

Assistant Commissioner of Vs. S.S. Pharmaceuticals (P.) Ltd.

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Court : Income Tax Appellate Tribunal ITAT Allahabad

Decided On : Sep-18-2002

Reported in : (2003)87ITD119(All.)

Judge : P Kalsian, B Saini

Appellant : Assistant Commissioner of

Respondent : S.S. Pharmaceuticals (P.) Ltd.

Judgement :

1. This appeal by the revenue is directed against the order of the CIT(A), Allahabad, dated 16th February, 1995 for the assessment year 1991-92 on the following grounds : 1. That the Ld. CIT(A) has erred in deleting the cash credits in the names of 5 persons whose identity, genuineness of transactions, credit-worthiness, mode of payment and whether they are on income-tax records were not brought to the notice of the Assessing Officer in spite of specific opportunities allowed to explain the same.
2. That the Ld. CIT(A) while deleting the addition for cash credits failed to appreciate that the assessee did not make any compliance to the notices issued and, therefore, addition deleted is highly unjustified and such addition should be restored back.
3. That the Ld. CIT(A) has also erred in admitting fresh evidences filed before him and thus violating Rule 46A of I.T. Rules.

4. That the order of CIT(A) being bad in law may be set aside and the order of the Assessing Officer be restored.

2. The facts, as taken from the record, are that the assessee had filed return showing net loss. The case was taken up for scrutiny and notices under Sections 143(2) and 142(1) were issued and served upon the assessee. In response to the notices, one Shri Gulab Bharati of the assessee company attended the hearing, who was given a questionnaire for compliance and the case was adjourned to 1st December, 1993. On 1st December, 1993, nobody attended the case and, as such, the Assessing Officer completed the assessment under Section 144 of the Income-tax Act vide order dated 31st January, 1994. In the balance sheet the assessee had shown unsecured loan from the following persons : The Assessing Officer observed that above noted entries as loan from others do not indicate the nature and source. The Assessing Officer further observed that the assessee has offered no explanation or any complete details about the nature and source. Hence, Section 68 is clearly attracted in this case and he added the same to the total income of the assessee. The action of the Assessing Officer was challenged before the CIT(A). It was contended before the CIT(A) that on the last date of hearing before the Assessing Officer on 1-12-1993, the Directors had no knowledge and one of the Directors Shri S.S.Kharbanda was sick and other two Directors were out of station. This fact was also supported by an affidavit dated 9th January, 1995 of the Director Shri S.S. Kharbanda. The assessee also filed an application for admission of additional evidence and also filed medical certificates of S.S. Kharbanda as well as filed the affidavits and copy of account of these five creditors before the CIT(A). The assessee also prayed for admission of the additional evidence. The Id. CIT(A) referred all the affidavits of the creditors to the Assessing Officer vide his letter dated 24th January, 1995 inviting the objection of the Assessing Officer, if any, to the admission of such evidences. The Assessing Officer, in pursuance of the opportunity granted by the CIT(A), submitted his reply to the CIT(A) on 7th February, 1995 in writing and objected to the admission of the additional evidence. The main objection of the Assessing Officer was that the assessee did not file those evidences before him despite many opportunities. The Id.CIT(A) after considering the reply of the Assessing Officer and his objection, decided the issue. However, keeping in view the medical certificate of Shri S.S.

Kharbanda and his affidavit, admitted the additional evidences and also accepted the reasons for not filing the affidavits before the Assessing Officer. The Id. CIT(A) also considered the capacity of the creditors and the genuineness of the transactions and came to the finding that all these persons were having source to advance the loans to the assessee. The Id. CIT(A), on the basis of these evidences, accepted the explanation of the assessee and deleted the entire addition made under Section 68 of the Income-tax Act. The revenue is in appeal before us in respect of the grounds of appeal incorporated above.

