Joint Cit Vs. Budh Kishore

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Court : Delhi

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Appeal No. : ITA No. 5677/Del/1998 12 August 2003 A.Y. 1995-96

Appellant : Joint Cit

Respondent : Budh Kishore

Advocate for Pet/Ap. : A.P. Agarwal,;for the assessed; N.K. Jain,;for the Revenue

Judgement :
ORDER

M.V. Nayar, A.M.:

The department is in appeal against the order of Commissioner (Appeals), Rohtak, in appeal No. 460/BN/1997-98, dated 19-9-1998.

2. The first ground of the department's appeal is against the action of Commissioner (Appeals) in deleting the addition of Rs. 4,25,000 on account of cash found and seized from the residential premises of the assessed ignoring the statement of Shri Shiv Charan, accountant, and Shri Kailash Chand, brother of the assessed.

3. The short facts are that the assessed is engaged in the business of retail trading in washing soap and washing powder. He also acts as commission agent for various dealers in oils and soap stock. The assessed had been accepting deposits and raising loans for investment in new issues of shares and in FDRs. He had also been advancing loans to family members and employees for investment by them in shares/debentures on which the interest has been charged from them at rates varying from 12 to 18 per cent. The assessed has also paid interest on loans/deposits raised by him at rates between 12 per cent to 15 per cent. A search under section 132 of the Act was conducted at the business and residential premises of the assessed, his sister concerns and other family members on 20-10-1994. During the course of search various loose papers/ documents/books of account and cash were seized against Panchnama.

During the course of the search operation under section 132(1) at the residential premises of the assessed a sum of Rs. 5,61,389 was found. As no Explanationn was offered by the assessed, cash amounting to Rs. 4,25,000 out of Rs. 5,61,389 was seized. The assessed vide letter dated 14-10-1997, was required to explain the same. In response thereto, the assessed vide his reply filed on 26-12-1997, stated that the cash belonged to different sister concerns of the assessed as mentioned below :

(a)

M/s. Mittla Industrial Corpn.

1,67,778.96

(b)

M/s. Mittal Chemical Udyog

1,05,841.31

(c)

M/s. Sri Ram Udyog

1,35,600.00

(d)

M/s. Ram Swaroop Dass Radha Kishan

5,581.50

(e)

M/s. Mittal General Store

93,063.00

5,07,865.00

5. The assessed further explained that during the course of search operation on this group cases cash amounting to Rs. 6,06,227 was found and the balance cash of Rs. 98,362 (Rs. 6,06,227 minus Rs. 5,07,815) pertained to different family members viz., Smt. Nisha, Master Saket, Baby Surbuchi and Vinod Ravi Meera Devi, Maya Devi and Ram Swaroop, watchman.

6. The assessing officer pointed out that during the course of the search operation at the business premises, M/s. Mittal Industrial Corpn., the statement of Shri Shiv Charan, accountant, was recorded in which he stated that the cash was kept in the safe lying in the business premises of M/s. Mittal Industrial Corpn. According to the assessing officer if the cash was lying with Shri Budh Kishore as claimed by him, the accountant of the firm, Shri Shiv Charan, would have narrated the said fact.

7. Further, during the course of the search operation, the statement of Shri Kailash Chand, brother of the assessed, was recorded under section 132(4). It was explained by him that cash amounting to Rs. 50,000 should be available in the house.

8. In view of the above, the assessing officer held that the claim of the assessed that the cash belonged to the sister concerns of the assessed was incorrect and held the same as belonging to the assessed, thus making an addition of Rs.

4,25,000 to the total income of the assessed on this account. Commissioner (Appeals) deleted the addition against which the department is in appeal before us.

9. Shri A.P. Agarwal, Departmental Representative, appeared for the assessed (sic-Revenue). He relied on the order of the assessing officer.

