

U.B. Engineers Vs. Dy. Cit

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Court : Delhi

Decided On : Dec-12-2003

Reported in : (2004)86TTJ(Del)1001

Appeal No. : ITA No. 1072/Del/2003, A.Y. 1998-99 12 December, 2003

Appellant : U.B. Engineers

Respondent : Dy. Cit

Judgement :

ORDER

G.S. Pannu, A.M.

This is an appeal by the assessed arising out of the orders of the Commissioner (Appeals) dated 13-1-2003 pertaining to assessment year 1998-99. The appellant in the impugned appeal has raised two main grounds of appeal. The first ground is in relation to the action of the Commissioner (Appeals) in sustaining the addition of Rs. 11,50,000 made by the assessing officer being the amount of capital introduced by one of its partners Mr. A.P.S. Bawa as undisclosed income of the firm. The second ground is with regard to the action of the assessing officer for levy of interest under sections 234A and 234B of the Income Tax Act. The aforesaid two grounds are being taken up by us in subsequent paragraphs in Serialtim.

2. At the time of hearing Shri Rakesh Gupta, C.A., appeared on behalf of the appellant and Shri R.R. Prasad, learned departmental Representative on behalf of the respondent-department. Their submissions have been considered while disposing of the present petition.

3. The brief background in relation to the first ground is that the appellant is a firm whose business includes construction/development/sale and purchase of real estate, etc. The assessed-firm started its business in terms of partnership, deed dated 7-7-1997 with three partners namely Sh. Ravi Batra, Sh. A.S. Kamal and Sh. A.P.S. Bawa. During the course of assessment proceedings, the assessing officer 'made enquiries with regard to capital introduced by Mr. A.P.S. Bawa'one of the partners. The assessed was asked to submit documentary evidence regarding the source of introduction of the impugned amount as capital in the books of the appellate firm. It was explained by the assessed at the time of assessment proceedings that the said Shri Bawa has since retired from the partnership firm, and the whereabouts were not known and thereforee the documentary evidence regarding the source of the funds with Shri A.P.S. Bawa could not be furnished. In the absence of any documentary evidence regarding the introduction of capital in the name of Sh. A.P.S. Bawa, the impugned sum of Rs. 11,50,000 was brought to tax as undisclosed income of the assessedfirm.

4. Aggrieved, the matter was carried in appeal before the Commissioner (Appeals) who has since sustained the action of the assessing officer. According to the Commissioner (Appeals), in so far as the assessed-firm was concerned, it had not been able to prove either the identity or the creditworthiness or the genuineness of the transaction leading to the introduction of the impugned amount as capital in the books of the assessedfirm. Hence, the appeal of the assessed.

5. At the time of hearing Sh. Rakesh Gupta, counsel appearing on behalf of the appellant has reiterated similar contentions as were taken before the lower authorities. It is argued by the learned counsel that with the retirement of the said partner from the firm w.e.f, 31-3-1998, it was beyond the control of the assessed-firm to obtain the necessary documents as are being insisted upon by the revenue. It is argued that the entire amount of Rs. 11,50,000 has come through the Banking

channels. Our attention was drawn to the copy of the order of the assessment framed in the case of the individual Mr. A.P.S, Bawa for the assessment year 1998-99 in this regard. It was pointed out that the assessing officer therein has indeed found that Mr. Bawa has contributed a sum of Rs. 11,50,000 in the appellant-firm as capital on various dates. On the basis of the aforesaid, it was argued that this amply demonstrates the genuineness of the entry made in the books of the assessed po ITR aying the impugned amounts as having been received as capital contribution from said Mr. Bawa. According to him, the ratio of the decision of the Hon'ble High Court of Madras in the case of S. Hastimal v. CIT : [1963]49ITR273(Mad) , is squarely applicable in as much as that the assessed cannot be insisted upon to prove the source of the source. It is also argued by the learned counsel that the similar amount has been added in the hands of the individual Shri Bawa in terms of the orders under section 148/144 dated 21-3-2002 under section 69 of the Income-tax as being unexplained thereby resulting in double taxation. In this regard, reference was made to the decision of the Hon'ble Delhi High Court in the case of Calcutta Co. Ltd. v. CIT 126 ITR 693 . It was also alternatively argued that having regard to the fact that the impugned assessment year being first year of incorporation of the assessed and as no business has been carried out during the year, the additions made under section 68 were not sustainable in view of the decision of the apex court in the case of CIT v. Bharat Engineering & Construction Co. : [1972]83ITR187(SC) and India Rice Mills v. CIT : [1996]218ITR508(All) .

6. On the other hand, the learned departmental Representative Sh. R.R. Prasad, at the outset, defended the orders of the lower authorities. According to him, the issue with regard to the taxability of the similar amounts in the hands of the individual Mr. A.P.S. Bawa, could not be stated to be final as he did not have the relevant facts with him.

