

Pirani and Co. Vs. Assistant Commissioner of Income Tax, Hyderabad

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Court : Andhra Pradesh

Decided On : Mar-28-2001

Reported in : 2001(3)ALD382

Judge : S.R. Nayak and ;S. Ananda Reddy, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 69, 143(3) and 260-A; Income Tax Rules, 1962 - Rule 46-A(3)

Appeal No. : ITTA No. 36 of 2001

Appellant : Pirani and Co.

Respondent : Assistant Commissioner of Income Tax, Hyderabad

Advocate for Pet/Ap. : Mr. A.V. Krishna Koundinya, Adv.

Judgement :

ORDER

S.R Nayak, J.

1. This appeal filed under Section 260A of the [Income Tax Act, 1961](#) (for short 'the Act') is directed against the order dated 23-6-2000 passed in ITA No.270/Hyd/1995 on the file of the learned Income Tax Appellate Tribunal (for short 'Tribunal'), Hyderabad Bench 'A' for the assessment year 1991-92. It arises from the order of the Assessing Officer in proceedings under Section 143(3) of the

Act.

2. The appellant is a partnership firm engaged in the sale and purchase of iron scrap in wholesale. The assessment year under consideration is the assessment year 1991-92. For the said year, the appellant disclosed its income at Rs. 1,83,454-00. The assessment was completed determining the income of the appellant at Rs.16,45,416-00. This figure was arrived at by making additions under Section 69 of the Act to the tune of Rs. 10,05,000-00 being loans received from different parties and the interest paid thereon amounting to Rs.24,079-00. The Assessing Officer also made additions disallowing the freight charges claimed by the appellant-assessee with which we are not concerned in this appeal. Against the said order of the Assessing Officer, the appellant-assessee filed an appeal before the Commissioner of Income Tax (Appeals) who confirmed the order of the Assessing Officer after calling for a report from the Assessing Officer. In the appeal preferred against the order of the Commissioner of Income - Tax (Appeals), though the appellant-assessee has raised number of grounds, he pressed only the following ground for consideration and decision by the learned Income Tax Appellate Tribunal:

'The appellate authority erred in law sustaining the following additions being loan amounts and the interest payment thereon to two parties, on the basis of remand report sent by the assessing authority who in his report 'presumed that, the loan amounts could be the funds of appellant' just because of the parties could not remember how the funds accumulated and the little gap of time between the date of deposit in their, (creditors) bank and the date of loan to the appellant firm, even though each party when summoned, categorically stated that, they (each party) gave the loan out of their own sources and it was through account payee cheque.

Loan amountInterest

(1)Smt. Mehrunnisa BegumRs. 1,40,000/-15,106/-(2)Mr. Doulath KhanRs. 30,000/-2,697/-(3)Mr. SatanRs. 25.000/- (4)Mr. ShamsuddinRs. 25,000/- (5)M/s. Bombay AgenciesRs. 1,00,000/-

Therefore sustaining the additions on the basis of 'assumptions and presumptions: of the assessing authority is bad in law.'

The learned Appellate Tribunal on consideration of the evidence and materials placed on record confirmed the order of the Commissioner of Income Tax (Appeals) as regards transaction with Smt. Mehrunisa Begum to the tune of Rs. 1,40,000-00 and allowed the appeal in respect of the remaining four transactions. Hence, this appeal under Section 260-A of the Act.

3. Sri A. V. Krishna Koundinya, learned Counsel appearing for the appellant would strenuously contend that the finding recorded by the Assessing Officer and the Commissioner of Income -Tax (Appeals) as well as the learned Appellate Tribunal that there is no acceptable evidence on the side of the assessee to prove the cash credit to the tune of Rs. 1,40,000-00 is totally perverse and based on no legal evidence. The learned Counsel would maintain that the authorities below and the learned Appellate Tribunal are totally unjustified in holding that there is no acceptable legal evidence on the side of the appellant to prove the cash credit of Rs. 1,40,000-00 in the name of Mrs. Mehnunnisa Begum eventhough the Assessing Officer in his report did not question the genuineness of the transaction.

4. The only question that arises for consideration and decision in this appeal is whether any substantial question of law arises for decision of the High Court as envisaged under Section 260-A of the Act.

