

F.A.A. Jasdanwalla Vs. Commissioner

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-21-2006

Judge : S Tiwari, S Chowla

Appellant : F.A.A. Jasdanwalla

Respondent : Commissioner

Judgement :

1. This appeal filed by the assessee is against the order of Commissioner-13, Mumbai relating to assessment year 1997-98 against the order under Section 263 of the Income Tax Act.

1. The order dated 14-3-2002 (The impugned order) passed by the Commissioner of Income-tax-13, Mumbai ('the Commissioner') is illegal, erroneous, contrary to the evidence and the material on record and without jurisdiction and ought to be cancelled.

2. The Commissioner erred in setting aside the order dated 10-1 -2000 passed by the Joint Commissioner of Income-tax, Special Range-40, Mumbai ('the JCommissioner').

3. The Commissioner erred in alleging that the JCommissioner had not passed a speaking order analyzing the bad debts claimed by the appellant.

4. The Commissioner erred in holding that the appellant's claim for a deduction of Rs. 50,00,000 under Section 36(2)(i) read with Section 36(1)(vii) of the Income

Tax Act, 1961 Income Tax Act was not correct.

5. The Commissioner erred in holding that since the appellant has shown income from interest under the head 'Income from other source' he was not entitled to a deduction of Rs. 50,00,000 on amount of moneys lost by him in the course of his activity of lending money by way of bill discounting.

(i) the appellant was, in fact, engaged in the business of money lending, inter alia by way of bill discounting and that the mere fact that the appellant had shown his interest income under the head 'Income from other sources' did not alter the correct position in law and fact, that such income was, in fact 'income from business' and that the appellant was in fact, carrying on the business of money lending and, as such, was entitled to the deduction of Rs. 50,00,000 claimed by him under the provision of Section 36(1) of the Act read with Section 36(2)(i) of the Act; (ii) strictly without prejudice to (i) above, even if the appellant's interest income was regarded as assessable under Section 56 of the Act as 'Income from other sources', the appellant was entitled to a deduction of the aforesaid sum of Rs. 50,00,000 lost by him, in computing his true, real income assessable under that head; (iii) The JCommissioner's order was correct and was neither erroneous nor prejudicial to the interests of the revenue and, as such required no interference with.

3. The present appeal was filed on 11-3-2003 i.e., after a delay of 298 days. The assessee has moved an application for condonation of delay in furnishing the present appeal by way of an affidavit filed by the assessee herein. It has been stated by the assessee that in the aforesaid order under Section 263 of the Income Tax Act, the Commissioner had set aside the order of the assessing officer with the direction to pass a speaking order after affording a reasonable opportunity of hearing to the assessee. The assessee further states that on the advise of his Chartered Accountant M/s. H.F.K. Madan & Co., no appeal was filed to the Tribunal against the said order as he was made to understand that he would have full opportunity of presenting his case before the assessing officer. The proceedings were taken up in January and February, 2000 by the assessing officer. Simultaneously, legal advise was sought from another counsel who in turn

advised that in addition to making representations before the assessing officer, an appeal should be preferred to the Tribunal against the order of Commissioner. The present appeal was filed on 11-3-2003 though the limitation to filing the present appeal expired on 17-5-2002.

4. In view of the circumstances set forth in the affidavit, the assessee prayed for condonation of delay in filing the present appeal.

In the facts and circumstances narrated here above, we condone the delay in filing the present appeal in time and proceed to dispose off the same after hearing the counsels for the assessee and the revenue.

5. The brief facts of the case are that the assessee had filed the return of income declaring income under the head 'Salary, house property, income from business and income from other sources'. The income from business was on account of the share profit received from partnership firm, which was claimed as exempt. The income under the head 'Other sources' included interest income amounting to Rs. 34,95,934. The details of the interest income included income from bill discounting amounting to Rs. 59,14,771. The assessee had claimed bad debts of Rs. 50,00,000 against the said income. The return of income was accepted by the assessing officer vide order under Section 143(3) of the Income Tax Act.

