
(2012) 03 GUJ CK 0095
In the Gujarat High Court
Case No : Tax Appeal No. 2012 of 2009

White Silco Private Limited	Vs	APPELLANT
Assistant Commissioner of Income Tax Central Circle 2(2)		RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Income Tax Act, 1961 — Section 131(1A), 260A, 68

Citation : (2012) 207 TAXMAN 21

Hon'ble Judges : S.G. Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Manish J Shah 1, for the Appellant; Mauna M Bhatt for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Honorable Ms. Justice Sonia Gokani

1. Following is the factual background which would be necessary for understanding the questions raised in the present Tax Appeal, preferred u/s 260A of the Income Tax Act (hereinafter referred to as "the Act"). The appellant-original assessee is a private limited Company engaged in the business of manufacturing of chemicals viz. "precipitated silica", "aluminum silicate" etc.
2. For the Assessment Year 1997-98, return of income was filed by the appellant and the Assessing Officer, on scrutiny assessment of the return required the appellant to prove the nature and source of 484 cash credits. On not having been satisfied with the reply filed by the appellant particularly with respect to the addresses of depositors, PAN of those persons, their confirmation letters, etc. total addition of a sum of Rs. 4,52,20,332/- was made by the Assessing Officer as "unexplained cash credit".
3. Assessing Officer issued first show cause notice on 4.11.1999. On account of there being no response from the appellant summons u/s. 131(1A) was issued on 24.1.2000. But on 18th January, 2000 written submission was made by the

appellant. Eventually on not being satisfied, this entire amount has been added to the total income of the assessee as "unexplained cash credit" u/s. 68 of the Income Tax Act.

4. When challenged before the CIT(Appeals) impugned order of Assessing Officer, it was of the opinion that only on the basis of general observations, the Assessing Officer had made the said addition. CIT(Appeals) held that confirmation of lenders were supplied to the Assessing Officer and these letters contained names and address of the depositors and bank pass-books of some of the depositors were also produced and most importantly it found that the transactions were rooted through bank as cash credit were received by cheques. PAN and GIR numbers were also furnished. It found the objections of Assessing Officer with regard to non-cooperation on the part of appellant devoid of merits in as much as the proceedings were initiated in the November, 1999 and the confirmations were to be obtained from 484 parties who were individual and mostly illiterate. Moreover, it held that loans were repaid back before more than three years and therefore, there was no cause for depositors to co-operate with the appellant. CIT(Appeals) went to an extent that Assessing Officer did not bother to check the records of the lenders and some of them were his own assesseees. It also gave certain instances how it was contrary to the record and accordingly, deleted the entire addition of Rs. 4.54 crores (rounded of).

5. Revenue being aggrieved by this order of CIT(Appeals), challenged the same before the Tribunal and the Tribunal remanded the matter by restoring the file to the Assessing Officer with a direction to re-frame the assessment on this issue as per law, on availing sufficient opportunities of hearing to the appellant by a detailed order.

6. The impugned order of the Tribunal dated 30.5.2008 is challenged in the present Tax Appeal by the appellant-assessee proposing the following questions of law for our consideration:

(I) Whether on the facts and in the circumstances of the case the Tribunal was right in law in not deciding the question of addition of the cash credit of Rs. 4,54,74,332/-and related interest of Rs. 15,86,346/-and instead sending the same back to the Assessing Officer ?

(II) Whether on the facts and in the circumstances of the case, the Tribunal ought to have held that the appellant has discharged the onus of proving the nature and source of the cash credit of Rs. 4,54,74,332/-from 484 parties, and therefore, neither the said amount nor the related interest of Rs. 15,86,346/-is addible as income u/s 68 of the Income Tax Act, 1961 ?

7. Although questions proposed are more than one, it essentially questions the order of remand made by the Tribunal setting-aside the order of CIT(Appeals) which deleted the entire addition of Rs. 4,52,20,332/-.

8. It is vehemently submitted by learned senior counsel Shri J.P. Shah appearing

with learned counsel Mr. M.J. Shah that Tribunal has committed a serious error in restoring the matter to the file of Assessing Officer without giving any reasoning much less the cogent findings while setting -aside the order of CIT(Appeals). He pointed out how factually correct findings CIT(Appeals) has rendered and how incorrect approach is adopted by the Tribunal in disregarding such positive findings of the CIT(Appeals).