7. We have heard the rival submissions carefully and have also perused the material on record and proceed to dispose of the issue in -the following lines. At the outset, we may state that the assessed has to succeed in this ground of appeal for the reasons discussed hereinafter. The facts are in a narrow compass

in as much as that the assessed-firm depicted a sum of Rs. 11,50,000 as having been received from one of its partners Mr. A.P.S. Bawa as capital introduction. The assessment order in the case of the said individual Shri Bawa for the relevant assessment year, as adduced by the counsel for the assessed, clearly demonstrates that the credit in the books of the firm came from the said individual. This indicates the identity and the source of the amount lying credited in the books of the assessed. The factum of the assessed's inability to produce the said Mr. Bawa cannot be treated as fatal so as to hold that the assessed has failed to discharge the initial burden cast on it in terms of the provision of section 68 of the Act. The difficulty explained by the assessed to the effect that the said partner having been retired from the firm as on 31-3-1998 and the said person being away from the country and the fact that the department has been able to trace the said amount having come from the account of the said Mr. Bawa clearly establishes the bona fides of the Explanationns offered by assessed-firm with regard to the nature and source of the impugned credit. thereforee, in our view, on this contention itself, the assessed is liable to succeed and the impugned addition deserves, to be set aside. We hold so accordingly.

8. In the result, the said ground is decided in favor of the assessed.

9. The second ground is in relation to the levy of interest under sections 234A and 234B of the Income Tax Act. The brief background giving rise to the present dispute can be summarised as under. The assessment of. the assessed was finalised by assessing officer in terms of section 143(3) vide orders dated 23-3-2001 at an income of Rs.. 11,50,000. Relevant portion of the order of assessment order reads as under:

'Assessed at Rs. 11,50,000. Issue demand notice and challan.

Penalty proceedings under section 271(1)(c) has been initiated separately.'

10. On the basis of the aforesaid, the stand of the assessed is that the assessing officer could not have charged interest as there was no direction in the assessment order for charging of interest under sections 234A and 234B of the Act. Before us, it is contended by Shri Rakesh Gupta appearing on behalf of the

appellant that the aforesaid issue has been adjudicated upon by the Hon'ble High Court of Delhi in the case reported at CIT v. Insilco Ltd. : [2003]261ITR220(Delhi) , as also CIT v. Kishanlal (HUF) : [2002]258ITR359(Delhi) . assessed's counsel has also placed reliance on the decision of the Delhi Bench of the Tribunal in the case reported at V.V Industries v. Assistant Commissioner . It is also submitted by the counsel that the apex court has dismissed an ILP preferred by the revenue against the judgment of the Madhya Pradesh High Court where in a similar view was taken to the effect that as there was no specific order for charging interest under section 234B of the Income Tax Act, the charging of interest under section 234B in the demand notice was illegal. A reference was made to (2002) 254 ITR 276 for the aforesaid. thereforee, it is canvassed by the learned counsel that the stand of the assessed has the implied approval of the Hon'ble apex Court.

On the other hand, the learned departmental Representative Shri R.R. Prasad, has assailed the arguments of the assessed and has contended that the levy of interest under sections 234A and 234B is mandatory and has referred to a recent decision of the Delhi Bench in the case of ITA 5221/Del/1997, dated 22-2-2003 in support of his submissions.

11. We have heard the rival counsels and have also perused the authorities cited at Bar and proceed to dispose of the issue in the following lines. At the outset we may state that the assessed has to succeed in the present appeal. As is discernible from the extract of the assessment order referred by us in an earlier paragraph, the assessment order is bereft of any direction for charging of interest under sections .234A and 234B of the Act. thereforee, the action of the revenue in calling upon the assessed to pay interest under sections 234A and 234B by way of demand notice or in the computation sheet clearly lacks the statutory backing. The decisions relied upon by the counsel namely in the case of Kishan Lal (HUF) (supra) and Insilco (supra) are clearly applicable. to the facts of the instant case. In fact, in the case of Insilco (supra) the Hon'ble High Court was dealing with the direction in the assessment order to the effect-'charge interest'. Even against the aforesaid facts, the Hon'ble High Court opined that since there was no specific direction to charge interest in the order of assessment itself, the interest could not be charged. The case before us is even on a weaker footing in so far as the

department is concerned. A perusal of the portion of the assessment order extracted above reveals that there is no direction whatsoever to charge interest. therefore, the parity of reasoning enunciated by the Hon'ble High Court in the aforesaid cases is applicable with even more force in the instant case having regard to the facts as stated above.

12. Before we part, we would like to discuss the reliance placed by the department on the case of ITA 5221/Del/1997 (supra). We have carefully perused the decision of our Co-ordinate Bench and it is evidently clear that the facts before the Bench were on a different footing. The Tribunal in the aforesaid case was dealing with a situation where the order of assessment contained a direction to 'charge interest as per law'. It was against the background of the aforesaid direction that the Tribunal concluded that the levy of interest in the annexed computation sheet and demand notice was in order. As we have seen in the earlier paragraphs, in the instant case before us, the assessment order is bereft of any direction with respect to the charging of interest and therefore, the aforesaid decision does not help the case of the revenue.

13. In the result, the appeal of the assessed is allowed.