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Court : Allahabad

Decided On : Aug-25-2004

Reported in : [2004]141TAXMAN574(All)

Appeal No. : IT Ref. Nos. 325 & 327 of 1982 25 August 2004

Appellant : Jagmohan Ram Ram Chandra

Respondent : Cit

Advocate for Pet/Ap. : P.K. Misra & Vikram Gulati, *for the Assessee A.N. Mahajan, for the Revenue*

Judgement :

ORDER

R.K. Agrawal, J.

In Income Tax Reference No. 325 of 1982 the Income Tax Appellate Tribunal, Allahabad, has referred the following question of law under section 256(1) of the Income Tax Act, 1961, hereinafter referred to as the Act, for opinion to this court.

'Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the addition of Rs. 17,500 in the total income of the assessee even though the said amount was also assessed in the hands of the two partners, viz., S/Shri Udai Narain and Girish Narain?'

2. The Income Tax Reference No. 327 of 1982 which is at the instance of the assessee, the Income Tax Appellate Tribunal, Allahabad has referred the following question of law under section 256(1) of the Act for opinion to this court.

'Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the addition of Rs. 7,500 made by the Income Tax Officer?'

3. Since both these references relate to the partnership firm and one of its partner for the assessment year 1977-78 and the questions are interdependent they have been heard together and are being decided by a common judgment.

4. Briefly stated the facts giving rise to the present Reference are as follows :

M/s. Jag Mohan Ram Ram Chandra Prasad, a partnership firm, consisted of six partners. In course of the assessment proceedings during the assessment year 1977-78 relevant to the previous year ending on 31-3-1977, the Income Tax Officer inquired from the firm to explain the nature and source of two cash credits standing in the names of two partners : Rs. 10,000 on 8-6-1976 in the name of Udai Narain and Rs. 7,500 on 5-6-1976 in the name of Girish Narain. The explanation offered by the firm was that these two partners have surrendered the aforesaid amount in their individual returns and that they have been assessed thereon. The Income Tax Officer rejected the explanation and treated the sum of Rs. 17,500 as its income by invoking the provisions of section 68 of the Act. The appeal filed by the firm before the Appellate Assistant Commissioner remained unsuccessful. The firm preferred second appeal before the Tribunal. Before the Tribunal arguments were heard along with another appeal of one M/s. Sanjai Vastralaya and the appellants counsel adopted the same arguments. The Tribunal following its decision in the case of Sanjay Vastralaya upheld the additions.

5. In the individual assessment of Girish Narain, one of the partners of the firm, the Income Tax Officer assessed the surrendered income of Rs. 7,500, which was the amount of deposit Standing in his name in the aforementioned firm by way of protective measure. However, in the appeal filed before the Appellate Assistant Commissioner, he took a stand that the Income Tax Officer should have called for the explanation of the firm to explain the nature and source of the cash credit

standing in his name and if he was satisfied by the explanation given by the firm he could have included Rs. 7,500 in the total income of the firm by invoking the provisions of section 68 of the Act and, therefore, it should not have been assessed in his name. The Appellate Assistant Commissioner agreed with the submission made and deleted the addition of Rs. 7,500. Feeling aggrieved the revenue preferred an appeal before the Tribunal. The Tribunal had reversed the order of the Appellate Assistant Commissioner on the round that the assessee could not have any grievance against the inclusion of an amount, which has been voluntarily surrendered by him. Since the assessee and the firm in which he is a partner are two separate and distinct entities, the Tribunal was of the view that similar amount having been included in the total income of the firm would not automatically justify the action of the Appellate Assistant Commissioner deleting Rs. 7,500 from the total income of the partner.

6. We have heard Sri Vikram Gulati, learned counsel for the applicant and Sri A.N. Mahajan, learned counsel appearing for the revenue.

7. Learned counsel for the applicant submitted that the cash credit amount appearing in the name of the partner having been surrendered by the partners in their individual assessment, therefore, it could not have been taxed in the hands of the firm. In the alternative, he submitted that if it was to be treated as income of the partnership firm, the same amount could not have been taxed at the hands of the partner in their individual assessment as it amounts to double taxation which is not permissible under the law.

