(2007) 02 MP CK 0066

In the Madhya Pradesh High Court

Sumerchand Jain APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 132, 256, 68, 69

Citation : (2007) 292 ITR 241 : (2007) 164 TAXMAN 50

Hon'ble Judges : S.C. Sinho, J;Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur (for short "the Tribunal"), for the opinion of this Court at the instance of the assessee in respect of the following questions:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in arriving at the finding, that the purchase of silver vide bill dated October 8, 1985, of M/s. Chouksey Rajnikant and Co., for silver ornaments of 59.547 kgs. amounting to Rs. 1,50,000 which was found recorded in the books of account found at the time of search, was not genuine purchase ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in arriving at the finding that the purchase of silver ornaments weighing 38.990 kgs., for Rs. 99,552 vide bill dated October 28, 1985, was not genuine purchase ?

2. The facts which are essential to be stated for the disposal of this reference are that the assessee is a partnership firm. The accounting year relating to the assessment year under consideration was Deepawali of 1984-85. There was a search and seizure operation u/s 132 of the Act at the business premises of the assessee-firm from October 29, 1985 to November 2, 1985. In the course of such search, on physical verification, stock of silver ornaments weighing 314.63

kgs. was found. At the time of search, trading account was drawn and accordingly closing stock as per the books of account on the date of the search was found to be 268.945 kgs. The search party worked out excess stock of silver ornaments weighing 45.685 kgs. During the Section 132(5) proceedings, the explanation of the assessee to the extent of articles weighing 4.950 kgs. was accepted and the silver ornaments weighing 38.990 were treated as unexplained. In the course of the said assessment proceedings, the Assessing Officer found that there was purchase of 98.437 kgs. of silver ornaments from M/s. Chouksey Rajnikant and Co., Sagar. These purchases were by two bills viz., for 59.447 kgs., dated October 8, 1985, and 38.990 kgs., dated October 28, 1985. The purchase bill dated October 8, 1985, was found recorded in the books of account found at the time of search, while the second purchase bill dated October 28, 1985, was not recorded in such books. In such entire proceeding the purchase of 98.473 kgs. from M/s. Chouksey Rajnikant and Co., Sagar was treated as non-genuine and accordingly the addition of Rs. 2,49,552 was made. On an appeal being preferred the entire addition was deleted by the Commissioner of Income Tax (Appeals). On further appeal being preferred before the Tribunal, it reversed the order of the first appellate authority and upheld that of the Assessing Officer.

3. After disposal of the appeal the assessee preferred an application u/s 256(1) of the Act seeking reference of seven questions to this Court for opinion. The Tribunal referred only two questions, as has been indicated hereinabove for the opinion of this Court.

4. We have heard Mr. H.S. Shrivastava, learned senior counsel along with Mr. Akshat Shrivastava for the applicant-assessee, and Mr. Rohit Arya, learned senior counsel along with Mr. Sanjay Lal for the respondent-Revenue.

5. It is submitted by Mr. H.S. Shrivastava, learned senior counsel along with Mr. Akshat Shrivastava for the assessee that the Tribunal has overturned the finding of the Commissioner of Income Tax (Appeals) and such unsettling indicates perversity of approach which is replete with guess work and conjectures and the same gives rise to substantial questions of law. The further submission of Mr. Shrivastava, learned senior counsel, is that the Tribunal has erroneously doubted about the credit given to the assessee by the seller on the foundation that the assessee was a new party and there has been no previous dealing with him which is totally unacceptable. It is contended that the Tribunal has further erred that the transaction with M/s. Chouksey Rajnikant was not a transaction in regular course of business and it was a case of credit purchase with abnormal circumstances and, therefore, onus was placed on the assessee to prove the genuineness of the purchase and the assessee was required to prove that the seller was capable enough in selling such huge quantity of goods in credit to the assessee. It is urged by Mr. Shrivastava that the Tribunal completely erred in law by not appreciating the fact that there were two transactions out of which one was reflected in the books of account and was a credit transaction and he further stated that the said transaction revealed the identity of the firm and the fact that

vouchers were given by the applicant and payment made afterwards would entail in the result that it was a genuine transaction. Learned Counsel further submitted that as far as the second transaction is concerned, there was no entry in the books of account but it was explained that the partner who was in charge of maintenance of books of account was not available and, therefore, it could not be done, but later on it was done by examining himself. It is contended by him that the Tribunal has unnecessarily laid emphasis on the source of M/s. Chouksey Rajnikant and Co. which is not an essential feature to make the transaction to be genuine.

6. Mr. Rohit Arya, learned senior counsel with Mr. Sanjay Lal for the Revenue submitted that the Tribunal has rightly laid emphasis on the source and, therefore, no fault can be found with the order.

