh cqDl] esa lqfuy dqekj ds uke ls tek jkfâ??k djnkrk dh /kkjk 68 ds rgr v? kksf""kr vk; gS tks fd mlus lqfuy dqekj",

ds uke ls tek dh gS ,oa 500000@& djnkrk dh dj ;ksX; vk; esa tksMs tkus ;ksX; gSA djnkrk dks bl laca/k esa bl dk;kZy; ds i= fnukad 18-2-2015 ds }kjk",

fy[kk x;k fd%&,

vkids izdj.k esa vkidh cfg;ksa esa vkids }kjk Jh lqfuy dqekj vxzoky ls vkyksP; o""kZ esa 500000@& tek, ysuk ik;k x;k gSA Jh lqfuy dqekj vxzoky ls",

/kkjk 133Â¼6Â½ esa lwpuk,a pkgh xbZ rks mlds }kjk izLrqr lwpuk,a larks""kizn ugha ikbZ xbZA rRiâ??pkr Jh lqfuy vxzoky dks vk;dj vf/kfu;e 1961",

dh /kkjk 131 ds rgr lEeu tkjh fd;k x;k ,oa fnukad 5-1-2016 dks mlds c;ku ntZ fd, x;sA ntZ c;kuksa ls ,oa mlds }kjk izLrqr cSad [kkrs ds fooj.k ,oa mldh",

dj fooj.kh dks ns[kus ij Kkr gqk fd Jh lqfuy vxzoky 500000@& m/kkj nsus dh gSfl;r esa ugha gS vkSj u mlds ikl ,slk dksbZ lk{; gksuk ik;k x;k] ftlls ;g",

ekudj /kkjk 68 ds rgr vkidh dj ;ksX; vk; esa tksM fn;k tkosA djnkrk us izR;qrj fnukad 24-2-2015 esa fuEu Li""Vhdj.k izLrqr fd;k%&",

Regarding Sunil Kumar I have taken Rs.500000/through account payee cheque is regular assessee at Bundi.,

He has no denied in his statement and further details may be submitted after perusal of his statement which is not provided by you. Therefore you are,

very kindly requested to accept the loan.â??,

djnkrk dks bl laca/k esa Jh lqfuy dqekj ds fy, x;s c;kuksa dh QksVksizr fnukad

24-2-2015 dks miyC/k djkbZ xbZA bl laca/k esa djnkrk us fuEu",

izR;qRrj fnukad 26-3-2015 dks izLrqr fd;k gS%&,

â??In reference to copy of statement of Sh. Sunil Agarwal provided by your honor assessee begs t submit as under:-,

That Sh. Sunil Agarwal has accepted payment of loan in his statement inspite of pressure of tax he has admitted in his statement that he has paid loan,

to assessee after depositing in his bank through account payee cheque. It is further submitted that Sh. Sunil Agarwal is assessed to tax since long he,

has sufficient capital to provided loan. He has submitted his PAN before your honor therefore only due to deposition just before providing loan is not,

sufficient to consider has entry not genuine. In this connection I Am submitting following decisions:,

Sh. Kamal Kishore Beheti, Jodhpur Vs. DCIT, Central Circle-2, Jodhpur Tax World 2012(48)155 Both the creditors from whom assessee accepted",

credits were employees of assessee. Opened bank a/c first time to give these loans/cash was deposited and loan was advanced. No other transaction,

in bank a/c except interest. Both were produced through cheque. One of he creditors was filing return of income. AO made the additions, which were",

confirmed by CIT(A).,

Honâ??ble ITAT held that assessee has proved identity, credit worthness and genuineness of the transaction.",

