

Assistant Commissioner of Vs. Nitin Mukesh Mathur

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-17-2002

Reported in : (2002)83ITD641(Mum.)

Judge : B Chhibber, I Bansal

Appellant : Assistant Commissioner of

Respondent : Nitin Mukesh Mathur

Judgement :

1. The assessee, an individual, is a play-back singer by profession.

Four grounds have been raised by the Revenue in this appeal. Ground No.1 reads as under :- 1. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in holding that the Assessing Officer was not justified in taxing the income of M/s. Nitin Mukesh Films (P.) Ltd. in the hands of the assessee and thereby erred in deleting the addition of Rs. 2,30,240 without appreciating the fact that forming a company and the assessee becoming a director of the company is clearly an arrangement made to divert the income of the assessee from his individual talent to other members of his family.

2. During the course of assessment proceedings, the Assessing Officer noted that the assessee along with his family members had invested in a company incorporated as M/s. Nitin Mukesh Films (P.) Ltd. The entire share capital was contributed by the assessee, his wife and two children. The total paid up capital

comprised of 900 shares of Rs. 10 each; out of which the assessee held 705 shares. The objects of the company as stated in the Memorandum and Articles of Association were mainly in connection with the film business. The assessee had also entered into an agreement with the said company whereby all the programmes to be held by him would be arranged by the company. As per the terms of the agreement, the company would have exclusive right to negotiate on behalf of the assessee in connection with the film shows and sound recordings. The assessee would be entitled to professional fees on the basis of programme receipts received by the company. He was also entitled to get salary of Rs. 6,000 per month, free telephone and reimbursement of medical expenses and 50 per cent of the maintenance of the residential house of the assessee.

3. It was explained to the Assessing Officer that the said company was found for commercial reasons i.e. with a view to have continuity, larger funds, better administration etc. and not with any other intention of reducing any tax liability. The Assessing Officer was not satisfied with the above explanation and came to the conclusion that the entire arrangement was to overcome the tax liability. According to him, the company was nothing but the reflected image of the assessee.

Accordingly, following the judgment of the Supreme Court in *Juggilal Kamlatpat v. CIT*[1969] 73 ITR 702 and *McDowell & Co. Ltd. v. CTO*[1985] 154 ITR 1481 (SC). The Assessing Officer added the income of Rs. 2,30,240 earned by the company in the hands of the assessee.

4. On appeal, the Commissioner (Appeals) held that the Assessing Officer has not brought any material on record to show that the agreement with the company was not bona fide. He further held "it is for the assessee to arrange his affairs in such a way that the interest of his profession and business are promoted without infringement of any law". Accordingly, he held that there was no justification for the impugned addition of Rs. 2,30,240 which was the income of the assessee company in the hands of the assessee.

5. Shri R.I.S. Gill, the learned D.R. strongly supported the order of the Learned Assessing Officer. He submitted that the company has no existence of its own because the entire income earned by the company constituted programme

receipts of the assessee and the whole arrangement was with a view to avoid tax and accordingly, the case of the assessee gets hit by the judgment of the Hon'ble Supreme Court in the case of McDowell & Co. Ltd. (supra).

6. Shri K. Shivaram, the Learned Counsel for the assessee strongly supported the order of the Learned Commissioner (Appeals). He submitted that the assessee and the Nitin Mukesh Films are two different entities and the Revenue has not doubted the existence of the company as a juristic and assessable entity. The computation and reduction claimed by the company had been accepted. According to the Id. counsel the attempt to club the income of the company in the hands of the assessee is not at all justified and same is not as per the provisions of the Act. According to the Id. Counsel, the arrangement entered into by the assessee company was a bona fide arrangement and accordingly, the ratio laid down by the Hon'ble Supreme Court in the cases of Juggilal Kamlapat (supra) and McDowell & Co. Ltd. (supra) are not applicable to the facts of the assessee's case.

(iv) Navketan International Films (P.) Ltd. v. CIT [1994] 209 ITR 9763 (Bom.).

(v) Vishal International Productions (P.) Ltd. v. ITO [1982] 9 Taxman 10 (Bom.) (Trib.).