9. As against that learned senior counsel Mr. Manish Bhatt appearing for the Revenue has urged that what all the Tribunal had done is to remand the matter to the Assessing Officer and sufficient opportunities is to be given to both the sides and this order hardly calls for any question of law to be interfered with.

10. For the detailed reasons recorded hereinafter, this Tax Appeal merits no consideration.

11. As can be noted from the order of the Assessing Officer, he has enlisted the details of all the depositors and the amount of interest on re-payment of loan/ deposit claimed to have been received also has been calculated. As the amount was very large, assessee was required to furnish the requisite proof concerning various depositors and opportunity was availed to him to substantiate the queries raised in this regard.

12. Nothings of the Assessing Officer suggest that dilatory tactics were adopted with an intent not to comply with the direction of the Assessing Officer and therefore, summons u/s. 131(1A) of the Act was issued. Although Chartered Accountant and other representatives of the Company appeared, no proof is noted to have been presented. Thus, it was noted further by the Assessing Officer that on repeated dates, it found no inclination of production of the proof despite specific requests. After sending strongly worded communication, there appears to be adducement of some evidence.

13. It is pointed out by the learned counsel that in the order of the Assessing Officer itself, there is a specific mention of confirmation in respect of 96 accounts and 160 accounts and therefore, it was wrong on the part of Assessing Officer to hold that despite the repeated opportunities, no evidence came to be produced compelling him to treat the entire sum of Rs. 4,52,20,332/-as "unexplained loan" Learned counsel also submitted that there was also perversity in initiating the penalty proceedings. As correctly pointed out by the learned senior counsel Mr. Shah that the order of the Assessing Officer does make a mention of confirmation in respect of deposits made in 96 account and 160 accounts, this of course is by way of communication addressed to the Assessing Officer by the assessee-respondent. That of course will not in any manner undermine the importance of evidence adduced by assessee-respondent particularly when the Revenue has not disputed the genuineness of such facts, nor is there any mention in the order challenging these vital aspects. CIT(Appeals) recorded that the return of income was filed on 28.11.97 and after two years in the month of November, 1999, assessment proceedings began. All depositors who were

individual; and were illiterate, and who had also repaid the entire loan. Thus, when after three years, the total 484 parties which were largely situated in the city of Bhavnagar and nearby area as were asked to state in respect of these transactions, there would be numerous difficulties the assessee would experience and it was lamented by the CIT(Appeals) that on one hand if the Assessing Officer chose to make inquiry and on the other hand when such details of confirmation were received, acceptance of the same cannot be denied only on the ground of method or manner of furnishing. It would not be necessary to dilate these facts further in respect of these confirmation letters. As far as order of CIT(Appeals) is concerned, heavy reliance is placed on some of the findings arrived at by it, those vitally relevant are reproduced hereunder :

From the records, I find that the assessee had produced the loan confirmation letters from all the lenders from whom it had accepted the deposits during the previous year. The said loan confirmation letters do contain name and address of the depositors. Further, the details of transactions are also narrated in the loan confirmation letters. The assessee has also produced the copies of bank passbooks of some of the depositors. More importantly, all the transactions of loan have been routed through bank. The assessee has also furnished P.A Nos. and G.I.R. Nos. in many cases. In such circumstances it cannot be said that the identity and capacity of the lenders have not been established. Nothing has been brought on record to show that the loans are not genuine. The fact which need to be considered over here is that the amount were routed through banking channel and independent brokers were also involved in the transactions of loans. Therefore, there is not even an iota of doubt on the genuineness of the loan. Considering the above factual aspect I am of the opinion that the assessee has discharged its prima facie onus to establish the genuineness of the loan. I am supported in my view by the decision of the Patna High Court in the case of Addl. Commissioner of Income Tax Vs. Bahri Bros. P. Ltd., which has been discussed herein above. My above view is also supported by the decision of the Supreme Court in the case of Commissioner of Income Tax, Orissa Vs. Orissa Corporation (P) Ltd., .

Having said so, CIT(Appeals) found complete absence of any evidence to establish non-genuineness of the loans. As according to it, after once assessee discharged primary onus of establishing the genuineness of the loan, the same needs to be dislodged by the Revenue by bringing on record some such evidence. It was also of the opinion that mere conduct of the assessee or manner of production cannot determine the issue against the assessee if otherwise there is complete absence of any contrary nature. Thus, there was no material much less sufficient enough according to the CIT(Appeals) to treat the entire cash credit as "unexplained" and to add the same u/s. 68 of the Act.