Also in the case of Sm. Premlata Sharma Jaipur Vs. ITO Jaipur Honorable ITAT Jaipur Tax World 2009 Vol. XLII Part 4(236) has observed as,

under:- During this year assessee obtainded loans of Rs. 25 Lacs from 18 different persons-AO required the assessee to urnish confirmation, PA",

number, copy of return of income and bank account of the creditors-assessee however furnished confirmation alongwith copy of bank accounts in",

respect of only five creditors. From the copy of bank account, AO noticed that the creditors have deposited the amounts in cash in their bank accounts",

just before issue of cheque of loan to the assessee and hence source of such cash deposites in the bank accounts of creditors and also furnish,

remaining details. Since assessee failed to produce these persons, AO issued summons to the creditors but nobody appeared. Ultimately assessee",

treating the some as unexplained cash credits U/s 68 of the Act. CIT(A) sustained the addition since assessee failed to produce them. Before Tribunal, assessee submitted that all the 18 creditors are income tax assessee and their confirmation and PA No. were filed before the AO all these amounts of,

loan were repaid during the next year along with interest through account payee cheque and that the assessee cannot be alamed if the creditors did,

not appear before the AO inspire of issue of summons surrender was made to purchase peace of mind and avoid litigation. Considering the facts of,

this case, Tribunal have debated the addition after observing that identity and credit worthiness of all the creditors stand proved.",

In the case of Ashok Kumar Jain V/s. DCIT Tax World 2008 Vol. XXXIX part (137) honorable ITAT Jaipur has observed as under:-,

During AY 2003-04, AO made additions of Rs.361000/representing unexplained case credit assessee filed confirmation of each creditors alongwith",

their Income Tax particulars.,

AO did not, accept the genuineness of these credits and made the addition CIT(A) deleted the addition. Now Tribunal have upheld the decision of",

CIT(A) after observing that if the creditors are not traced by the AO, the loans cannot be treated as non genuine.",

Further, in the case of ACIT Vs Sampat Ram (2005) 24 Tax world 172, the Jaipur Bench of ITAT has held that depositing of cash after issuing",

cheque does not effect the genuineness of transaction. This does not make the transaction bogus.,

In the case of Sahibganj Electrical Cables Pvt. Ltd. (1978) 115 ITR 408 (Calcutta) it was held that the loan amount was received and returned,

through cheque and the assessee submitted a confirmation letter mentioning income tax number of creditor. The assessing officer without any,

investigation and not relying on the evidence rejected the deposits. He Tribunal reversed the decision of the Assessing Officer.,

Later, Calcutta High Court also upheld the decision of Tribunal.",

If any transaction is performed through bank, then the question of its genuineness does not arise. Moreover all loners are assessed to tax and are",

PAN holders, therefore identity is beyond doubt. Further, money has been advanced out of their assessed capital shown in their respective balance",

sheets and established sources of income, therefore, credit worthiness is fully proved.",

It is also submitted that in AY 2008-09 credit balance has been considered to be genuine. Sh. Sunil Agarwal has submitted of his copy of income tax,

return. Computation & balance sheet in within this sum is refulcting.,

djnkrk ds }kjk izLrqr izR;qRrj lkekU; izo`fRr dk gS ,oa blesa fn, x;s ch lswa ds rF; djnkrk ds izdj.k ds rF;ksa ls esy ugha [kkrsA djnkrk dk dFku Lohdkj",

djus ;ksX; ugha gSA vr% djnkrk ds izdj.k esa 500000@& djnkrk dh gh v?kksf""kr vk; ekudj /kkjk 68 esa dj ;ksX; vk; esa tksMk tkrk gSA djnkrk us",

viuh vk; dh fooj.kh esa mijksDr 500000@& ds rF;ksa dks Nqik fy;k gS ,oa lgh&lgh rF; izLrqr ugha fd;s gSA vr% bl pwd ds fy, djnkrk ds fo:) vk;dj",

vf/kfu;e dh /kkjk 271Â¼1Â½Â¼lhÂ½ ds rgr 'kkfLr dh dk;Zokgh visf{kr gSA,

6. The aforesaid finding was confirmed by the tribunal.,

7. In that view of the matter, we are in complete agreement with the view taken by the Tribunal, therefore, no substantial question of law arises.",

8. Hence, the appeal stands dismissed.",

