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Court : Mumbai

Decided On : Jan-05-1996

Reported in : (1996)56TTJ(Mumbai)648

Appeal No. : ITA No. 3427/Bom/1986; Asst. yr. 1978-79, January 5, 1996.

Appellant : inspecting Assistant Commissioner

Respondent : Ramkumar Jalan.

Judgement :

ORDER

I. S. VERMA, J. M. :

This is an appeal by the Department against the order of the CIT(A), dt. 31st March, 1986, whereby an addition of Rs. 1.50 crores made on account of cash credits appearing in the names of two creditors, i.e., M/s Prakash Cotton Mills Pvt. Ltd. and M/s Amarchand Dharmachand has been deleted and following grounds of appeal have been taken :

1. The learned CIT(A) erred in deleting the addition of Rs. 1.50 crores made by the ITO as income from undisclosed sources even though the creditworthiness of M/s Prakash Cotton Mills Pvt. Ltd. and M/s Amarchand Dharamchand has not been proved.

2. The learned CIT(A) erred in deleting the addition of Rs. 1.50 crores made by the ITO as income from undisclosed sources even though the assessee has not furnished the details of the person or persons who are supposed to have brought this money from Delhi in cash.

3. The learned CIT(A) erred in deleting the addition of Rs. 1.50 crores made by the ITO as income from undisclosed sources.

2. The facts of the case are the ITO noted the following facts with regard to cash credits totalling to Rs. 1.50 crore appearing in the books of the assessee for S. Y. 2033 (asst. yr. 1978-79) :

'A further scrutiny of the books of account of the assessee-firm has revealed the introduction of cash in the names of M/s Amarchand Dharamchand and M/s Prakash Cotton Mills P. Ltd. as under :

Rs. 25 lacs received from M/s Amarchand Dharamchand, Delhi, on 8th Feb., 1977

Amount appearing in the name of M/s

Rs. 50 lacs received from M/s Amarchand Dharamchand, Delhi, on 23rd Feb., 1977

Amarchand Dharamchand.

Rs. 25 lacs received from M/s Prakash Cotton Mills P. Ltd. on 10th March, 1977

Amount appearing in the name of M/s

Rs. 25 lacs received from M/s Prakash Cotton Mills P. Ltd. on 11th March, 1977

Prakash Cotton Mills P. Ltd.

M/s Amarchand Jalan is a Delhi based partnership concern where close relations of the partners of the assessee-firm are partners. It has got no branch at Bombay. M/s Prakash Cotton Mills P. Ltd. is a private limited company assessed with me and is based at Bombay. However, it has got bank account in Delhi also. Sri Tolaram Jalan, one of the partners of the assessee-firm, is a director in M/s

Prakash Cotton Mills P. Ltd. Other directors of this company are very close relations of the partners of the assessee-firm.

It is gathered from the books of account of M/s Prakash Cotton Mills P. Ltd. that Rs. 25 lakhs and Rs. 50 lakhs were sent by it on 7th Feb., 1977, and 22nd Feb., 1977 respectively to Delhi by telegraphic transfer through bank. These amounts were withdrawn in Delhi on 8th Feb., 1977, and 23rd Feb., 1977, respectively in cash and accordingly they appeared in the books of M/s Amarchand Dharamchand. It is the claim of the assessee-firm that these amounts were received by it on the same day from M/s Amarchand Dharamchand, Delhi, and are accordingly appearing in the assessee's books.

The books of account of M/s Amarchand Dharamchand as examined by my predecessor showed that on 8th Feb., 1977, M/s Amarchand Dharamchand had received an amount of Rs. 25 lakhs which was deposited in the bank and subsequently withdrawn on the same date. Similarly, on 23rd Feb., 1977, Rs. 50 lakhs were received and were withdrawn on the same date. These amounts (sic) 8th Feb., 1977, and 23rd Feb., 1977, respectively are appearing in the books of the assessee from which is in Bombay..... the money has been withdrawn from bank at Delhi and it has been shown to have come to Bombay....' '..... the assessee had filed a confirmation letter of the above transaction signed by one of the partners, Shri Nurmalkumar Goenka. These transactions were earlier confirmed by Kalicharan Mudgal, accountant of M/s Amarchand Dharamchand, Delhi.