10. Shri N.K. Jain, advocate, appeared for the assessed. The learned authorised representative has argued that the assessing officer while considering Rs. 4,25,000 as unexplained cash found at residence of H. No. 96-97 has ignored the fact that the cash found at house was inclusive of Ughai and sale proceeds brought by Shri Kailash Chand on 19-10-1994, from Behal side area, the receipts of which were also taken into seizure as either item No. 27 or 28 and 29 of the annex. A of seizure memo. The Ughai was thus not recorded in the regular books of the firm nor cash sales were so recorded. Such cash out of Ughai amounting to Rs. 49,201 was recovered from the bed room of Shri Kailash Chand and thus was duly explained and could not have been assessed as the income of the assessed. Likewise, Shri Satya Narain and Ravi Mittal had also brought cash sales and Ughai of old credit sales on 19-10-1994, of which the receipts were available in the house No. 96-97 with Shri Ravi Mittal and are in the seized receipt books No. 27,28,29. Rs. 90,912.62 represented such cash sales and Ughai which was brought a day earlier and available at the house. This amount as such cannot be considered as unexplained. Normally, the cash was being handled and sent to the bank by Shri Budh Kishore for different business concerns of the family. thereforee, at business premises only nominal cash required for day-to-day was being kept and balance cash amount was kept at the residence. Besides, cash of Rs. 27,296.34 was opening cash balance on 19-10-1994, as per the books of M/s. Mittal Industrial Corpn. After leaving amount for immediate requirement of the business, the balance amount was available in the house.

11. It was submitted that likewise M/s. Mittal Chemical Udyog's books were showing closing cash balance of Rs. 1,05,841.31 as on 19-10-1994, whereas no cash was found at the business premises and none of the family members has claimed or explained the same to be with him. Normally, since cash was being

handled by Shri Budh Kishore, the same was available with Shri Budh Kishore at his residence and, thereforee, cannot be presumed to be not explained.

12. Similarly, it was urged, even cash amounting to Rs. 1,35,600.50 was the cash balance as per books of M/s. Shri Ram Udyog Ltd., and only Rs. 4, 100 was found at the business premises. As already explained excess cash available with the firm was kept at the house and the cash to that extent thus was also explained because none else has claimed the said cash to have been with any other family member or there was no evidence to show that this amount was spent by the firm. thereforee, the cash found in the residence No. 96-97 wherein family of Shri Budh Kishore as well as Shri Kailash Chand was residing cannot be considered to be unexplained.

The learned authorised representative submitted that as per the books of M/s. Mittal General Store, Rs. 71,086 was opening cash in hand as on 18-10-1994, and the Ughai of 18-10-1994, amounting to Rs. 25,896 and Ughai of 19-10-1994, amounting to Rs. 11,467 which had not reached to the business premises and, thereforee, were not recovered in the books of accounts of M/s. Mittal General Store, obviously were available at the residence out of which Rs. 15,000 was deposited in the bank on 18-10-1994, and Rs. 340.50 pertained to expenses incurred for effecting Ughai on 18-10-1994 and 19-10-1994. After making entries for such receipts and expenses and deposits in the bank, cash available in hand for M/s. Mittal General Store comes to Rs. 93,063. As against this only Rs. 2,292 was left at that business premises. The balance case of Rs. 90,771.50 was thus included in the cash found at residence.

13. We have considered the facts on record. It is common practice that cash of such family concerns is taken to residential premises after the close of business and is handled from the residence next morning. No conclusive material has been brought on record to prove that cash found short during search at various business premises, was utilized somewhere else. The addition cannot be made on the basis of Shri Shiv Charan's untested statement, since he was not handling the cash and could not even tell the cash balance on the day of search because he had not received the requisite information since 15-10-1994. Shri Kailash Chand had also

deposed during the search that the entire cash found with Shri Budh Kishore was as per regular books of account. The books of account, receipt books, etc., which are under seizure of the department, are sufficient documentary evidence to support the Explanationn tendered by the assessed. We confirm the order of Commissioner (Appeals) and dismiss the department's appeal on the first ground.

14. The second ground of the department's appeal is against the action of Commissioner (Appeals) in deleting an addition of Rs. 1 lakh on account of foreign visit when the details of expenses were not explained during the course of assessment proceedings.

15. During the year under consideration, Shri Budh Kishore went to Korea on 23-9-1994 and returned back on 28-9-1994. The assessing officer vide his letter dated 14-10-1997, asked the assessed to explain the purpose of the visit and total expenditure incurred on the said foreign visit. The assessed vide his reply filed on 26-12-1997, claimed that he had gone to Korea to purchase machinery for M/s. Mittal Polyfil. It was stated that the money was drawn from M/s. Ram Swaroop Dass Radha Kishan. The assessed further claimed that expenses incurred on the foreign visit were duly debited in the books of account of M/s. Mittal Polyfil.