8. In support of his submission he relied the following decisions:

1. Girdhari Lal Nannelal v. STC : [1977]109ITR726(SC)
2. Sundar Lal Jain v. CIT : [1979]117ITR316(All)
3. CIT v. Jaiswal Motor Finance : [1983]141ITR706(All)
4. Addl. CIT v. Precision Metal Works : [1985]156ITR693(Delhi)
5. India Rice Mills v. CIT : [1996]218ITR508(All)

6. Surendra Mohan Seth v. CIT : [1996]221ITR239(All)

9. Sri A.N. Mahajan, learned counsel for the revenue, however, submitted that under the Act the firm and the partners are treated to be distinct entities and therefore, if any entry of cash credits is found in the books maintained by the partnership firm which remains unexplained the same can be added as income of the said firm under section 68 of the Act. Likewise, if the amount of investment is found in the assessment of an individual, who has not maintained any books of account, it can be added if the explanation offered has not been accepted and in that event the amount can be treated as unexplained investment on the hands of the said person and treated to be an income under section 69 of the Act.

He relied upon the following decisions :

1. CIT v. Kapur Bros. : [1979]118ITR741(All) .

2. CIT v. Jairamdass Lokesh Kumar .

10. He submitted that there is no question of double taxation in the present case as different provisions of the Act, namely, sections 68 and 69 have been applied in two cases-section 68 in the case of firm and section 69 in the case of partner.

11. Having heard the learned counsel for the parties, we find that the explanation regarding cash credit entries given by the firm had been disbelieved. Section 68 of the Act deals with the cash credits and how it should be added. It reads as follows :

'68. Cash Credits.Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.'

12. Thus, where a sum is found in the books of an assessee and the explanation offered by it about the nature and source thereof is not found to be satisfactory or

no explanation is offered the sum so credited is charged to the income-tax as the income of that assessee for the relevant previous years. Since in the present case the explanation offered by the firm has been disbelieved the provision of section 68 of the Act are fully attracted and, therefore, the amount of Rs. 17,500 had rightly been added. This court in the case of Kapur Bros. (supra) has held that if the explanation offered by the firm had been proved or believed then alone the question would arise that the deposit should be considered, as belonging to the partners. The firm was required to establish the sources of these deposits. To establish this the firm offered explanations and if they were disbelieved, the result would be that the firm had failed to prove that the money belonged to the partners. It would be a case of failure to establish the bona fides of the ostensible lender or depositor. If the assessee failed to prove even the identity, the revenue is entitled to draw the inference that the amount deposited constituted the income of the assessee-firm. This court referred to the observation of Untwalia C.J. (as he then was) in the case of Hardwamal Onkarmal v. CIT : [1976]102ITR779(Patna) which is to the following effect :

'....If the credit entry stands in the name of the assessee himself, the burden is undoubtedly on him to prove satisfactorily the nature and source of the amount of that entry; if the entry stands in the name of the assessee's near relation, in that case also the burden is on him. If the entry, however, stands in the name of a third party then the assessee discharges the burden if he proves to the satisfaction of the Income Tax Officer the identity of the third party and also supplies evidence to show prima facie that the entry is not fictitious. If I may say so, the case in hand falls within the second category. If cash credits are found in the account books of partnership firm in the names of the partners then such cash credits in the names of persons who cannot call themselves as being related to itself but surely are in the names of persons who constitute the firm itself that being so in such case the onus is on the assessee to establish that the partners had actually deposited the money and that the entries were not fictitious.' (p. 786)

13. In the present case the explanation offered by the firm has been disbelieved. There was no occasion to conclude that the partners were relying on the common money and there was hence no occasion to hold that the deposits should be

assessed in the individual assessment of the partners.

14. In the case of Girdhari Lal Nannelal (supra) the Apex Court was considering the question as to whether the amount credited in the name of the wife of a partner in firm for which the explanation regarding source has been rejected can be presumed to represent firms profits from undisclosed sources and can be added to turnover of the sales under law laid down under the Sales Tax Act. The Apex Court has held as follows :

'The approach which may be permissible for imposing liability for payment of income-tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax, it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee had resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present, a credit entry in respect of Rs. 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee-firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs. 10,000 with the income of the assessee-firm as a result of sales. In the absence of such material the mere absence of explanation regarding the source of Rs. 10,000 would not justify the conclusion that the sum of dispute represents profits of the firm derived from undisclosed sales.' (p. 729)

The Apex Court in the aforementioned case had held that in appropriate cases it is permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such.

