

**Vijay Textiles Vs. Cit**

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**Court :** Delhi

**Decided On :** Apr-18-2002

**Reported in :** [2002]122TAXMAN726(Delhi)

**Appeal No. :** IT Reference No. 197 of 1983 18 April 2002

**Appellant :** Vijay Textiles

**Respondent :** Cit

**Advocate for Pet/Ap. :** Sanjeev Khanna,; Ms. Prem Lata Bansal and; Ajay Jha, fo

**Judgement :**

S. B. Sinha, C.J.

This reference was made at the instance of the assessed under section 256(1) of the Income Tax Act, 1961) (hereinafter referred to as the Act) by the Tribunal, Delhi Bench 'E', for opinion of this court on the question :

'Whether on the facts and in the circumstances of the case, the Tribunal was justified on facts and in law in treating the cash credits, loans of Rs. 1,00,000 and interest thereon as income of the assessed for the assessment year under appeal by invoking section 68 of the Act ?'

2. Nobody appeared on behalf of the petitioner. We have heard Mr. Khanna, the learned counsel appearing on behalf of the revenue, who has taken us through the

records.

3. The learned Tribunal in its order dated 29-4-1982, inter alia, disbelieving the transaction noticed :

'3. At the assessment stage since some sums detailed as under were found credited in the account books of the assessed maintained for the previous year relevant to assessment year under appeal, the assessed was called upon to explain the nature and source thereof :

Rs.

1.

Vinod Kumar Goenka

10,000

2.

Sunil Kumar D. Kedia

10,000

3.

Girdhari Lal Bajaj

10,000

4.

Ramesh Kumar S. Mishra

10,000

5.

Jivraj K. Gupta

10,000

6.

Pawan Kumar Bhimsaria

10,000

7.

Mahavir Pd. Bajaj

10,000

8.

Pawan Kumar Aggarwal

10,000

9.

Pawan Kumar Sharma

10,000

10.

Shub Karan B. Aggarwal

10,000'

4. The aforesaid amounts were treated as income of the assessed for the assessment year 1977-78 and it was held :

'7. (i) It is out of character for a wholesale trader in Delhi to take loans in Bombay where he is comparatively unknown that too nor from an established money-lender but from cotton brothers who have no accounts. It is also out of character that no documents were executed for loans aggregating to Rs. 1 lakh.

(ii) The assessed stated earlier during the assessment proceedings that he had arranged the loans through Shri Jayanti Lal, a broker. An examination of Sh. Jayanti Lal, revealed that he did not arrange the loans but had only introduced the party.

(iii) Subsequent enquiries revealed that the accommodation for these alleged loans has been obtained through Sh. Devki Nandan Bhimsarai who is doing business in cotton textiles. In the statement recorded 14-7-1980, he says that he does not know anything about the assessed, nor even whether he belongs to Delhi or Bombay.

(iv) Most of the alleged creditors have no books of account but they have bank accounts. Account payee cheques have been issued by these persons by deposits of cash on the same day. There is reason to believe that the deposits have proceeded from the assessed in the circumstances mentioned below.

(v) The assessed is not able to prove as to how the money reached Bombay in cash on 4-4-1977, 4-5-1977 and 4-6-1977 especially when the assessed admitted he has not visited Bombay on the respective dates.

(vi) It is improbable to believe that the cash has been sent to Bombay to the tune of Rs. 40,000, Rs. 30,000 and Rs. 30,000 on 4-4-1977, 4-5-1977 and 4-6-1977 through the persons whose names the assessed is neither able to give or recollect especially when the amounts involved are substantial.

(vii) The assessed has admitted in his statement reproduced above recorded on 1-3-1980 that money in cash has never been sent like this to Bombay either before or after this.

(viii) The assessed has not been able to substantiate as to how the money reached to the parties of Bombay on the same date especially when all the parties were having different addresses of Bombay and that too when the change in addresses of Bombay had also occurred.

(ix) There is no evidence for the repayment of the alleged loans. The story of the assessed about the alleged repayments is scarcely credible. The bank accounts of

the alleged creditors do not show deposits of the return of the alleged loans.

(x) It was also found by an examination of the aforesaid bank accounts that the interest stated to be paid on these loans by account payee cheque had not been credited in the accounts of these alleged creditors, but in the bank account of Shri Devkinandan Bhimsarai.

(xi) In view of the foregoing evidence, it appears that Shri Devkinandan Bhimsarai arranged the accommodation of Rs. 1 lakh for a consideration which was credited to his account and is camouflaged in the assessed's bank as interest payments to the alleged creditors.'

5. The learned Tribunal further noticed that in terms of section 68 of the Act, the onus to prove the cash credit found in the books of account of the assessed maintained for any previous year was on him and it was held :

'On the facts of the present case, the following points made out by the Income Tax Officer go unrebutted qua the assessed in appeal :

(i) that the addresses given by the assessed of all 10 creditors were found to be not correct except in the case of cash creditor No. 9 as above;

(ii) that Shri Jayanti Lal Dalal, as per the claim of the assessed was responsible for arranging loans and getting loans from the respective creditors but while Shri Jayanti Lal Dalal confirmed this fact in an affidavit filed by him, in his statement dated 5-2-1980, he resoled from the earlier stand;

(iii) enquiries from the Union Bank of India, Princess St. Bombay and from Central Bank of India, Cotton Exchange Branch, revealed that all the cheques issued by the assessed in favor of the respective 10 creditors in lieu of interest due and payable on the alleged cash creditors were credited in the current account maintained in the name of one Shri Devkinandan Bhimasaria;

(iv) that the said Shri Devkinandan Bhimsaria is not one of the 10 cash creditors;

(v) that the repayment of cash credits which is claimed by the assessed to have been made in Bombay in terms of cash payments by the assessed is not proved

by any material on record since the assessed has not been to Bombay on the respective dates of repayments.'

6. Having regard to the aforementioned finding, we are of the opinion that no question of law arises for consideration of this court inasmuch as the finding of fact arrived at by the learned Tribunal is binding on this court.

7. We may notice that in R. Dalmia v. CIT : [1978]113ITR522(Delhi) , the law has clearly been laid down by the Apex Court in the following terms :

'These cases exemplify two obvious propositions; first, that though money may be received by one person, it may be the income of another, and, second, that from the fact that the source of a cash credit is unexplained, it does not follow that the money does not belong to the recipient. Neither of these is a principle of law. They are commonsense to be applied to the facts. The real, and only, question is whether a cash credit is the assessed's income. Notwithstanding that it is the cash credit which originates this question, the inquiry into its source is only a part of the process of finding the answer. When the source is unexplained, it depends upon the facts whether the conclusion that it is the assessed's income can be immediately drawn.'

8. For the reasons aforementioned, having regard to the aforementioned question of fact, no question of law arises for this court to express its opinion.

9. This reference is, accordingly, disposed of.

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