

(2005) 11 MP CK 0016
In the Madhya Pradesh High Court
Case No : IT Ref. No. 2 of 2002

Farkamal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Income Tax Act, 1961 — Section 254(2), 256(1), 256(2), 68

Citation : (2006) 201 CTR 474 : (2008) 296 ITR 585 : (2006) 154 TAXMAN 321

Hon'ble Judges : Subhash Chandra Vyas, J;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : S.C. Bagadia and D.K. Chhabra, for the Appellant; R.L. Jain and Veena Mandlik, for the Respondent

Judgement

S.K. Kulshreshtha, J.—This reference has been received from the Tribunal, Indore Bench, Indore under the provisions of Section 256(1), in pursuance of the direction issued by the apex Court, by order dt. 9th Nov., 2001, to refer the following questions of law for decision of this Court :

1. Whether, in the facts and circumstances of the case, there is any basis in law for addition of the two sums of Rs. 50,000 as income of the assessee in the relevant year ?
2. Whether the mere omission on the part of the assessee to include the sum of Rs. 50,000 withdrawn from the bank in his cash book can lead to the inference, in law, that the amount represented his income ?
3. Whether the mere finding that the cash book was unreliable can justify in law the addition of the two sums as income without any independent evidence?
2. The applicant-assessee is a firm in the name and style of M/s Farkamal, Indore. The matter relates to the asst. yr. 1983-84, relevant to the previous year from 1st Jan., 1982 to 31st Dec., 1982. The AO made an addition of Rs. 50,000 on account of the five creditors appearing in the books of the assessee on 7th Jan., 1982, wherein originally an amount of Rs. 50,000 was credited in the name

of M/s Daruwala and Brothers. The contention of the assessee was that the amount of Rs. 50,000 originally credited in the name of M/s Daruwala and Brothers was correctly replaced by five credits of Rs. 9,000 each pertaining to (1) Shri Girdharilal, (2) Shri Shankarlal, (3) Shri Santosh Kumar, (4) Smt. Saraswatidevi, and (5) Smt. Kishoridevi and the sum of Rs. 5,000 was added as the income of the year. A sum of Rs. 67,000 was withdrawn by the assessee from Dena Bank on 27th Dec., 1982, but due to oversight only a sum of Rs. 17,000 was credited in the cash book while the remaining amount of Rs. 50,000 was lying in the hands of the assessee. This money belonging to the assessee was later credited in the cash book and the entry was corrected from Rs. 17,000 to Rs. 67,000.

3. The CIT(A) accepted the contentions of the assessee and deleted the addition of Rs. 50,000 on the basis that there was no element of income as the amount of Rs. 50,000 was assessee's own money withdrawn from bank and could not be treated as income. Against the first appellate order, the Department appealed to The Tribunal, while the assessee preferred a cross appeal. The Tribunal allowed the appeal of the Department while rejecting the cross-objection and restored the addition made by the AO. The Tribunal observed that the assessee had interpolated the entries, as on 7th Jan., 1982 it tried to make a wrong entry of receipt of Rs. 50,000, on 27th Dec., 1982 it tried to show a wrong entry of receipt in the first instance, thereafter tried to correct the entries and on the third occasion, on 28th Dec., 1982, wrong entry of debit was made to explain the same entry of Rs. 50,000.

4. The assessee filed various applications u/s 254(2) of the IT Act before the Tribunal for rectification of mistake. The assessee also moved reference applications which were rejected. Thereafter the application was moved u/s 256(2) of the IT Act before this Court and after the same having been rejected, the assessee approached the Hon'ble Supreme Court and on the basis of the aforesaid order, the Tribunal has stated the case and referred it to us for decision.

5. Learned senior counsel Mr. Bagadia, has submitted that at the time of the assessment when the assessee realised that in respect of the amount of Rs. 67,000 withdrawn from the bank, there was a short entry, steps were taken to make amends and accordingly the entry was corrected in the cash book from Rs. 17,000 to Rs. 67,000. Learned counsel submits that it was a bona fide inadvertent mistake where the money which belonged to the assessee had not been properly reflected in the accounts and steps were taken to correctly indicate the same. However, the accountant of the assessee in order to make adjustment in the balance sheet, unwittingly made entries in respect of five persons to make debit entries and for that purpose, scored out the entry of Rs. 50,000 made in the name of Daruwala. This amount was surrendered on account of balance sheet difference and because the cash credit was disbelieved. However, the AO, instead of making addition of the sum of Rs. 50,000 surrendered by the assessee on account of the balance sheet difference, also made addition in respect of the

amount withdrawn from the bank on the ground that the same was unexplained investment and thus made addition twice of the same amount of the balance sheet difference. He further submitted that in appeal, the CIT(A) had called for the report of the AO in which the AO clearly opined, *inter alia*, as under :

(v) The surrendered amount of Rs. 50,000 on account of entry made in the name of M/s Daruwala Brothers, covers the bogus credits of Rs. 45,000 and interest of Rs. 4,500, shown to have been paid to them because such entries were made in the book in order to explain the credit in the name of Shri Daruwala.

6. The Tribunal, however, restored addition in respect of the account of Daruwala to the extent of Rs. 49,500 in addition to Rs. 50,000 surrendered by the assessee.