6. The Commissioner noted that the income from other sources was computed as per the provisions of Sections 56 to 58 of the Income Tax Act and the claim of bad debts is not covered under the provisions of Section 51 (iii) of the Act. It was further noted by the Commissioner that during the course of assessment proceedings, the claim of bad debts was made by the assessee under Section 36(2)(i) of the Income Tax Act and such claim is not allowable as the assessee had shown income of bill discounting under the head 'Income from other sources'. Show-cause notice under Section 263 of the Income Tax Act dated 14-2-2002 was issued to the assessee.

7. Before the Commissioner, learned authorised representative for the assessee submitted that the business of financing and bill discounting carried on by the assessee was a sophisticated form of money lending in which against security of

bills monies were lent with interest discounted either at the front or at the end. The interest component so earned by the assessee has been shown in the return of income from year to year. The learned authorised representative further pointed out that a sum of Rs. 50,00,000 was lent to M/s. Western India Financial Services Ltd. for re-discounting the bill of M/s. Thiruvillar Multipurpose Workers Co-operative Society Ltd. The assessee on maturity of the bill presented the same for payment. The cheque was returned unpaid by the Bank. Efforts were made for the recovery and even a suit to recover the bad debts was filed in the Court. Since the assessee had lend the money and lost the same in the course of his business of banking or money lending, a claim was made for the deduction of the said bad debts under the provision of Section 36(2)(i) of the Income Tax Act.

8. The Commissioner after examining the facts of the case observed that since the assessee had shown the income from interest on bill discounting under the head 'Income from other sources', the claim of bad debts under Section 36(2)(i) of the Act was not allowable against income from other sources. Consequently, the order of the assessing officer was set aside with a direction to pass speaking order fresh after examining the issue of claim of bad debts against income from other sources. The assessee is aggrieved by the said direction of Commissioner and hence this appeal.

9. The learned authorised representative for the assessee stated that the Commissioner had initiated the proceedings under Section 263 of the Income Tax Act as according to him the claim of the assessee for deduction of Rs. 50,00,000 as allowable under Section 36(2)(i) of the Income Tax Act is not correct. The Commissioner had noted that the assessee had shown the income from interest under the head 'Income from other sources' and as per the provisions of the Income Tax Act, claim of bad debts under Section 36(2)(i) are not allowable against income from other sources. The learned authorised representative further pointed out that the Commissioner had merely set aside the order with direction to the assessing officer without recording a finding that order of assessing officer is erroneous and prejudicial to the interest of the revenue, which is the primary condition for invoking the provisions of Section 263 of the Income Tax Act. The learned authorised representative for the assessee drew our attention to the paper

book filed during the course of hearing. Attention was invited to pages 1 to 3 of the paper book which are the acknowledgement of filing the return of income and the computation of income, wherein the assessee had declared the interest from bill discounting and its claim of bad debt under the head 'Income from other sources' under the sub-head Interest'. The learned authorised representative further drew our attention to the explanation filed before the assessing officer during the course of assessment wherein it had been categorically mentioned that the assessee 'carries out the business of finance and bill discounting'. Further the assessee in the said letter had given details of its claim of bad debts of Rs. 50,00,000 which was claimed as per the provisions of Section 36(2)(i) of the Act. The assessee has enclosed the said explanation at pages 5 and 6 of the paper book along with the communication with the parties in respect of its claim of bad debts at pages 7 to 34 of the paper book. Reference was further made to letter dated 16-12-1999 filed before the assessing officer wherein the claim of carrying on the business of financing and bill discounting and deduction on account of bad debts as per the provisions of Section 36(2)(f) of the Act was reiterated, as there was a successor to the assessing officer and the claim was re-explained to successor in office. Reference was also made to a series of judicial pronouncements on the issue of allowability of bad debts under Section 36(2)(i) of the Act in the said letter dated 16-12-1999. The assessing officer vide his order under Section 143(3) of the Income Tax Act accepted the returned income filed by the assessee after noting as under: 10. The learned authorised representative further stated that the Commissioner has initiated the proceedings under Section 263 of the Act only on the point of disallowance of claim of bad debts as the income from bill discounting was shown under wrong head. Learned authorised representative further submitted that it is an established principle that while completing the assessment. The assessing officer is duty bound to assess the income declared by the person under the correct head of income. Reliance was placed on the decision of Hon'ble Supreme Court in Bihar State Co-operative bank Ltd. v. Commissioner . The learned authorised representative further stated that the nature of receipts in the hands of the assessee is business income as is clear from the details of interest received on bill discounting totalling Rs. 59,14,771 furnished along with the return of income. Reference was drawn to the letter furnished before the assessing