Similarly, the books of account of M/s Prakash Cotton Mills shows that Rs. 25 lacs and Rs. 50 lacs were sent to Delhi by telegraphic transfer on 10th March, 1977, and 11th March, 1977. These amounts were withdrawn in Delhi on the same day from Mercantile Bank where Prakash Cotton Mills has got an account. This money also has been stated to have been received by the assessee-firm on the same date in Bombay, i.e., to say, the date of withdrawal from the bank at Delhi. However, the difference is only that these amounts have first appeared in the books of account of Prakash Cotton Mills in Bombay and later on transferred to M/s Ramkumar Jalan on the same date. It is to be noted that M/s Amarchand

Dharamchand and M/s Prakash Cotton Mills Ltd. both have confirmed the above transactions. Thus, a total of Rs. 1.50 crores has been stated to have been received in Bombay from M/s Amarchand Dharamchand and Prakash Cotton Mills and it stands proved that the money has been withdrawn in cash from bank at Delhi on different dates and is appearing in the books of account of the assessee on the same date at Bombay.....'

3. The ITO investigated the genuineness of the cash credit and as per his letter dt. 3rd March, 1984, called upon the assessee to file :

(i) Confirmation letter(s) from the person(s) who had brought the moneys from Delhi to Bombay, and

(ii) Name(s) and address(es) of the person(s) who had brought the moneys from Delhi to Bombay.

4. The ITO after summarising the reply of the assessee, reproduced hereinafter, made an addition of Rs. 1.50 crores because, according to him, the genuineness of the transaction is not proved :

'..... The assessee has stated in its reply that -

(1) All the above money was transferred from M/s Prakash Cotton Mills to Delhi.

(2) At no point of time, either Prakash Cotton Mills or M/s Ramkumar Jalan, the assessee, or any other concern has tried to use those monies to explain the making of any investment or entries whatsoever other than appearing in the books of account.

(3) The main objection of the Department is about the mode of transfer of money from Delhi to Bombay. Due to passage of time and since the old accountants are not available, fresh enquiries cannot be made. However, the confusion in the entries appearing to be because of the misunderstanding in the mind of the accountant who has wrongly credited the cash book with the amounts on the dates on which they were withdrawn in Delhi.

(4) Because of this misunderstanding only, the whole of the confusion has arisen and is supported by the fact that all the above money of Rs. 1.5 crores has not been spent immediately and it is possible that the money might have been received in time before the actual expenditure since there is a gap of few days between the date on which the money shown to have received and the date on which actually it is spent and utilised.'

5. When the matter was brought before the CIT(A), he deleted the addition on the findings reproduced as under :

'21. I have very carefully considered the facts of the case and contentions of Shri Rakesh Khandelwal. The ITO in the assessment order has stated that the assessee had filed a confirmatory letter from M/s Amarchand Dharamchand, Delhi. The entries in the books of account of Prakash Cotton Mills Pvt. Ltd., Bombay, M/s Amarchand Dharamchand and the bank accounts support the explanation offered by the assessee. The ITO in the assessment order has in clear and unambiguous terms stated as under :

There is no doubt about it that the money has been transferred by M/s Prakash Cotton Mills on different dates to Delhi and the money has been withdrawn in Delhi. Out of the total money transferred amounting to Rs. 1.5 crores, Rs. 75,00,000 appeared in the books of M/s Amarchand Dharamchand, Delhi, and the total of Rs. 1.5 crores is stated to have come back to Bombay. There is no doubt that the money has been withdrawn in cash from Delhi bank....

The ITOs only objection is that the assessee has not filed confirmatory letter(s) from person(s) who had brought moneys from Delhi to Bombay and had not furnished the name(s) and address(es) of such persons. The assessee says that since this information has not been recorded in the books of the assessee, it is not possible for it to comply with the requirements of the ITO. It has to be remembered that Delhi and Bombay are connected by air and that on the dates on which amounts had been withdrawn from bank accounts in Delhi, they could have been brought to Bombay. Secondly, it has to be noted that the amounts in question had not been utilised for any purpose immediately and they remained in the books of the assessee for a week or so. The possibility of the entries having been made on