5. It need hardly be emphasised that appeal shall lie to the High Court under Section 260-A of the Act from every order passed in the appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. In Chunnilal V. Mehta v. Century Spinning and Manufacturing Company Limited : AIR 1962 SC1314 and Pankaj Bhargava v. Mohinder Nath : AIR 1991 SC1233 , the Supreme Court has expressed the view that the proper test for determining whether a question of law raised in a case is substantial or not would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by Federal Court or is not free from difficulty or calls for discussion of alternative

views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well-settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a question of law. As per the decision of the Supreme Court in *Mahindra and Mahindra v. Union of India*, AIR 1979 SC 798 and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, 1999 (2) AWC 1068 the question of law would be a substantial question of law which (i) is of general public importance or directly and substantially affects the rights of the parties; and (ii) which is either not finally settled by the Supreme Court or Privy Council or Federal Court, or is not free from difficulty or calls for discussion of alternative views. It is, therefore, clear that both the ingredients must be present and coexist in a question of law so as to constitute it as a substantial question of law.

6. In the instant case, the cash credit of Rs. 1,40,000-00 in the name of Mrs. Mehnmnisa Begum is disallowed on the ground that there is no acceptable evidence on the side of the assessee to prove the said cash credit. It is relevant to note that during the course of the appellate proceedings, the appellant filed confirmatory letters in support of the alleged credits including the one which is the subject-matter of this appeal. As the aforesaid confirmatory letters could not be admitted at the appellate stage in view of Rule 46-A(3) of the IT Rules, 1962, those confirmatory letters were forwarded by the Appellate Authority to the Assessing Officer with a direction to submit a report on the genuineness or otherwise of the cash credits. Accordingly, the Assessing Officer made enquiry in that regard and submitted a report to the appellate authority. In the report submitted by the Assessing Officer as regards the cash credit of Rs. 1,40,000-00 in the name of Mrs. Mehrunisa, it is reported as under:

'It was the assessee's claim that Mrs. Mehnmnisa loaned out to the assessee to the tune of Rs. 1,40,000-00. She was summoned by the Assessing Officer and a statement was recorded from her on 30-11-1994. It was found that an amount of Rs. 1,40,000-00 had been credited to her account in the Indian Bank, Osmanganj Branch on 30-7-1990 and that the said amount was returned in the following week to the appellant. Mrs. Mehrunnisa also was totally ignorant of the transactions with the appellant. She could not furnish any details with regard thereto. It was stated

by her that all the transactions had been looked after by her husband. Mr. Nooruddin Dayani was summoned by the Assessing Officer and when he was asked about these details, it was stated, by him that he could not recollect as to how the said funds had accumulated.....'

The Commissioner of Income - Tax (Appeals) on consideration of the above report of the Assessing Officer has recorded his finding thus:

'.....In the case of Mehrunnisa, no details could be furnished with regard to the source of the loan and the details of the transaction either by Mrs. Mehrunnisa or by her husband. In all these cases, the amounts deposited were withdrawn with a very short span time to be offered as loans to the appellant'.

The learned Appellate Tribunal too on perusal of the report of the Assessing Officer and on consideration of the ground urged before it, extracted above, recorded its finding as under:

'The learned Commissioner of Income -Tax (Appeals) after calling for a report from the Assessing Officer has decided the above issue against the assessee. As for as the cash credit of Rs. 1,40,000-00 in favour of one Mehrunnisa, the Assessing Officer recorded a statement from her. At the time of enquiry by the Assessing Officer, she could not furnish any details with regard to the said loan and has further stated that all the transactions had been looked after by her husband. Since the explanation offered by Mehrunnisa was not convincing, the Assessing Officer disallowed this sum of Rs. 1,40,000-00.....As far as the cash credit of Rs. 1,40,000-00 in the name of Mehrunnisa is concerned, there is no acceptable evidence on the side of the assessee to prove the said cash credit.....'

Firstly, the above finding recorded by the Assessing Officer, Commissioner of Income Tax (Appeals) and learned Tribunal is a finding on a pure question of fact. Secondly, that finding cannot be said to be perverse in the sense that it is not based on any admissible substantive legal evidence. As rightly pointed out by the authorities below that the appellant-assessee has utterly failed to prove the said cash credit standing in the name of Mrs. Mehrunnisa Begum. It is trite to State that Section 69 clearly lays down the initial burden on the assessee of proving the

nature of source of investments not recorded in the books of accounts. If the assessee fails to explain and prove the nature and source of investments, the unexplained investments would be assessable under Section 69 and there would be no burden on the department to prove that such investments were the income of the assessee. In taking this view, we are fortified by the judgment of Gauhati High Court in *Jatindra Nath Sarmah v. ITO*, of Punjab and Haryana High Court in *Raghunath Singh v. CIT* and of Calcutta High Court in *Smt. Kama/a Devi Jhawar v. CIT* : [1978]115ITR401(Cal) .

7. This appeal does not involve any question of law much less substantial question of law. In that view of the matter, ITTA No.36 of 2001 is dismissed with no order as to costs.

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