14. All these findings of the CIT(Appeals) were before the Tribunal which was required to adjudicate on considering the findings of both the authorities below. What is mainly objected to by the assessee-respondent as far as the order of

Tribunal is concerned is the fact that without setting aside the positive findings of the CIT(Appeals), it has chosen to deal with the issue. Tribunal dealt with the same as follows:

29. We have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. In the instant case we find that the assessee has claimed to have received Rs. 4.52 crores as deposits from 484 persons. The Assessing Officer observed that the confirmations of the depositors in a number of cases were filed on 15.2.2000 and the assessment was getting barred by limitation in a short time. Hence, he opined that the required material to establish the genuineness of the cash credit was not filed by the assessee and he, therefore, added the same to the income of the assessee. On the other hand, the CIT(A) observed that no positive material was brought on record by the Revenue to disprove the claim of the assessee which was prima facie proved by the assessee by furnishing confirmation. We also observe that the CIT(A) has observed that though the return was furnished on 28.11.97 but assessment proceedings were initiated by the A.O. only after a lapse of two years and on 19.11.1999. Thus, the complain of the A.O. regarding shortage of time is not valid. He, therefore, deleted the addition of Rs. 4.52 crores. We find that it is not in dispute that P.A Numbers in respect of many depositors was not filed by the assessee. Further, the time limit available with the A.O after filing of the confirmation by the assessee for cross verification was not sufficient though the same was not because of any lapse on the part of the assessee but probably due to lethargic departmental functioning. Be that as it may be, on the above facts and circumstances, in our considered opinion neither the assessee has brought prima facie sufficient material on record to prove the genuineness of all the depositors as it has not disputed the fact that confirmation of few depositors could not be filed, P.A. Numbers in certain cases could not be filed nor the Department has brought any material to disprove the genuineness of the cash credit in respect of the depositors whose addresses were made available by the assessee. Hence, it shall be in the interest of justice to restore the issue back to the file of the A.O with the direction to reframe the assessment on this issue as per law after allowing sufficient opportunity hearing to the assessee. Thus, the ground of appeal of the Revenue is allowed for statistical purposes.

15. It will be difficult to uphold the contention of the appellant that Tribunal has decided this issue disregarding the orders of the lower authorities. In our opinion not only the Tribunal, has taken note of decisions of both, the Assessing Officer and that of CIT(Appeals), it also categorically made mention of the observations of CIT(Appeals) of absence of any positive material made available by the Revenue to disprove the claim of the assessee which was prima facie proved by furnishing the necessary confirmation. From the overall facts and circumstances, Tribunal noted that there was no sufficient material adduced by the appellant - assessee towards the proof of all the deposits and the depositors. There was absence of PAN numbers in certain cases and addresses of many depositors were lacking. This nowhere indicates that there was any prejudicial approach on the

part of Tribunal nor did it conclude either in favor or against the appellant or Revenue. Since it found that insufficient evidence it deemed it fit to restore the matter to file of Assessing Officer for examining the entire issue and to avail sufficient opportunities to the assessee for proving its case. In our opinion, there ought not to be in any apprehension in the minds of appellant -assessee that as it is made to pass through the said ordeal, categorical and positive findings of CIT(Appeals) would be lost and after many years when this exercise once again is to be undertaken, the appellant-assessee will be in disadvantageous position in as much as the order of Tribunal prejudices none and the same is born out of a balanced approach. Inquiry pertains to all the 483 deposits and depositors and therefore, on not finding proofs concerning all, Tribunal when deemed it appropriate to avail an opportunity once again, this order cannot be assailed on the ground of non application of mind or being biased..

16. When this Court examines the appeal u/s 260A of the Income Tax Act, as required by the statute, it would entertain only those appeals which would propose substantial question of law. Here, there is an absence of question of law not to talk of substantial question of law. There is no material found to point out any perversity in the conclusion of the Tribunal

17. As noted above, Tribunal has merely availed an opportunity to the assessee for having found insufficient evidence to sustain the order of CIT(Appeals). It also has noted the infirmities pointed out by the CIT(Appeals) in the material which was on record. Therefore, in our opinion, this remand has neither made order of the Tribunal erroneous nor perverse for this Court to interfere and in the aforementioned premise, this Tax Appeal receives no entertainment, in absence of any question of law. Resultantly, the same is dismissed.