7. Both the learned Counsel have placed reliance on the observations of the Tribunal contained in para 14 of its order, which reads as under:

14. After careful perusal of the relevant pages of the cash book, the ledger, balance sheet, P&L a/c, statements of the creditors and the letters written by the assessee to the AO, CIT(A), we are of the view that when the AO has noticed the discrepancies of Rs. 50,000 in the bank accounts of the assessee and its cash book, the assessee had introduced Rs. 50,000 cash in its ledger on 27th Dec., 1982. To justify the introduction of this cash the assessee interpolated the withdrawal entries and cheque amount. The withdrawal entry was changed from Rs. 52,253.13 ps to Rs. 1,02,253.13 ps and a cheque amount was changed from Rs. 17,000 to Rs. 67,000. To adjust this Rs. 50,000 the assessee has introduced the entries of payment to five creditors at Rs. 9,900 each on the very next day i.e., 28th Dec., 1982. To adjust the balance Rs. 500, the assessee increased the freight expenses from Rs. 425 to Rs. 925. To justify the payment to the creditors the assessee introduced the cash credits of Rs. 45,000 in the name of five creditors at Rs. 9,000 each after scoring off the credit entry of Rs. 50,000 appearing in the name of Daruwala Brothers. To adjust the remaining Rs. 5,000, he increased the cash withdrawal from Rs. 3,325.60 ps to Rs. 8,325 but he could not make the changes in the corresponding entries appearing in the ledger. Since the assessee has already filed the balance sheet and the P&L a/c along with the return of income which was prepared on the basis of the ledger, he could not make the changes in the corresponding entries in the ledger, Had it been done, the relevant, balances appearing in the ledger would not correlate with the balances appearing in the balance sheets and P&L a/c. Therefore, we are of the considered opinion that the assessee has manipulated the cash book to overcome the discrepancies noticed by the AO. In these circumstances, we have to pierce the veil to find out the actual state of affairs. To ascertain the truth, we have to reverse the entries manipulated by the assessee. In that eventuality we have to reduce the cash withdrawal from the bank from Rs. 1,02,253.13 ps to Rs. 52,253.13 ps and a cheque amount from Rs. 67,000 to Rs. 17,000 appearing at p. 311 of the cash book. If we do so, there would have been a cash of Rs. 50,000 which was withdrawn from the bank and not introduced in the cash book

which is abundantly clear from the statement of bank account appearing at p. 48, In these circumstances, we agree with the view of the AO who treated this amount as unexplained investment or difference in the balance sheet. On the other point we agree with the contentions of the Revenue that in case of reverse entries there is no need to go into the genuineness of the five cash credits because these cash credits never existed in the account books till the date of furnishing of the return. In that eventuality, all these cash credit entries and difference in the withdrawal from the bank introduced on 7th Jan., 1982 should be replaced by a credit entry of Rs. 50,000 in the name of M/s Daruwala Brothers whereby the credit balance of M/s Daruwala Brothers will correlate with the credit balance shown in the ledger and the balance sheet, but when the assessee has filed a copy of the books of accounts of M/s Daruwala Brothers which is placed at p. 6 of the second compilation in which a debit balance in the name of the assessee was shown at Rs. 1,50,000, If we compare both these accounts, we find that there is a bogus credit of Rs. 50,000 in the account of M/s Daruwala Brothers which calls for an addition u/s 68 of the IT Act, but the AO has made the addition under this section to the tune of Rs. 49,500 u/s 68 of the Act. We, therefore, restrict the addition to that amount. Accordingly we set aside the order of the CIT(A) and confirm the additions.

8. From the observation of the Tribunal it is manifest that insofar as the withdrawal of the amount of Rs. 67,000 is concerned, it is not the case that such an amount had not been withdrawn by the assessee. The Tribunal has recorded its agreement after referring to the transaction that this amount was unexplained investment or difference in the balance sheet. In either of the above eventualities we are unable to subscribe to the view of the Tribunal that the amount was unexplained investment or difference in the balance sheet. It is not disputed that the amount was withdrawn from the bank and, though subsequently, it was accounted for in the accounts. Though some attempt was made to adjust the entry by scoring out the entry made in favour of Daruwala and make credit entries in favour of five persons, the said manipulation did not in any way affect the entry with regard to the amount drawn from the bank and credit in the cash book. Under these circumstances, from the amount drawn from the bank and merely on its delayed entry in the account books, no inference could have been drawn that it was an amount representing unexplained investment. It was, therefore, neither an unexplained income nor an unexplained investment and it was only the amount withdrawn from the bank which, whether inadvertently or deliberately one cannot say, was not entered in the account books. Insofar as the difference in the account books was concerned, the assessee surrendered a sum of Rs. 50,000 for being charged to tax. Under these circumstances, the addition of Rs. 50,000, the amount withdrawn from the bank, could not have been made to the taxable income of the assessee.

9. In view of the above discussion, we are of the view that in the facts and circumstances of the case, there was no basis in law for addition of two sums of Rs. 50,000 as income of the assessee in the relevant year. The omission on the

part of the assessee to include the sum of Rs. 50,000, withdrawn from the bank, in his cash book could not lead to the inference in law that the amount representing is income, We are of the view that in the facts and circumstances of the case and the plea that the cash book was not reliable, the addition of two sums as income was not justified without independent evidence.

10. Thus, all the questions referred above are answered in favour of the assessee and against the Department. This reference is disposed of.