officer during the course of assessment proceedings wherein it was categorically mentioned that the assessee was carrying on the business of bill discounting and financing against which it had claimed the deduction of its claim of bad debts which was duly allowable under the provisions of Section 36(2)(i) of the Act. The assessing officer, according to the Id. authorised representative for the assessee, completed the assessment after taking into consideration of the submissions and explanations furnished by the assessee. In the body of the assessment order the assessing officer had accepted the fact by stating that the assessee is carrying on the business of financing and bill discounting. A reference was also made to column No. 10 of the assessment order wherein under the head, 'Nature of business', the assessing officer had mentioned "as discussed in the assessment order".

In turn the assessment order only talked about the assessee carrying the business of financing and bill discounting. Under the circumstances, it was stated by the learned authorised representative that no recourse could be made to the provision to the Section 263 of the Income Tax Act wherein the assessing officer had completed the assessment after considering the legal implications of the claims made by the assessee.

11. The learned Departmental Representative for the revenue submitted that the assessing officer has accepted the income that is the income from other sources as the return of income filed by the assessee had been accepted. The learned Departmental Representative further pointed out that the assessment completed by the assessing officer is both erroneous and prejudicial to the interest of the justice as the assessment order passed by the assessing officer is cryptic and without application of mind. The learned authorised representative in rejoinder stated that the assessing officer has not accepted the return of income but the returned income has been accepted. It was further stated by the learned authorised representative that the Commissioner cannot replace his view to that of the assessing officer as held by the Hon'ble Bombay High Court in Commissioner v. Gabrial India Ltd. (1993) 203 ITR 1081.

Reliance was also placed on the decision of the Hon'ble Bombay High Court in *Dattatraya Gopal Bhotte v. Commissioner* for the proposition that in case the assessee makes a mistake in its return of income, then it is the duty of the assessing officer to correct the mistake made by the assessee. Reliance was also placed on decision of *Bihar State Co-Operative Bank Ltd. v. Commissioner* 12. We have heard the rival submissions and perused the records. The assessee had declared the income from bill discounting as interest received on bill discounting under the head 'Income from other sources'. The assessee had further claimed the deduction of bad debts on loans for bill discounting amounting to Rs 50,00,000 against the said income of bill discounting. The perusal of statement of interest received on bill discounting filed along with the return of income reflects that the assessee had received the aforesaid bill discounting charges from several parties during the year under consideration. It is the claim of the assessee that similar bill discounting charges have been received by the assessee from year to year for the proceeding several years, which have been accepted in entirety in the past. It was only during the year under consideration that the assessee had claimed bad debt of Rs. 50,00,000 which was on account of money lent to M/s.

Western India Financing Services Ltd. for re-discounting of bill of M/s. Tiruvillar Multipurpose Workers Co-operative Society Ltd. The said bill of the Co-operative Society was the primary security with the assessee. On maturity of the bill, same was presented for payment and the cheque deposited for payment was returned unpaid by the bank.

Series of correspondence between the parties resulted in no repayment of the aforesaid amount. The assessee also filed a suit for recovery of the said debt and thereafter claimed the amount as bad debt during the year under consideration. It is the claim of the assessee that in the line of business carried out by him, sophisticated form of money lending against security of bills of a company is being carried on. The interest earned on such bill discounting is shown as income by the assessee. During the course of assessment proceedings, the factum of earning the income and the claim of deduction on account of bad debts was considered by the assessing officer and also the successor in office along with the reliance on various judicial pronouncements on the issue vis-a-vis the claim of the assessee