7. We have considered the rival submissions and perused the facts on record. A company, under the general law, is a juristic person and it is separate and distinct from its shareholders [Salomon v. Salomon & Co. [1897] AC 22 (HL); Mrs. Bacha F. Guzdar v. CIT[1955] 27 ITR 1, 5 (SC); CIT v. B.M. Kharwar[1969] 72 ITR 603, 608 (SC); Calcutta Tramways Co. Ltd. v. CWT[1972] 86 ITR 133, 140 (SC); CIT v. Associated Industrial Development Co. (P.) Ltd. [1969] 73 ITR 50, 52 (Cal.)]. The assessee and Nitin Mukesh Films (P.) Ltd. are therefore, two different entities. The company was found with an intention to carry out commercial activities of production of films, serials etc., apart from having exclusive rights to conduct programmes of the assessee. The contention of the Assessing Officer that the assessee's agreement with the company is a device is not at all correct as there is no material on record to substantiate the same. The agreement entered into by the assessee was for commercial reasons such as with a view to have continuity, larger funds, better administration etc. and not with any intention of reducing any

tax liability. It is very clear from the fact that the company was found in December 1988. The tax rate applicable to the company was 57.75 per cent whereas tax rate applicable to an individual was 52.50 per cent. Thus, the arrangement was made for diversification and commercial expediency and was a bona fide arrangement.

8. Coming to the judgments relied upon by the Id. Assessing Officer and Id. D.R., we agree with the Id. Counsel that the same are not applicable to the facts of the case before us. In Juggilal Kamlapat's case (supra), it was conclusively established that the transaction was a sham and was carried only for the purposes of avoidance of tax. In the case of the assessee before us, the cases are totally different.

The material available on record shows that the agreement with the said company was not a sham one and the transactions carried out by the said company were genuine transactions. As regards the ratio laid down by the Apex Court in McDowell & Co. Ltd. 's case (supra), the same cannot be applied in a case where there is a commercial reason or justification of any transaction entered into as held by the Supreme Court in the case of CWT v. Arvind Narottam [1988] 173 ITR 4791, Union of India v. Playword Electronics (P.) Ltd. [1990] 184 ITR 308 (SC), Gujarat High Court in the case of Baniyan & Berry v. CIT[1996] 222 ITR 8312. Again, Gujarat High Court in CGT v. Dipak A. Seth [2001] 254 ITR 235 and Mumbai Tribunal in the case of First WTO v. S.B. Garware, HUF [1986] 15 ITD 711.

On the other hand, the case of the assessee is on all fours with that of First WTO v. Smt. Sairabanu (supra) decided by the jurisdictional High Court. In that case, the assessee, a film artist had permanent assignment with that company, whose objective was to make available artists, technicians to various film producers. Under the terms of agreement entered into with the producers and the company, the assessee's services were available to the company for which the said company had agreed to pay a remuneration of Rs. 80,000 per annum to the assessee. The company had entered into agreements with the film producers directly and received all payments. In the previous year relevant to the assessment years 1972-73 and 1973-74, the assessee had acted in 2 films and 5

movies for which the company got Rs. 45,001 and Rs. 3,35,011 respectively. For the years 1972-73 and 1973-74, the assessee claimed Rs. 1,65,712 and Rs. 2,30,096 respectively in her returns for income for the above years which included Rs. 80,000 received by the assessee from the company. The ITO took the view that the assessee had entered the agreement with the company with a view to avoid tax; that the company was controlled by the assessee's brother and mother, who was also a leading star. On appeal, the Hon'ble High Court held that out of the income earned by the company from various films in which the assessee acted, the assessee was entitled to only Rs. 80,000 from the said company and not the entire income which the producers paid to the said company. Nowhere in the order of the Income-tax Officer it was shown that there was an attempt on behalf of the assessee to evade tax.

9. In the light of the above discussion, we concur with the finding of the Learned Commissioner (Appeals) that there is no justification for assessing the income of Rs. 2,30,240 in the hands of the assessee. We, accordingly, decline to interfere. This ground, accordingly, fails and is dismissed.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in deleting the addition of Rs. 1,50,000 being estimated additional marriage expenses on the occasion of marriage of assessee's sister ignoring the fact that considering the assessee's status and also custom and tradition the expenses declared was too low.

