

Jagat Explosives Vs. Assistant Commissioner of Income Tax

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Court : Rajasthan

Decided On : Aug-02-2007

Reported in : (2007)212CTR(Raj)244

Judge : P.B. Majmudar and; Deo Narayan Thanvi, JJ.

Appellant : Jagat Explosives

Respondent : Assistant Commissioner of Income Tax

Advocate for Pet/Ap. : Mr. Kothari

Disposition : Appeal dismissed

Judgement :

1. Heard the learned Counsel for the appellant.
2. This appeal is directed against the order passed by the Tribunal, Jodhpur Bench, Jodhpur in IT Appeal No. 455/2000. The appellant assessee was a consignment agent for supply of explosive goods to I.C.I. India Limited in Rajasthan. In view of the information received, a survey under Section 133A was carried out in the case of Pooja Roadlines, Udaipur and some bill books were impounded under Section 131 of the Act. On scrutiny of the bill books of M/s Pooja Roadlines, it was noticed that the vans (motor vehicles) owned by the assessee had been used for transportation of goods to various places. On examination, it was found that the assessee had entered into an agreement with M/s India

Explosives Ltd. for supplying trading items of the principal company at Udaipur. The vans owned by the assessee were used for getting goods from Udaipur to Gomia in Bihar. The vans so used for delivering goods were to be unloaded at Udaipur and empty vans were to be sent to Bihar for obtaining the consignment. In short, the vans were not to be used for getting other goods while sending and bringing the goods from Gomia to Udaipur. The principal company bore the cost of the whole transportation expenses to and fro.

3. Summons were issued under Section 131 to the partners of the assessee firm, namely Sh. Pradeep J. Mashru and Sh. Hari Lai T. Mashru. During the course of statement under Section 131, Sh. Harilal T. Mashru (managing partner) admitted that the assessee's vans were used for carrying goods to various places while sending it for bringing consignment goods. Another partner also admitted the said aspect. Not only that, both the partners also gave consent that they have no objection, if a sum of Rs. 5,98,440 was added in the total income declared for asst. yr. 1996-97. The partners also admitted that the said amount has not been declared in the IT return filed for aforesaid assessment year. Accordingly, the aforesaid amount was added to the total income of the assessee. The appellant assessee thereafter challenged the said order before the CIT(A). The CIT(A) came to the conclusion that the partners were under undue pressure. The appellate authority also found that the said amount cannot be added in total declared income for asst. yr. 1996-97. The said order was challenged by the Department by way of IT Appeal No. 455 of 2000. The two members of the Tribunal differed in the matter and therefore, the same was referred to the Third Member. The Third Member of the Tribunal, after considering the evidence on record, came to the conclusion that the confession made by the partners of the appellant firm was genuine one and the statements were not recorded under any duress. The third member ultimately found that out of five vehicles, the income relating to three vehicles which were not owned by the assessee, are not assessable in the hands of the assessee notwithstanding the fact that partners of the firm had agreed to pay tax in respect of such income. The third member also found that since the assessee is the owner of two vehicles only, the assessment should be restricted to said two vehicles. The third member accordingly came to the conclusion that the income relating to the three vehicles not owned by the assessee could not be

assessed in the hands of the assessee. The third member in para 27 of his order has observed that 'there is no written agreement between the parties for leasing the vehicles'. The assessee preferred a rectification application on the ground that the said observation made in the order is not correctly recorded. The Tribunal allowed the said rectification application by omitting the sentence 'there is no written agreement between the parties for leasing the vehicles'. It was however, further observed that the said omission will not change the complexion of the decision.

4. The appellant assessee has challenged the order of the Tribunal in the present appeal. The learned advocate Mr. Kothari appearing for the appellant submitted that in view of the rectification order, it is clear that there was lease agreement and therefore, the member of the Tribunal should have confirmed the deletion and should have allowed the appeal in toto. It is submitted that by rectification, the whole complexion of the order is changed.

