

Cit Vs. Print Pack Industries

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Court : Allahabad

Decided On : Mar-29-2005

Reported in : [2006]154TAXMAN500(All)

Appeal No. : ITR No. 153 of 1993 29 March 2005

Appellant : Cit

Respondent : Print Pack Industries

Advocate for Pet/Ap. : Shambhoo Chopra, *for the Applicant.*

Judgement :

ORDER

The Income Tax Appellate Tribunal, New Delhi has referred the following two questions of law under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act) for opinion to this court:

'1. Whether the ITAT was justified in confirming the view of the Commissioner (Appeals) and directing the assessing officer to verify whether amount introduced in the firm was made out of income shown by the parties under Amnesty Scheme when the deposits in the firm were in cash and there was no evidence with the partners to have earned independently

2. Whether the ITAT was justified in upholding the decision of the learned Commissioner (Appeals) that the amount disclosed by the partners could explain

the deposits in the case of the firm when the same are not acceptable in view of the ratio laid down in the case of Smt. Shakti Rani Devi v. CIT (1973) 115 ITR 712.'

The present Reference relates to the assessment years 1986-87.

3. The respondent-assessee has been assessed for income tax in the status of a registered firm. During the scrutiny of accounts deposit of Rs. 40,000 and Rs. 30,000 was found by the assessing officer standing in the names of Smt. Shanti Devi and Sri Rajiv Kumar Aggarwal respectively on 14-3-1986. When asked to explain the source, the respondent stated that these amounts had been surrendered under the Amnesty Scheme in the preceding year by the depositors in their personal returns thus explained the deposits out of disclosed sources. The assessing officer did not accept the explanation and he added the amount under - section 68 of the Act. On appeal, the Commissioner (Appeals) had directed the assessing officer to verify the facts as to whether the returns of the depositors were filed under the Amnesty Scheme and if they were accepted by the department. He was further directed to verify whether the deposits in the firm had been made out of the amounts shown in the return filed under Amnesty Scheme. The assessing officer was directed to accept the deposits as explained should the contention of the respondent-assessee be found as correct. Revenue feeling aggrieved preferred an appeal before the Tribunal, which has confirmed the order of the Commissioner (Appeals) by holding as follows:

'4. We have given our careful consideration to the rival contentions. The deposits have been found in the accounts of the partners who have admitted to have made such deposits. The partners have made declarations of income in their own assessments. The amnesty provided under the amnesty Scheme is available to the partner s in respect of the income disclosed. In this case it has not been established that the amounts of deposits had not come from the partners. In such circumstances, the decision of the Hon'ble Supreme Court and decision of the Madhya Pradesh High Court and Andhra Pradesh High Court relied upon by the learned Departmental Representative are not applicable to the facts of this case. In this case of Jamna Prasad Kanhaiyalal (supra), the declaration had been made

in the hand of minors and on investigation it was found that they had no independent source of income. In such case the Hon'ble Supreme Court held that it was open to the assessing officer to go beyond the disclosure made by the assessee and to disregard the same. On investigation it was found that the declaration made was bogus. In this case, there is no finding by the revenue authorities that the amounts did not belong to the partners. Nor is there anything on record to suggest that the amount in fact belongs to the firm. In any case the Commissioner (Appeals) has left the field open to the assessing officer to make enquiries in respect of the disclosures made by the partners and to verify as to whether the amounts deposited in the firm have been made out of the amounts shown in the return filed under amnesty Scheme. The direction is in consonance with the decision of the Hon'ble Supreme Court in the case of Jamna Prasad Kanhaiya Lal (supra) as the assessing officer has not been directed to accept the deposits merely on verification of the partners having declared the amounts under amnesty Scheme. The assessing officer has been Directed to make further enquiries in this regard. In such circumstances, we are of the view that the decision of the Commissioner (Appeals) is not contrary to the decision of Hon'ble Supreme Court and the decisions of the Hon'ble Madhya Pradesh High Court relied by the revenue. We accordingly see no reason to interfere.'

4. We have heard Sri Shambhoo Chopra, learned Standing counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

5. From the perusal of the order of the Tribunal reproduced above, we find that the Tribunal has left the matter open and the assessing officer has been given full power and authority to make enquiry in the matter and find out as to whether the deposits standing in the name of two partners was really out of the funds disclosed under the Amnesty Scheme or not and whether any such disclosure was made by the partners under the Amnesty Scheme or not. The matter, having been left open, we consider that the questions of law referred to above do not call for any opinion from this court. We accordingly, return the questions unanswered.