11. During the year under appeal, on 2-2-1992, the marriage of assessee's sister Miss Namrata was solemnised. The Assessing Officer found that the assessee had paid a sum of Rs. 76,275 towards marriage expenses of his sister. On further examination of details, the Assessing Officer noted the amount of Rs. 76,275 pertained to payment of hotel bills at the time of reception, hence, he was of the view that other expenses were not disclosed. He observed that following the tradition in the Society, bride's family has to incur all other expenses also. He estimated such other expenses at Rs. 1,50,000 and made an addition of Rs. 1,50,000 to the income of the assessee. On appeal, the Commissioner (Appeals) deleted the addition holding that the addition has been made on presumption.

12. Shri R.I.S. Gill, the learned D.R. relied upon the order of the learned Assessing Officer.

13. Shri K. Shivaram, the learned counsel for the assessee strongly supported the order of the Learned Commissioner (Appeals). He submitted that the impugned addition has been made merely on the basis of presumption and surmises. There is no material on record to show that the assessee had expended any money over and above what is already recorded in the books of account. He also drew our attention to the invitation card placed at page 52 of the paper book and submitted that the invitation was from Smt. Saral Mukesh, mother of the assessee and mother of bride namely Namrata. He submitted that the assessee had only contributed for the reception and that expenditure was duly shown by him.

14. We have considered the rival submissions and perused the facts on record. We find that the impugned addition has been made purely on presumption. Nothing has been brought on record to show that the assessee had contributed to the marriage expenses over and above what he had declared. In the case of *Yadu Hari Dalmia v. CIT*[1980] 126 ITR 481, the Hon'ble Delhi High Court while adjudicating upon the marriage expenses has held "an estimate without details will not be upheld in all circumstances and the Department should give some definite basis for arriving at some expenditure where it can". We find that no material has been placed on record by the Assessing Officer to warrant the impugned addition and the addition based on pure presumption has rightly been deleted by the Commissioner (Appeals). We, accordingly, decline to interfere. This ground too fails and is dismissed.

"3. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in deleting the disallowance of Rs. 36,000 being salary paid to assessee's wife.

16. During the year under appeal, the assessee paid a sum of Rs. 36,000 as salary to his wife Mrs. Nisha N. Mathur. It was explained to the Assessing Officer that Mrs. Mathur was acting as Secretary to the assessee and similar salary had been paid in the past also. The Assessing Officer was not satisfied with the explanation furnished, hence disallowed the entire amount on the ground that Mrs.

Mathur was merely house-wife and she was not managing the affairs of the assessee.

17. On appeal, the Commissioner (Appeals) held that having found his wife competent to do the job, the assessee had appointed her as Secretary and felt that Mrs. Mathur had rendered services and the salary paid at the rate of Rs. 3,000 per month was fair and reasonable.

He, accordingly, deleted the impugned addition.

18. Shri R.I.S. Gill, the Learned D.R. relied upon the order of the learned Assessing Officer Shri Shivaram, the Learned Counsel for the assessee strongly supported the order of the Learned Commissioner (Appeals).

19. We have considered the rival submissions. We find that the assessee had appointed Mrs. Nisha N. Mathur, who had studied up to graduation level as his Secretary and further, he had not employed any other Secretary and therefore, in pursuance of his profession as a Singer, it was necessary to have a competent and trustworthy person as a Secretary. The factum of services having been rendered by Mrs. Nisha N.Mathur is not in dispute. Moreover, salary paid in the earlier year for the same services rendered has been accepted by the revenue. Further, the expenditure has to be considered from the assessee's point of view and not from the revenue's point of view as held by the Gujarat High Court in the case of Voltamp Transformers (P.) Ltd. v. CIT[1981] 129 ITR 105'. Accordingly, we decline to interfere and uphold the findings of the Learned Commissioner (Appeals). This ground also fails and is dismissed.

4. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in deleting the addition of Rs. 2,425 being 50% of society charges which was to be reimbursed by the company as per arrangement between the assessee and the company.

21. After hearing both the parties, we find that the Learned Commissioner (Appeals) has rightly observed that the addition of Rs. 2,425 has been made "on mistaken facts". Accordingly, we decline to interfere and uphold the findings of the

learned Commissioner (Appeals).

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