3. We have heard the Id. D.R. and Id. counsel for the assessee. The Id.D.R., besides relying on the grounds of appeal, argued that assessee was given many opportunities to prove the cash credit but assessee has not availed such opportunities and has not explained anything at all and, as such, CIT(A) has wrongly admitted inadmissible evidence. The Id. D.R., on the basis of the record and reply filed towards the admission of the additional evidences, argued that CIT(A) has wrongly admitted the additional evidences and assessee has not given identity of the creditors, their capacity to give loan as well as genuineness of the transaction. Id. D.R. accordingly argued that the order of the CIT(A) is liable to be set aside. On the other hand, the Id. counsel for the assessee filed Paper Book containing the copies of the same affidavits, medical certificate and explanation filed before the CIT(A). Id. counsel for the assessee relied on the order of the CIT(A) and argued that due to the illness of the Director, the details were not furnished before the Assessing Officer. The Id. counsel for the assessee further argued that all the three conditions of the cash credit were proved to the satisfaction of the CIT(A). Id. counsel for the assessee further argued that all the entries were not doubted by the Assessing Officer in his reply before the CIT(A). Id. counsel for the assessee further argued that no trading account was disputed despite assessment framed under Section 144 which shows that the books of account had been correctly maintained by the assessee. During the course of argument, we directed the Id. D.R. to file the copy of the letter of the CIT(A) dated 24-1-1995 addressed to the Assessing Officer as well as copy of the reply filed by the Assessing Officer which was received in the office of the CIT(A) on 7th February, 1995. The Id.D.R. filed copy of the same.

4. We have considered rival submissions. Ld. counsel for the assessee filed copies of all the affidavits of the creditors whose names are mentioned above. All these creditors have deposited amounts on various dates in the assessment year in question. The same amount was also returned by the assessee to these creditors on different dates. The creditors have also given details of their credit worthiness and have also proved the genuineness of the transaction in the affidavit. Once the creditors have filed the affidavit before the CIT(A), the identity of these creditors cannot be disputed. The Id. CIT(A), on the basis of application for admission of the additional evidence, gave opportunity to the Assessing Officer vide his letter dated 24th January, 1995 and copies of all the affidavits of the creditors and statement of accounts were referred to the Assessing Officer inviting his objection. The CIT(A) accordingly allowed opportunity to the Assessing Officer to make his comments in the matter. The Assessing Officer filed his written objections before the CIT(A) which was received by the CIT(A) in his office on 7th February, 1995. The reply of the Assessing Officer revealed that he has given various dates showing when notices were issued to the assessee under Sections 143(2) and 142(1). The notices were issued for 26-6-1992, 26-8-1993 and 5-10-1993 and lastly notice under Section 143(2) was issued for 22-11-1993 and on that day the case was adjourned to 1-12-1993. The Assessing Officer replied that he had given five opportunities to the assessee which were not availed. The Assessing Officer further replied that the affidavits of the Director of the assessee Shri S.S. Kharbanda is self serving and would not prove anything. The Assessing Officer further replied that the affidavits of the creditors were filed at belated stage and had no evidentiary value as no details have been filed. On these objections, the Assessing Officer requested the CIT(A) that the additional evidence may not be admitted. We may mention here that the Assessing Officer did not object to the identity of the creditor as well as genuineness of the transaction in his reply. The Assessing Officer did not seek to examine the evidences filed by the assessee or the affidavits or to cross examine the various deponents/ creditors whose affidavits were filed by the assessee. The Assessing Officer had also not filed any evidence in rebuttal of the evidence filed by the assessee. The objections of the Assessing Officer, which were raised in the reply, were over-ruled by the CIT(A). The moment CIT(A) had accepted reasonable cause of the assessee in not furnishing the