16. The assessing officer pointed out that the assessed had not filed any details of expenses incurred on the said foreign visit. He also had not furnished the details like number of days and amount spent for non-business purposes, result of the visit with evidence thereof, etc. In view of the above facts an addition of Rs. 1 lakh was made to the income of the assessed.

17. Commissioner (Appeals) deleted the addition against which the department is now in appeal before us.

18. Shri A.P. Agarwal, Departmental Representative, appeared for the department. He relied on the order of the assessing officer.

19. Shri N.K. Jain, advocate, appeared for the assessed. The learned authorised representative has urged that this addition is against the factual position and without any material. It is explained that as is clear from second line of para 5 of

the order, Shri Budh Kishore went to Korea on 23-9-1994 and returned back on 28-9-1994. Thus, there was no justification to say that the assessed had not furnished the details like number of days and amount spent for non-business purposes and result of the visit. It is reiterated by the learned authorised representative that the assessed had gone to see the working of the machinery to be purchased for Mittal Polyfil, a business concern of the family, which was to be set up at the relevant time. The assessed after examining the working of the machinery entered into spot negotiation for the purchase thereof, as is evident from the invoice No. EBK 410-6369, dated 27-9-1994. The consignment was received in two wooden boxes through the ship ESSEN Express, port of loading being Busan in Korea and place of delivery ICD, Delhi. The machinery was received and was duly installed. It is urged that the assessed had gone for the bands on purchase of machinery and an amount of Rs. 70,000 was withdrawn on 20-9-1994, from M/s. Ram Swaroop Dass Radha Kishan, proprietary concern of the assessed. With this amount, U.S. dollars as permissible under law were obtained. The assessed incurred an expenditure of Rs. 38,500 on account of fare and purchase of dollars, etc., and balance amount remained as cash on hand. It is submitted that Rs. 38,500 were debited in the books of M/s. Mital Polyfil in machinery account and entered in the books of Ram Swaroop Dass Radha Kishan at Rokar Pana 66, Khata Panna 46.

20. We have examined the rival submissions. We find that the addition has been made by the assessing officer without any evidence on record. The assessed's passport was seized by the department, which corroborates his stand materially. We confirm the action of Commissioner (Appeals) in deleting the addition of Rs. 1 lakh. The department's appeal is dismissed on the second ground.

21. The third ground of the department's appeal is against the action of Commissioner (Appeals) deleting the addition of Rs. 71,240 by treating the capital of various persons as income of the assessed.

22. During the course of assessment proceedings for the assessment year 1994-95, the Assistant Commissioner Investigation, Circle Rohtak, had added back the following cash credits to the income of the assessed treating the same as

unexplained :

(1) Shri Prem Kumar

(2) Shri Shiv Charan

(3) Shri Satdev

(4) Shri Gauri Shanker

(5) Shri Ashok Kumar

(6) Shri Om Prakash

(7) Shri Paras Ram

23. The assessing officer found from a perusal of the assessment records for the assessment year 1995-96, that the assessed had paid interest to the above persons. Further, there were additions to the capital accounts of the persons. Since the above said creditors were not considered genuine and treated as unexplained last year, this year also disallowance to the capital and interest paid thereon was disallowed by the assessing officer and added to the income of the assessed, resulting in an addition of Rs. 71,420.

24. Commissioner (Appeals) deleted the addition against which the department is now in appeal before us.

25. Shri A.P. Agarwal, Departmental Representative, appeared for the department. He relied on the order of the assessing officer.

26. Shri N.K. Jain, advocate, appeared for the assessed. He relied on the order of Commissioner (Appeals).

27. We have examined the rival submissions. The addition was made by the assessing officer following the view taken for assessment year 1994-95. This matter has already been dealt with in our appellate order No. 5675/Del/1998 for assessment year 1994-95. For the reasons given therein, we confirm the action of Commissioner (Appeals) in deleting the addition of Rs. 71,420. The appeal of the

department is dismissed on the third ground.