under the provisions of Section 36(2)(i) of the Act. Though the assessee had declared the income under the head 'Income from other sources', but in its communication before the assessing officer had claimed to carry on the business of financing and bill discounting against which the claim of bad debt was made under Section 36(2)(i) of the Act. The assessing officer has in the body of his order accepted that the assessee carries on business of financing and bill discounting and thereafter accepted the returned income. It is an established principle of a law that it is the duty of the assessing officer to correctly assess the income declared by the assessee which in its umbrella include the assessability of income under the correct head of income. Mere declaration of income under one head of income by the assessee does not restrict the power of the assessing officer to correctly assess the same under correct, head of income other than the one declared by the assessee. In the facts of the present case, the issue of nature of business carried on by the assessee and the claim of deduction of Rs. 50,00,000 as bad debts against income of Rs. 59,14,771 has been considered by way of submissions of the assessee and also supporting documents furnished during the course of assessment. Merely because the order of the assessing officer is not elaborative on the point of allowability of the claim of the assessee i.e., the claim of the bad debts of Rs. 50,00,000 does not give rise to a presumption that the particular issue was not looked into by the assessing officer. It is an accepted norm of passing assessment order wherein the claim of the assessee is accepted, no comments about the same are usually found in the body of the assessment order, though in cases wherein if disallowance of a particular claim is made by the assessing officer, the observations to that effect are incorporated in the body of the order.

13. The power of revision under Section 263 of the Income Tax Act being a Supervisory Jurisdiction conferred on the Commissioner of Income-tax is to be exercised with due care. In order to exercise the power under Section 263 of the Income Tax Act, two conditions are prescribed i.e., the order of the assessing officer should be erroneous and also prejudicial to the interest of revenue. Both the conditions have to be simultaneously fulfilled before invoking the jurisdiction under Section 263 of the Income Tax Act. Their Lordships of Hon'ble Bombay High Court in *Gabrial India Ltd. 's case* (supra) had held as under: If an Income Tax Officer acting in accordance with law makes certain assessment, the same cannot be

branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This Section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income Tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the Income Tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income on a higher figure than the one determined by the Income Tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income Tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue.

But that by itself would not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, namely, that the order is erroneous, is absent. Similarly if an order is erroneous but not prejudicial to the interests of the revenue, then the power of suo motu revision cannot be exercised.

Any and every erroneous order cannot be the subject-matter of revision because the second requirement must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute, on an incorrect or incomplete interpretation, a lesser tax than what was just has been imposed.

When exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard.

14. Merely because the assessee had returned the income under the head 'Income from other sources' as against the correct head of income from business and where the assessing officer had observed in the body of his order that the assessee is carrying on the business of bill discounting, does not render the order erroneous and prejudicial to the interest of revenue in order to empower the Commissioner to exercise his jurisdiction under Section 263 of the Income Tax Act. Their Lordships of Honble Supreme Court Bihar State Co-operative Bank Ltd. 's case (supra) had held that in its return the appellant showed these various sums as other sources but nothing turns on the manner in which the appellant chose to show his income in his return. In the facts of that case exemption was provided to co-operative society on interest income received on short-term deposits under the head 'Business income'. The assessee therein had declared the interest income under the head 'Other sources' which was not exempted from tax. The assessment of the case was completed under the head 'Income from other sources'. Their Lordships of Hon'ble Supreme Court held the interest derived from deposits as arising from the business of the bank and therefore falling within the income exempted under the notification, nothing turned on to manner in which the appellant chose to show this income in its return.

15. In the facts of the present case, enquiries were made by the Assessing Officer in respect of the expenditure claimed by the assessee i.e., bad debts against the income from bill discounting. The assessee had filed detailed explanation along with supporting documents with regard to its claim of bad debts, which was allowed by the assessing officer after taking into consideration the explanation of the assessee. In the assessment order, though it was noted that the assessee is carrying on the business of financing and bill discounting, an elaborate discussion was not made on the assessability under different head of income. The claim of bad debts against such income was considered during the course of assessment, but no discussion was made in the assessment order. Such an order cannot be called erroneous.

The Commissioner can exercise the jurisdiction under Section 263 of the Act only after holding that the assessment order passed by Assessing Officer is both erroneous and prejudicial to the interest of revenue.

16. In the circumstances of the case, the exercise of jurisdiction by the Commissioner under Section 263 of the Income Tax Act in setting aside the assessment is incorrect. Hence, the grounds of appeal raised by the assessee are allowed.

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