7. At the very outset we must clearly state that the facts are not in dispute. The question that emerges for consideration is whether the Tribunal was justified in unsettling the finding of the Commissioner of Income Tax (Appeals) by putting the onus on the assessee with regard to the source. In this context, we may refer to the decision rendered in Commissioner of Income Tax Vs. Metachem Industries, , wherein the Division Bench of this Court has held as under (page 162):

Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.

8. Thereafter, the Division Bench proceeded to state as under (page 162):

Whether that person is an Income Tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of Income Tax. It is open to the Assessing Officer to take appropriate action u/s 69 of the Act, against the person who has not been able to explain the investment....

9. In the case of Ashokpal Daga (HUF) Vs. Commissioner of Income Tax, another Division Bench of this Court relying on the decision rendered in the case of Orient Trading Co. Ltd. Vs. Commissioner of Income Tax (Central), Calcutta, expressed the opinion that where the entry stands in the name of the third party and the assessee satisfies the Income Tax Officer as to the identity of the third party and also supplies such other evidence which would show that the entry is not

fictitious the initial burden that lies on him can be said to be discharged by him. It is not necessary for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of money with the assessee.

10. In the case of Sarogi Credit Corporation Vs. Commissioner of Income Tax, , the Division Bench explained the view as under (page 349):

Once the identity of the third party is established before the Income Tax Officer and other such evidence are prima facie placed before him pointing to the fact that the entry is not fictitious, the initial burden lying on the assessee can be said to have been duly discharged by him. It will not, therefore, be for the assessee to explain further as to how or in what circumstances the third party obtained the money and how or why he came to make advance of the money as a loan to the assessee. Once such identity is established and the creditors, as in the instant case, have pledged their oath that they have advanced the amounts in question to the assessee, the burden immediately shifts on to the Department to show as to why the assessee''s case could not be accepted and as to why it must be held that the entry, though purporting to be in the name of a third party, still represented the income of the assessee from a suppressed source. And, in order to arrive at such a conclusion, even the Department has to be in possession of sufficient and adequate materials.

11. In the case of Nemi Chand Kothari Vs. Commissioner of Income Tax and Another, the Bench ruled as under (page 263):

Since it is not the business of the assessee to find out the sources(s) from where the creditor has accumulated the amount, which he has advanced, in form of the loan, to the assessee, Section 68 cannot be read to show that in the case of failure of the sub-creditors to prove their creditworthiness, the amount advanced as loan to the assessee by the creditor shall have to be read, as a corollary, as the income from undisclosed source of the assessee himself.

12. In the case of Commissioner of Income Tax Vs. Mehrotra Brothers, a Division Bench of this Court placing reliance on the decisions rendered in the cases of Shankar Industries Vs. Commissioner of Income Tax, Central, , Gee Vee Enterprise Vs. Additional Commissioner of Income Tax, , Commissioner of Income Tax Vs. Kohinoor Tobacco Products P. Ltd., , Nanak Chandra Laxman Das Vs. Commissioner of Income Tax, and Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 expressed the view that when the identity of the parties is given the genuineness or the capacity of the lenders and transaction are not to be discarded on the ground that the assessee had not explained satisfactorily the cash credit in the books of account of the firm and discharged the burden.

13. In view of the aforesaid enunciation of law it is crystal clear that the source of M/s. Chouksey Rajnikant and Co., was not essential to be proved inasmuch as the assessee had been able to prove the identity, entry and source of the third party and it should be regarded that the assessee has been able to discharge the

onus. In view of the aforesaid, we are of the considered opinion that as far as the transaction relating to purchase of silver made by the assessee-firm from M/s. Chouksey Rajnikant and Co., on credit basis which finds mention in the books of account it could not have been added on the basis of suppression.

14. The second aspect relates to non-mentioning of purchase in the books of account. The explanation preferred was that the partner who was looking after the books of account was not available. The Tribunal has not lent credence to the same. The same is in the realm of facts. We are inclined to accept that the Tribunal has rightly not given credence to the same and the conclusion arrived at by the Tribunal in that regard is absolutely impeccable.

15. In view of the aforesaid we are disposed to hold that the Tribunal was not justified in arriving at the finding that the purchase of silver vide bill dated October 8, 1985, of M/s. Chouksey Rajnikant and Co., for silver ornaments of 59.547 kgs., amounting to Rs. 1,50,000, which was found recorded in the books of account found at the time of search, was not a genuine purchase and the Tribunal was justified in arriving at the finding that the purchase of silver ornaments weighing 38.990 kgs. for Rs. 99,552 vide bill dated October 28, 1985, was not genuine purchase.

16. Consequently, question No. 1 is answered in the negative, in favour of the assessee and question No. 2 is answered in the affirmative, in favour of the Revenue and against the assessee.