28. The fourth ground of the department's appeal is against the action of Commissioner (Appeals) in deleting the addition of Rs. 21,798 on account of commission on consignment sales. The assessed had shown consignment sales of Rs. 88,31,565 as compared to Rs. 1,12,92,264 in the earlier year. The assessing officer noticed that commission income had decreased from Rs. 83,063 to Rs. 66,517 during the year under consideration. The percentage of Arhat came to 0.75 per cent. While framing the assessment for assessment year 1994-95, the assessing officer had applied a rate of 1 per cent on the total sales in view of the agreement with the consignor. Accordingly, by applying a rate of 1 per cent, total Arhat came to Rs. 88,315. Thus, an addition of Rs. 21,798 (Rs. 88,315 - Rs. 66,517) was made on this amount.

29. Commissioner (Appeals) deleted the addition against which the department is now in appeal before us.

30. Shri A.P. Agarwal, Departmental Representative, appeared for the department and relied on the order of the assessing officer.

31. The authorised representative argued that the assessed had been effecting sales of oil and soap stock as commission agent for which commission on the basis of weight was received, which was duly entered in the audited books of account. He argued that the assessing officer had worked out the commission received by applying the percentage rate without any evidence even though the provisions of section 145 of the Act were not applied and the books were not rejected.

32. We have examined the rival submissions. A similar issue has been considered by us in the appellate order for assessment year 1994-95 in the assessed's own case. We see no justification for addition of Rs. 21,798. The deletion made by Commissioner (Appeals) of this addition is confirmed and the department's appeal is dismissed on the fourth ground.

33. The fifth ground of the department's appeal is against the action of Commissioner (Appeals) in deleting an addition of Rs. 82,290 on account of income from the estate of Smt. Ralia Devi, deceased mother of the assessed.

34. This issue has been adjudicated by us in our appellate order for assessment year 1994-95 in the assessed's own case. Following the reasons set out there in we confirm the action of Commissioner (Appeals) in deleting the addition of Rs. 82,290. The department's appeal is dismissed on the fifth ground,

35. The sixth ground of the department's appeal is against the action of Commissioner (Appeals) in deleting the addition of Rs. 84,000 on account of household expenses.

36. The assessed had not disclosed any household expenses in the return of income of income. He had contended that household expenses of Rs. 3,000 per month were incurred by withdrawals made by Smt. Meera Devi, wife of the assessed. Keeping in view the size of the family and the standard of living monthly expenditure of the family was worked out at Rs. 10,000 per month totaling to Rs. 1,30,000 for the entire year. This addition on this account worked out to Rs. 84,000 (Rs. 1,20,000 minus Rs. 36,000) and was treated as income out of undisclosed income and added to the income of the assessed.

37. Commissioner (Appeals) deleted the addition against which the department is now in appeal before us.

38. This issue had been considered by us in the appellate order for assessment year 1994-95 in the assessed's own case. Following the reasons contained therein, we restore the addition of Rs. 84,000 made by the assessing officer. The order of Commissioner (Appeals) is set-aside on this point and the appeal of the department is allowed in the sixth ground.

39. The seventh ground of the department's appeal is against the action of Commissioner (Appeals) in deleting an addition of Rs. 1,16,500 on account of different assets as appearing in the supplementary trial balance sheet filed during the course of assessment proceedings for the year under consideration.

40. During the course of assessment proceeding for assessment year 1995-96, it was noticed that there was variation in the cash available in the home chest, investment in shares, loans and advances, and balance and credits in the bank account as on 1-4-1994, as compared to 31-3-1994, as per details given below :

31.3.1994

1.4.1994

Difference

(Rs)

(Rs)

(Rs.)

Cash in hand

801

17,301

16,500

Loans and advances

47,500

47,500

Investment in shares

5,87,415

6,39,915

52,500

1,16,500

41. The assessing officer asked the assessed to explain the same. The assessed stated that at the time of search, a sum of Rs. 1 lakh was disclosed by the assessed under section 132(4) of the Income Tax Act on account of investment in assets, stock, cash, shares, etc. recorded in documents and invested in the names of family members or other Benami names and reflected in certain bank accounts or otherwise in any manner and may be reflected in the seized documents/other assets found at the residence or business premises which may not be recorded in the books of account for the financial year 1993-94 or 1994-95. The assessed further stated that disclosed amount of Rs. 1 lakh was duly included in the total wealth statement submitted during the course of assessment proceedings for the assessment year 1994-95, and over and above the capital shown in the balance sheet as on 31-3-1994, found during the course of search operation. The assessed further submitted that during the assessment year 1994-95, the assessed was a joint holder of bank account No. 1548 of Punjab & Sindh Bank, New Delhi. Before the assessing officer, it was stated that the same had been owned by him during the course of assessment proceedings for the year under consideration with a view to avoid litigation. A revised trial balance including the said sum of Rs. 1 lakh on account of disclosure was prepared and attached with the reply filed on 11-12-1997. The assessed further submitted a supplementary trial balance to avoid confusion as per details given below :

Liabilities

Assets

(Rs.)

