(2015) 04 CAL CK 0051

In the Calcutta High Court

Case No : ITA No. 52 of 2003

Sushil Modi APPELLANT

Vs

C.I.T. RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Evidence Act, 1872 — Section 114
Income Tax Act, 1961 — Section 139, 263, 69

Citation : (2015) 04 CAL CK 0051

Hon'ble Judges : G.C. Gupta, J;Arindam Sinha, J

Bench : Division Bench

Advocate : Ananda Sen and Biswajit Mal, for the Appellant; Arkadeb Biswas, Advocates for the Respondent

Judgement

1. The subject matter of challenge in this appeal, of the year 2003, which is yet to be admitted, is a judgment and order dated 28.6.2002 by which the learned Tribunal dismissed an appeal preferred by the assessee challenging the order dated 30.10.1998 of the Deputy Commissioner of Income Tax passed in a block assessment for the period between 1.4.1986 to 20.9.1996. The question, which the learned Advocate for the appellant has pressed before us, is Question No. (iii) which reads as follows:--

"(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in having upheld the treatment of cash deposits of Rs. 2,01,000/- in Canara Bank during assessment year 1987-88 as unexplained cash credit by invoking provisions of section 69 of the I.T. Act, 1961, inasmuch as the source of such deposits were duly considered in the final account of the assessee?"

2. Learned Advocate for the appellant has filed a written notes of submission. He relied on paragraphs 2, 3 and 4 at page-2 of his written notes, which read as follows:

"In this case the block assessment order shows lack of required enquiry as to the sources of deposits even when most of the deposits of salary are in the bank accounts like in the case of account with PNB, New Delhi and Dena Bank, New Delhi, represented by clearing cheques deposited for which necessary enquiry was possible with the Bank where deposits were found and the Banks from which the amount were debited for credit to the assessee''s account. Such enquiry was not even attempted.

The conclusions are mostly on the basis of A.O.''s statement that assessee was not able to explain. Such conclusion can indicate either absence of explanation or explanation given verified to be not tenable. However, such conclusion has to be based on result of specific post such enquiry and assessee''s explanation with regard to result of such enquiry. Therefore, here also, the block assessment order failed to rise to the requirement of a speaking order based on result of post of such enquiry and assessee''s statement on results of enquiry put across to the assessee. The grounds of appeal before Tribunal clearly shows assessee''s grievance on lack of specific post such enquiry to verify assessee''s explanation.

Assessing Officer is not supposed to sit idle even in the face of a return which is apparently in order but calls for further enquiry as he is not only an adjudicating authority but an investigating authority as well. In this respect, an Assessing Officer is different from a Civil Court as held in the decision of Re: Gee Vee Enterprise Vs. Additional Commissioner of Income Tax, (1975) 1 ILR Delhi 53 : (1975) ILR Delhi 53 : (1975) 99 ITR 375 . Lack of necessary enquiry makes an assessment order erroneous as held by the Hon''ble Supreme Court of India in Re: Malabar Industrial Corporation (2000) 243 ITK 83 (SC)".

3. The learned Tribunal in paragraph-16 of the impugned judgment, held as follows:--

"16. The question before us is, as to whether the action of the A.O. to treat the deposits aggregating to a sum of Rs. 2,01,000/- as the income of the assessee from undisclosed sources is justified. In order to consider as to whether the addition of Rs. 2,01,000/- is in accordance with the provisions relating to the block assessment, it would be necessary to consider as to which addition is based on the material found during the course of search. If the addition is based on some material found in the course of search, then the second question that arises for consideration is as to whether the provisions of Sec. 69 are attracted in the case of block assessments and finally it is to be considered as to whether the assessee had satisfactorily explained the source of the deposits in the bank account and not whether the addition was justified in block assessment. In this case, the existence of Savings Bank Account No. 4790 with Canara Bank was detected as a result of search and the assessee had owned the said account. Therefore, the foundation for assessment of Rs. 2,01,000/- is the material found in the course of the search."