8th and 23rd Feb. and 10th and 11th March, 1977, when in fact the amounts were actually received slightly later cannot be ruled out. Thirdly, I am of the opinion that if the sources of credits of Rs. 75 lacs (on 10th and 11th March, 1977) in the books of Prakash Cotton Mills are accepted as genuine and correctly representing the transaction between it and its Delhi office, no addition can be made in the case of the assessee (of an amount of Rs. 75 lacs). If the sources of credits of Rs. 75 lacs appearing in the books of Prakash Cotton Mills P. Ltd. are held as not satisfactorily proved, the ITO assessing the said company would have made an addition of Rs. 75 lacs in the case of the said company. Shri Rakesh Khandelwal tells me that no such addition has been made in the case of Prakash Cotton Mills P. Ltd.

22. Having regard to the totality of facts and circumstances, I am of the opinion that the assessee has proved the nature and source of credits of Rs. 1.5 crores appearing in its books on 8th and 23rd Feb. and 10th and 11th March, 1977. In this view of the matter, I am of the opinion that the ITO erred in making addition of an amount of Rs. 1.50 crores for asst. yr. 1978-79 as income from undisclosed sources. The addition made by the ITO of Rs. 1.50 crores in the assessment for asst. yr. 1978-79 is, therefore, deleted.'

6. We have heard the learned Departmental Representative as well as the counsel for the assessee. The arguments of the learned Departmental Representative were on the lines that the assessee has not furnished any evidence as to how and when the money actually came from Delhi to Bombay meaning thereby that out of 3 conditions required to prove the genuineness of the creditworthiness, i.e., identity of the creditor, capacity of the creditor and genuineness of the transactions, the third conditions, i.e., genuineness of the transaction has not been proved by the assessee. He further submitted the fact that the amount was withdrawn from bank by the creditors at Delhi is itself not sufficient evidence that money actually had come to Bombay. On the other hand, he pressed his argument, that the assessee's failure to tell the name of the person who might have brought the money to Bombay or to produce confirmation from the concerned person clearly confirms that money was not brought to Bombay.

The counsel for the assessee, on the other hand, submitted that the credit being from sister concerns, the cash credits were genuine ones and further relied on the order of the CIT(A).

7. We have considered the arguments put forward by both the parties and have gone through the record. We are of the opinion that the submission made by the learned Departmental Representative has some force because the assessee has not been able to prove the genuineness of the transaction at any stage of the case - either before the ITO or before the CIT(A) or before the Tribunal. On the other hand, when the Bench specifically asked as to how the money was brought to Bombay and if it was brought by the assessee or by the creditor, then have the travelling expenses been accounted for by the concerned entities or not, the counsel for the assessee replied that he has no evidence or material as to how the money was brought to Bombay and through whom. He also stated that no travelling expenses have been accounted for by any of the parties. When further asked by the Bench that was the money received at Bombay through havala transaction, he again replied in the negative and admitted that it was not brought through havala even.

8. The assessee's failure to prove as to how and when the money was brought to Bombay raises a serious doubt against the actual transaction because had the money come, then it is not believable as to how the assessee has forgotten the mode and the name of the carrier. His plea that the name of the person (carrier) having not been recorded in the books of account, it is not possible for him to deliver the actual name, is also not believable.

9. After having considered all the facts and circumstances of the case, we are of the opinion that even if the identity and the capacity of the creditor are taken as to have been proved, then also the genuineness of the transaction is not proved because the actual receipt of money at Bombay remained unproved. It is very surprising to note that the assessee do not remember the name of the carrier where a huge amount of Rs. 1.50 crores was involved. On the contrary it leads to presume that money was never brought to Bombay. Otherwise, no prudent person will commit such a mistake as not remembering the name or identity of the person.

The admission on the part of the assessee that the travelling expenses were not accounted for either by it or by creditor further confirms that at least money was not brought by any of the parties directly and, therefore, it was very easy for the assessee to remember the name of person had it been an outsider. All the cumulative facts go to show that money was not brought to Bombay and consequently the transaction was not genuine. We, therefore, reverse the order of the CIT(A) and restore the order of the ITO confirming the addition of Rs. 1.50 crores by considering the credits under appeal as assessee's income. Consequently, the Department's appeal is allowed.

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