(Rs.)

Income disclosed under section 132(4) and credited to the capital account

1,00,000

Loans and advances

39,500

Investment in shares

58,500

Through interest

16,500

Deposit in bank

14,500

1,14,500

1,14,500

42. The assessing officer carefully examined the submission made by the assessed. He pointed out that during the search operation conducted on 20-10-1994, the disclosure of Rs. 1 lakh was made for the assessment year 1994-95 and no disclosure was made for the year under consideration. He pointed out that no evidence had been furnished by the assessed that different assets shown by the assessed in the supplementary trial balance were acquired during the financial year 1993-94 relevant to assessment year 1994-95 in the case of the assessed. He also pointed out that it was an accepted principle of accounting that the closing balance as on the last day of the accounting year forms the basis of opening balance on the first day of the next accounting year.

He also further pointed out that the figures as appearing in the revised trial balance as on 31-3-1994, did not tally with the supplementary trial balance. For example, in the reply filed on 14-1-1998, loans and advances were disclosed at Rs. 47,500, whereas in the supplementary trail balance filed on 22-1-1998, the same had been shown at Rs. 58,500. The assessing officer concluded that the assessed was not aware of his true state of affairs. He held that the different assets as appearing in the supplementary trial balance filed during the course of assessment proceeding for the assessment year under consideration were not acquired by the assessed out of income earned from the sources not disclosed to the department and hence, the same were treated as the income of the assessed for financial year 1994-95 relevant to assessment year 1995-96. Thus, an addition of Rs. 1,16,500 was made to the income of the assessed on this account.

43. Commissioner (Appeals) deleted the addition against which the department is now in appeal before us.

44. Shri A.P. Agarwal, Departmental Representative, appeared for the department. He relied on the order of the assessing officer.

45. Shri N.K. Jain, advocate, appeared for the assessed. The learned authorised representative has submitted that the assessed had made disclosure of Rs. 1 lakh during the course of search. The disclosure which was made relating to the assessment year 1994-95 was not included in the balance sheet or capital account, though the amount was included in the return of income which was filed. The disclosure was on account of investment in assets, stocks, cash, shares and advances, etc., which were not recorded in regular books. It was submitted that this disclosed income of Rs. 1 lakh was duly included in the total wealth statement submitted during the course of assessment proceedings for the assessment year 1994-95 over and above the capital and asset disclosed in the balance sheet as of 31-3-1994. Thus, explained the learned authorised representative the assessed by recasting trial balance brought the same to the actual/factual position that existed after taking into consideration the disclosed income of Rs. 1 lakh and the position as earlier shown on 31-3-1994, was not inclusive of the said figures.

The learned authorised representative has submitted that from para 11 of the order, it would seem as if there has been an accretion of cash in hand, loan and advances and investment in shares to the extent of Rs. 1,16,500 as on 1-4-1994, as against these amounts disclosed in the balance sheet as on 31-3-1994. In fact, the difference is not of Rs. 1, 16,500 but the correct difference is of Rs. 1,14,500. It is submitted that the figure of difference under the head loans and advances, as on above date, has been worked out to Rs. 45,500, i.e., loans and advances as per balance sheet dated 31-3-1994, were of Rs. 3,31,193. The difference between these two figures comes to Rs. 45,500 and not Rs. 47,500 as taken and worked out by the learned assessing officer. In this way, the difference of Rs. 2,000 alleged to exist in the first part of para 11 and in supplementary trial balance is due to clerical error on the part of the assessing officer.

46. We have examined the rival submissions. In our opinion in view of the factual position explained above, the addition of Rs. 1,16,500 has been made by the assessing officer without appreciating the correct facts. We confirm the order of Commissioner (Appeals) in deleting the addition made by the assessing officer of Rs. 1,16,500. The appeal of the department is dismissed on the seventh ground.

47. In the result the appeal of the department is allowed only on the sixth ground and dismissed in respect of all the other grounds.