4. During the search and seizure, it is thus evident that the Savings Bank Account No. 4790 maintained with Canara Bank was detected. It was also found

that a sum of Rs. 2,01,000/- had been deposited in the aforesaid bank account. It was not disputed by Mr. Sen that a sum of Rs. 2,00,000/- was deposited on 7.4.1986 and the balance sum of Rs. 1000/- was deposited on 21.1.1987. This is also reflected in paragraph-15 of the impugned judgment. The deposit was admittedly made during the financial year 1986-87 corresponding to assessment year 1987-88.

5. Before the learned Tribunal, the defence as regards the aforesaid sum of Rs. 2,01,000/- was that the deposit was made from out of the cash balance available with the assessee as would appear from paragraph-15 of the impugned judgment. From the written submission filed by the learned Advocate for the assessee before us, which we have quoted above, it does not appear that even before us there is any attempt to offer any explanation with regard to the two deposits made with Canara Bank. When this was pointed to the learned Advocate for the assessee, he drew our attention to the grounds of appeal filed before the learned Tribunal. He relied upon Ground No. 1, which reads as follows:

"That the Ld. A.O. erred in having treated the cash deposit in Canara Bank amounting to Rs. 2,00,000/- and Rs. 1000/- on 7.4.86 and 21.187 respectively as unexplained cash credit while the source of such deposit was duly considered in the final accounts of the appellant."

6. Mr. Sen, learned Advocate for the appellant repeated that the aforesaid sum of Rs. 2,01,000/- was duly accounted for in the final accounts of the financial year 1986-87 corresponding to assessment year 1987-88, but the Assessing Officer did not take the trouble of making the necessary investigation. Had such an investigation been made, the fact would have been discovered.

7. We have not been impressed by the submissions advanced before us by Mr. Sen, learned Advocate for the assessee for more than one reason. In the first place, no such case was made out before the learned Tribunal. Even assuming that investment of a sum of Rs. 2,01,000/- has been reflected in the final accounts of the assessment year 1987-88 and has duly been offered for taxation, nothing was easier for the assessee than to produce a copy thereof before us which may have tilted the balance in his favour. The fact that the assessee-appellant did not take any such step leaves no doubt in our mind that the submissions are not true. The investment discovered during the search and seizure has not been disputed on facts. Therefore, it was a clear case where Section 69 of the Income Tax Act would be applicable and this is what was done.

8. In the written notes quoted above emphasis was laid on independent investigation by the Assessing Officer. In support of his submission, the learned advocate has also relied upon the judgment in the case of Malabar Industrial Corporation. Independent investigation on the part of the assessing officer was stressed in the case of Malabar Industrial Corporation in a proceeding under Section 263 of the I.T. Act. For exercise of power under Section 263 two jurisdictional facts are required to be shown:--

"(a) That the order is erroneous.

(b) That the order is prejudicial to the interest of the Revenue."

9. An answer to the question whether the order is prejudicial to the interest of Revenue is dependent upon proper and requisite investigation by the assessing officer. The assessing officer cannot accept a claim made by the assessee without satisfying himself about the correctness thereof. For arriving at such satisfaction, he is empowered to make the necessary investigation.

10. In the case before us, the assessee admittedly made an investment of a sum of Rs. 2,01,000/- which was not disclosed by him in the returns filed under Section 139. During search his explanation was that "the said deposits were made out of the cash balance available. In the absence of any proof with regard to such availability of funds, the assessing officer treated the aforesaid deposits as the income of the assessee from undisclosed sources.

11. Mr. Sen contended before us that the deposit had been reflected in the final accounts of he assessment year 1987-88. Therefore, the explanation offered at the relevant time and the explanation offered now before us materially differ. The explanation offered before us could have been proved by the assessee by producing his final accounts of the assessment year 1987-88 but he omitted to do so.

12. Therefore, the case is clearly covered by Clause - (g) of Section 114 of the Evidence Act which provides as follows:--

"(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it; "

13. The Court is therefore entitled to apply the aforesaid presumption.

14. The contention that the assessee need not prove his case and the assessing officer is bound to find corroboration by making independent enquiry is neither based on law nor is supported by reason.

15. We do not find any error in the order under appeal. There is, as such, no reason why the appeal should be admitted. We were inclined to saddle the appellant with costs, but considering that no notice has been issued, we refrain from imposing costs.

16. The appeal is dismissed.