5. We have heard the learned advocate for the appellant and we have also gone through the record of the case.

6. In our view, there is no substance in this appeal. Whether confession in question was genuine or not is a question of fact. Even otherwise, the third member of the Tribunal to whom the matter was referred, has considered this aspect in the proper manner. In paras 22, 23 and 24 of the order, the third member of the Tribunal has observed as under:

22. In both the statements of the partners recorded by the AO, it is categorically stated that the other partners had been consulted and the surrender was made with the consent of the other partners. The deponents had enough time to discuss with other partners, who happen to be family members. Therefore, the claim made on behalf of the assessee that the partners did not get sufficient time to consult the other partners is bereft of substance. The assessee had also constituted his chartered accountant (see replies to Qs. 48 and 49). There is thus no merit in the contention advanced on behalf of the assessee that the surrender was extracted by the AO under duress and without giving reasonable opportunity to the partners of the firm to consult other partners. I am therefore, in agreement with the finding

of the learned AM that the conduct of the assessee does not demonstrate that the AO was guilty of recording the statement of the partners of the firm under duress or under any sort of pressure.

23. In the light of above finding that the statement was not recorded under duress, the question that requires to be considered is as to whether the addition made by the AO was valid in the eyes of law. As pointed earlier, the AO had collected the evidence from M/s Pooja Roadlines in the form of challan books, in which the name of the assessee, particulars of vehicles and the names of the drivers were indicated along with payments made. After collection of the said evidence, the AO had two options, one is to confront the assessee and find out the correctness of the evidence or agreed to be assessed in respect of the income shown to have been paid, then no further enquiry would be required to be made by the AO. On the other hand, if the assessee had denied the receipt from M/s Pooja Roadlines or had not agreed to pay income-tax in respect of the receipt, the AO would be required to make further enquires and decide the issue on the basis of evidence on record. In this case, the evidence collected by the AO was confronted to the partners of the firm. They initially expressed their ignorance about the payments from M/s Pooja Roadlines. However, in reply to question No. 38, when the partners were asked about the information available in challan books of M/s Pooja Roadlines, it was stated 'I will tell you after being confirmed'. Subsequently, the partners had agreed to be assessed in respect of the receipts. In fact, the tax in respect of the addition was also paid by the partners. In the light of the said facts, the AO had not committed any mistake in making the addition in respect of the payments having been shown to have been paid to the assessee. In the statements, the partners had admitted that the vehicles shown in the challan books of M/s Pooja Roadlines belong to the assessee. I am, therefore, of the considered view that the AO was justified to make addition of Rs. 5,98,440.

24. The next question that remains to be considered is as to whether it was open to the assessee to challenge the addition before the CIT(A) notwithstanding the fact that the income, the assessability of which is in dispute was surrendered for assessment. I have referred to various decisions relating to this issue elsewhere in this order. The law is well settled. The assessee will be entitled to resile from his

statement only, if it is established that the surrender was made under duress or under mistaken notion of law. I have already held that the statements of the partners of the firm had not been recorded under duress. Thus, the only question that requires consideration is as to whether the assessee has discharged the strong burden to establish that the income offered for taxation was not liable to be taxed in the hands of the assessee.

It has also been found by the Third Member of the Tribunal that the assessee had taken a totally different stand before the CIT(A) than the one taken before the AO. As regards the submission that in view of rectification order, the appeal was liable to be allowed is concerned, in our view, the Tribunal has rightly found that in the light of facts available on record and preponderance of probability coupled with surrounding circumstances, the leasing of vehicle to the sister concern is nothing but an arrangement between the family members for reflecting the income. In our view, therefore, the rectification order by omitting the sentence 'there is no written agreement between the parties for leasing the vehicles' would not mean that it will affect the ultimate finding given by the third member. In our view, a very charitable view has been taken by the third member of the Tribunal in computing the income of the assessee only in connection with two vehicles.

7. Considering the aforesaid aspect of the matter, we are of the opinion that no question of law much less substantial question of law arises for determination of this Court. The assessee after having taken particular stand by making voluntary statement, has ultimately tried to back out from the same. Considering the circumstances of the case, it has rightly been found by the third member of the Tribunal that the partners of the assessee firm had voluntarily given statement and the same was not recorded under the force or duress. The said finding of fact has rightly been recorded by the Tribunal. We therefore, do not find any substance in this appeal and accordingly the present appeal stands dismissed. No order as to costs.