evidences before the Assessing Officer, the Department cannot re-agitate the same issue in this appeal. The CIT(A) has accepted the illness of the Director which was supported by affidavit and medical certificate. The Assessing Officer has also not examined the affidavit of the Director nor did he point out anything contrary to the medical certificate. Whatever objections were raised by the Assessing Officer were with regard to the opportunities granted by him at the time of assessment but once the additional evidence is admitted, such grant of opportunity by the Assessing Officer would be of no consequence. The revenue has taken ground No. 3 with regard to violation of Rule 46A of the Income-tax Rules. We are not able to agree with the contention of the Id. D.R. that Rule 46A has been violated at all. The Assessing Officer was given opportunity and the Assessing Officer had filed his reply also. Therefore, Rule 46A is not at all violated by the CIT(A). The revenue has filed this appeal on various grounds and ground Nos. 1 and 2 have been raised with regard to the identity and genuineness of the transaction and creditworthiness of the creditors but the same were raised on the plea that those things have not been explained before the Assessing Officer. It was further objected in the grounds of appeal that the assessee did not make any compliance to the notices issued by the Assessing Officer. The revenue has not taken any grounds on merits in the grounds of appeal challenging the order of the CIT(A). We have already stated that once the additional evidence has been admitted, then the opportunity, if any, granted by the Assessing Officer would be of no consequence. The Department cannot raise this plea again and again that once opportunity is granted by the Assessing Officer then no additional evidence should be admitted. The Id. CIT(A), on the basis of reasonable cause of the assessee on account of illness of the Director allowed the assessee to lead additional evidences. All these additional evidences before admission were referred to the Assessing Officer for his objection. The Assessing Officer did not seek to examine any of the affidavits as well as evidences filed before the CIT(A). The Assessing Officer also failed to seek cross examination of any of these affidavits and, as such, the contents of the affidavits of the creditors and Directors of the assessee will be deemed to have been admitted by the Assessing Officer.

The grounds of appeal Nos. 1 and 2 are, therefore, accordingly liable to be rejected having no force. The Id. CIT(A) was satisfied about the identity,

genuineness of the transaction and credit worthiness of various creditors. The satisfaction of the CIT(A) was on the basis of the contents of the affidavits and the details of the advance of loans.

The ground Nos. 1 and 2 of the departmental appeal would not survive as whatever opportunity was granted by the Assessing Officer was considered by the CIT(A) while admitting the additional evidences. Rule 46A(1)(b) has given the exceptions when additional evidences could be admitted and one of the conditions was that where appellant was prevented by sufficient cause from producing the evidence before the Assessing Officer. The CIT(A) has already considered the reasonable cause in favour of the assessee. The Assessing Officer has not brought anything on record to show that assessee was not prevented from sufficient cause in producing the evidences before the Assessing Officer. The Assessing Officer has lost his opportunity to examine and cross examine the deponents. We may also add here that the Assessing Officer has examined this case on 22-11-1993 when representative of the assessee appeared for the first time before him. Practically it was the first appearance of the assessee before the Assessing Officer on 22-11-1993 and the case was adjourned to 1st December, 1993 and immediately proceedings under Section 144 were conducted. The assessee has explained before the CIT(A) that some of its Directors were out of station and one of the Directors dealing with the case, Shri S.S.Kharbanda, was ill and, as such, the assessee could not appear before the Assessing Officer on 1st December, 1993. All these reasons have been accepted by the CIT(A) on the basis of the medical certificate as well as affidavit of S.S. Kharbanda. Nothing is pointed out by the Id.D.R. against these evidences. Lastly, the Id. D.R. argued that the case of the revenue is covered by the authority of the Hon'ble Allahabad High Court in the cases of Ram Prasad Sharma v. CIT [1979] 119 ITR 867 : 2 Taxman 469 and Jagannath PrasadKanhaiya Lal v. CIT [1988] 171 ITR 596 : 36 Taxman 239. We do not agree with the contention of the Id.D.R. In the authority reported in Ram Prasad Sharma's case (supra) the AAC refused to admit additional evidences but in this case the CIT(A) has admitted the evidence. Therefore, this authority will not be applicable in favour of the revenue. In Jagannath Prasad Kanhaiya Lal's case (supra) the Tribunal refused to admit additional evidence. This is not the case before us. Both the authorities are clearly distinguishable and are

not applicable. Keeping in view the above discussion, we are of the considered view that the revenue has failed to make out any case for interference in the order of the CIT(A).

Accordingly, we uphold the order of the CIT(A) and dismiss the appeal of the revenue.

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