

ito Vs. Anoj Kumar Agarwalla

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Court : Guwahati

Decided On : Sep-20-2001

Appeal No. : ITA No. 196 (Gau) 1995 20 September 2001 A.Y. 1992-93

Appellant : ito

Respondent : Anoj Kumar Agarwalla

Judgement :

N.R.S. Ganesan, J.M.

Both the appeals are filed by the revenue as well as the assessee respectively in respect of the assessment year 1992-93 against the order of the Commissioner (Appeals). Since both the appeals have arisen out of the same order of the Commissioner (Appeals), we heard the same together and disposing of the same by this common order.

2. The common ground raised in both the appeals are in respect of addition made by the assessing officer on account of daily wages in respect of contract business. The assessing officer has made an addition of Rs, 75,000 on the ground that the signatures and thumb impression of the labourers differed and hence, he made an addition of Rs. 75,000 to the total income of the assessee.

3. However, on appeal the first appellate authority was of the view that the difference in signature should not be adversely treated without properly examining the person concerned. However, he sustained an addition of Rs. 45,000 on

estimate and granted a relief of Rs. 30,000 to the assessee. Being aggrieved by the aforesaid order of the Commissioner (Appeals), both the assessee as well as the revenue has filed the present appeals before the Tribunal.

4. Mr. B.L. Purohit, the learned authorised representative for the assessee, submitted that all the details regarding the payment of salaries to the labourers were produced before the assessing officer. The assessing officer was of the view that there was some variation in the signature and thumb impression of the labourers which differed from one another. The learned authorised representative vehemently argued that the contract business is mainly labour-oriented and the signatures of the labourers are bound to vary except a similarity in some feature. The learned authorised representative further submitted that the assessing officer without examining the labourers by invoking his power under section 131 of the Act has simply come to the conclusion that if genuine persons had been working, there would not be any discrepancy either in signature or thumb impression. According to the learned authorised representative, the assessing officer is not the competent person to say that the signatures varied. Moreover, the admitted signature and thumb impression were not even compared by the assessing officer before arriving at a conclusion. The learned authorised representative further submitted that the Commissioner (Appeals) also committed a mistake in estimating the addition without any basic material available before him. When the Commissioner (Appeals) accepted the argument of the assessee that the variation in signature should not be adversely treated without properly examining the person concerned, he ought not to have made an addition on the basis of estimate. The further submission of the authorised representative was that when the books of account maintained by the assessee was scrutinised and the assessing officer as well as the first appellate authority has not raised any defect in the correctness or completeness of the accounts maintained by the assessee. Hence, the assessing officer or the first appellate authority has no discretion to estimate the addition.

5. On the other hand, the learned Departmental Representative, Mr. D.K. Biswas, submitted that the business of the assessee was mainly labour-oriented and it was found that some set of persons were engaged week after week. So, according to the Departmental Representative since the same persons were engaged

continuously there should not be any variation in the signature or thumb impression of the labourers. Since there was a variation, the assessing officer came to the conclusion that there was an inflation in the expenditure and hence, he rightly added back Rs. 75,000 to the total income of the assessee. According to the learned Departmental Representative, the first appellate authority has not properly appreciated the facts and without any basis has estimated the addition and granted a relief to the assessee to the extent of Rs. 30,000.

6. We have given our thoughtful consideration to the rival contentions of both the representatives and we have perused the records. It appears that the business of the assessee is mainly labour-oriented. According to the assessing officer same set of persons had been engaged continuously week after week. The assessing officer after verifying the materials available before him came to the conclusion that the signatures and thumb impression at different pages are different from one another. When the assessing officer came to the conclusion that the signature and thumb impression are different from one and the other he ought to have invoked his power under section 131 of the Act and summoned the concerned labourers to appear before him. The assessing officer has not taken any such step either to summon the concerned labourers or to direct the assessee to produce the concerned labourer for information even though the details of register of payments were produced before the assessing officer. It is general principles of law that the difference in signature cannot be compared with naked eye, more particularly, the thumb impression cannot be so easily compared as it was done by the assessing officer in this case.

7. We are conscious of the fact that the provisions of Indian Evidence Act is not applicable to the proceedings before this Tribunal. However, as time and again it was pointed out by the Hon'ble Supreme Court and various High Courts that the principles enunciated in the Indian Evidence Act and the Civil Procedure Code can always be taken into aid whenever Income Tax Act is silent on that aspect. In this case, there is a variation of signature and thumb impression according to the assessing officer. Hence, the principles laid down by the Hon'ble Supreme Court and various High Courts in sections 45, 47 and 73 of the Indian Evidence Act can be taken into aid for resolving the present dispute. The Apex Court in the case of