15. In the case of Sundar Lal Jain (supra), this court has held that where the entries are found in the books of a firm and the assessment is that of an individual, namely, one of the partners of the firm, section 68 will not apply as the existence of the entry in the books of the firm would be immaterial because those are in the books of a different assessee. In the aforesaid case this court has held that the assessee had made investment which were not recorded in the assessee's books of accounts because he had not maintained any books of account at all. The explanation offered by the assessee i.e., individual partner was not found satisfactory and all the ingredients and conditions of section 69 were satisfied which alone could apply and section 68 was entirely inapplicable. Thus, the aforesaid decision is applicable in all force in respect of addition in the hands of the partner under section 69 of the Act.

16. In the case of Jaiswal Motor Finance (supra), this court has held that if there are cash credit entries in the books of a firm, in which the accounts of the individual partners exist, and it is found as a fact that cash was received by the firm from its partners, then, in the absence of any material to indicate that they were the profits of the firm, it could not be assessed in the hands of the firm. This court was considering the case where the deposits were found in the accounts of partners in the books of the assessee firm in the first year of assessment of the firm. In the aforesaid case the Tribunal had found that the deposits were made by the partners as their capital because without these investments they could not have become partners and, therefore, the assessee which was a firm had discharged the burden of explaining the deposits in its account books.

17. In the case of Precision Metal Works (supra), the Delhi High Court has held that the income could either be the income of the firm or it could be the income of the individual partners. It could not be the income of both. Once having accepted the amount as the income of the partners themselves, it could not be added to the income of the firm. The assessment of the partners had resulted in the sum being charged to tax in their hands and it did not make any difference whether the sum was taxed in the hands of the partners or in the hands of the firm.

18. In the case of India Rice Mills (supra), this court has held that if the deposits came to be during the accounting year in the books of the assessee-firm before it started its business and the deposits represented the capital contribution of the partners. It was for the partners to explain the source of deposits and if they failed to discharge the onus then such deposits could be added in the hands of the partners only. These deposits could in no case be the income of the assessee-firm because the firm started its business after the credits had been made in its books.

19. In the case of Surendra Mohan Seth (supra), this court has held that the deposits made by the partners on the very first day when the partnership firm came into existence cannot be added in the hands of the assessee-firm if the explanation regarding source of the deposits is disbelieved and at best it could be added in the hands of the partners individually.

20. In the case of Jairamdass Lokesh Kumar (supra), the Rajasthan High Court has held that the assessment of different persons in respect of the same income will not absolve one from liability to be taxed. It has held as follows:

'We are of the opinion that in view of the decision of the Supreme Court in Jain Brothers v. Union of India : [1970]77ITR107(SC) it should be no more in doubt that the assessment of different persons in respect of the very same income will not absolve one from liability to be taxed de hors the finding recorded in one proceeding with reference to the finding recorded in somebody else's assessment. If in the case of A it has been found that A has earned income, then the obligation is on A to be assessed and pay tax on the income earned by him.' (p. 527)

21. Thus, from the aforesaid decisions, it is settled that if an entry of cash credits is found in the books of account of a firm, it is for the firm to give explanation regarding identity and source of such deposits and if the explanation is disbelieved then it is to be added as an income under section 68 of the Act in the hands of the firm. Similarly, if an assessee, who is a partner in the partnership firm, has made investment which are not recorded in the books of account maintained by him for any source of income and the explanation given by the partner or individual regarding source of deposits is disbelieved then such deposits which is investment can be brought to tax as income from undisclosed sources under section 69 of the

Act. There is no question of any double taxation. Full effect of the deeming provisions and the presumptions provided under sections 68 and 69 of the Act has to be given. The partnership firm and the partners being treated as separate assessee under the Act, assessment of the income at the hands of different assesseees under different provisions of the Act is permissible.

22. In view of the foregoing discussion, we answer both the questions of law in the affirmative i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.

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