Bandha & K. Sudha, AIR 1996 SC 1140 held that the learned Judge in that case ought not to have taken the hazardous task of adjudicating upon genuineness and authenticity of the signature in question even without the assistance of the skilled or trained persons, whose services could have been easily availed of. The Hon'ble Supreme Court while arriving at that conclusion has placed its reliance on its earlier judgment reported in AIR 1979 (SC) 14. In the case reported in AIR 1990 Madras 375, the Hon'ble Madras High Court has said that the thumb impression would stand on different footing when compared to signatures and the variation in thumb impression cannot be easily judged by naked eye. Though the above judgments were under the Indian Evidence Act in respect of civil case, the principles laid down therein can be taken into aid of this Tribunal for adjudicating the dispute. The civil Judges who were empowered to adjudicate the civil dispute between various litigants could not compare the signature with the naked eye and they have necessarily to take the assistance of expert. In the case on our hand, the assessing officer who is a quasi-judicial authority admittedly has no experience in adjudicating dispute in respect of handwriting and thumb impression cannot be permitted to take a decision on his own without the assistance of an expert. When the assessing officer is of the strong view that the signatures and thumb impression, which are found in different pages differs from each other, he ought to have referred the matter to an expert by invoking the power under section 131 of the Act. Without doing so, we are of the considered opinion that the assessing officer has committed a serious error in making an addition on the ground that the signatures are varying.

8. Admittedly, the payments were made to labourers. It is well-known common principles that the signature of one man cannot be similar to that of another even if it is signed on a particular time. Signature of one person is bound to have some difference apart from some characteristic similarity. As it was pointed out by the Hon'ble Madras High Court, the thumb impression cannot at all be compared with naked eye. So, the first appellate authority has rightly accepted the explanation offered by the assessee and came to the conclusion that it should not be adversely treated without proper examining the persons concerned. When we posed a specific question to the learned Departmental Representative, why the assessing officer could not invoke his power under section 131 of the Act and

examined those labourers in order to verify the same. The learned Departmental Representative could not say any reason for not invoking the power under section 131 of the Act. However, the learned Departmental Representative submitted that the case may be remanded back to the assessing officer for verification.

9. When we have put a specific question to the learned authorised representative that why the matter should not be remanded back to the assessing officer for making proper verification, the learned authorised representative submitted that the assessment relates to the assessment year 1992-93 and the previous year was 1991-92. So the transaction was almost 10 years back and admittedly the contract business is labour-oriented. The learned authorised representative further submitted that due to various social compulsion and the law and order problem which prevails in the North-East region, the very same labourers which were employed by the assessee may not be available for verification after a long gap of 10 years. So, according to the authorised representative in view of the extraordinary circumstances and the long gap of 10 years, it is practically impossible for the assessing officer to make verification at this stage. No useful purpose will be served if the matter is remanded back to the assessing officer for verification. We find some force in the submissions of the learned authorised representative. Due to various social compulsion the possibilities of the labourers going away from that places cannot be ruled out. Moreover, the law and order problem, which prevailed in North East States is also one of the grounds which may compel such labourers to leave the particular place due to long gap of 10 years. Some of them might have expired. In view of the above, we find that no useful purposes will be served in remanding back the matter to the assessing officer for proper verification. However, as it was discussed earlier, the assessing officer cannot make addition merely on the ground that the signature and thumb impression are varied. In view of the judicial pronouncement that the thumb impression and signature cannot be compared with naked eye, we are of the opinion that the assessing officer has committed an error in comparing and coming to the conclusion that if genuine person had been working, there would not be any discrepancy. In view of our above discussion, we are of the considered opinion that the first appellate authority has correctly come to the conclusion that the variation in signature should not be adversely treated without properly examining

the person concerned.

10. When we come to the addition made by the first appellate authority on estimate basis, the first appellate authority came to the conclusion that the net profit shown during the year is on lower side. It appears that when the first appellate authority came to the conclusion that the net profit is on the lower side, he has no material on his file to support the above said finding. Moreover, the books of account maintained by the assessee is not doubted either by the assessing officer or by the first appellate authority and hence, it has to be taken as both the assessing officer and the first appellate authority are satisfied about the correctness and completeness of the accounts of the assessee. Unless the authorities below are dissatisfied with the correctness and completeness of the accounts, they cannot go beyond the books entry maintained by the assessee. The net profit may vary due to various factors which may prevail in the business and the assessment can be done on estimate only if the books of account is not maintained or if the authorities below are not satisfied about the correctness and completeness of the books of account maintained by the assessee. In view of the above discussion, we are of the opinion that the first appellate authority has made an addition on the basis of surmises and presumption, which has no role to play in the field of taxation without any basis for estimation. In view of the above discussion, the entire claim of the assessee to the extent of Rs. 75,000 ought to have been allowed by both the authorities below. We have no hesitation to set aside the orders of both the authorities below and direct the assessing officer to allow the entire sum of Rs. 75,000 as claimed by the assessee towards daily wages account.

11. In the result, the appeal in ITA No. 196(Gau) of 1995 filed by the revenue is dismissed and the appeal in ITA No. 219(Gau) of 1995 filed by the assessee stands allowed.

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