

Man Mohan Gupta Vs. Assistant Commissioner of Income Tax and anr.

Man Mohan Gupta Vs. Assistant Commissioner of Income Tax and anr.

SooperKanoon Citation : sooperkanoon.com/768143

Court : Rajasthan

Decided On : Sep-19-2003

Reported in : (2004)189CTR(Raj)331; [2005]274ITR179(Raj)

Judge : S.K. Keshote and; K.S. Rathore, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 132(4A) and 271(1)

Appeal No. : IT Appeal No. 59 of 2002

Appellant : Man Mohan Gupta

Respondent : Assistant Commissioner of Income Tax and anr.

Advocate for Def. : J.K. Singhi, Adv.

Advocate for Pet/Ap. : T.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Keshote, J.

1. This is an income-tax appeal under Section 260A of the Income-tax Act, 1961 (for short, 'the Act, 1961') and is directed against the order dt. 31st Oct., 2001 of the learned Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (for short, 'the Tribunal') in IT Appeal No. 2143/JP/1992 for the asst: yr. 1985-86 titling Man

Mohan Gupta v. Asstt. CIT, Circle I (1), Jaipur. The appeal was placed on the board for preliminary hearing on 4th July, 2002. The Court was pleased to admit the appeal in terms of the following question:

'Whether, on the facts and in the circumstances of the case, the statutory provisions of Section 271(1)(c) as existing during the relevant year were correctly applied by learned Tribunal in arriving at the findings and upholding the penalty in relation to trade advances of Rs. 3,20,000 received from various traders, against supply of goods and in pursuance of which goods were duly supplied to them?'

2. Briefly stated the facts of the case are that the assessee is an individual engaged in trading in precious and semi-precious stones under a proprietorship of M/s Asian Arts, Jaipur, The return was filed by the Revenue showing the income of Rs. 56,453, on 28th of March, 1988 which was revised on 29th of March, 1988 and 28th of March, 1989. In the second revised return filed on 28th of March, 1989 the assessee has added the income advanced against sales amounting to Rs. 4,20,000. The Asstt. CIT, Investigation (Circle-I), Jaipur, made assessment of the assessee at income of Rs. 7,76,600. On the first appeal the CIT(A), Rajasthan-I, Jaipur deleted the addition of Rs. 91,407 and further set aside the part of other addition. The setting aside of the assessment was made on 2nd of April, 1991 and the income was finally determined at Rs. 6,45,518 as against Rs. 6,41,740 disclosed by the assessee in the second revised return.

3. The penalty proceedings were initiated against the assessee under Section 271(1)(c) of the Act, 1961 and after rejecting the assessee's explanation, the AO held that he has made wrong claim of certain expenses and non-genuine entries of cash credits were found in the books of accounts of the assessee and, accordingly, he considered the amounts referred represented income/or the income in respect of which wrong particulars were furnished by the assessee. It is further held by the AO that the assessee had concealed the income and furnished wrong particulars of income deliberately with regard to the income of Rs. 5,06,782, and thus the levy of penalty under Section 271(1)(c) is attracted and; accordingly, a penalty of Rs. 3,13,562 was levied vide order dt. 17th Sept., 1991.

4. The assessee carried the matter in first appeal before the CIT(A), Rajasthan-I Jaipur. The appellate authority held that in view of the persistent enquiries made by the AO, the charge of concealment is established in respect of foreign tour expenses, cash credits, interest on credits and brokerage and, accordingly, he confirmed the penalty levied by the AO excluding the amount of interest relating to loans taken for investment made in purchase of property of Rs. 40,883 as according to him on this amount alone the charge of concealment of income is not established. The assessee has taken the matter in further appeal before the Tribunal. The appeal was partly allowed by the Tribunal under its order dt. 31st Oct., 2001 and thus this appeal before us,

5. The learned Tribunal held that the explanation furnished by the assessee of receipt of the amount of Rs. 1,00,000 as deposited from M/s Amit Enterprises, proprietor Shri Sudhir Kumar, Rs. 50,000, Shri Om Prakash Ghiya Rs. 25,000 and Shri Kamal Kumar Kasliwal Rs. 25,000, is bona fide and thus no penalty is leviable on this count.

6. Shri T.C. Jain, the learned counsel for the appellant, submitted that Rs. 3,20,000 has been taken as advance against sale of goods from the four parties named in para No. 10 of the order of the learned Tribunal. The goods has been sold to these parties in the subsequent asst. yr. 1986-87, the details of which are given in para No. 10 of the judgment of the learned Tribunal. In his submission the purchasers are duly registered under the Rajasthan Sales-tax and they provided declaration 31 17 and, therefore, no sales-tax was charged. Sales-tax registration number is duly mentioned. It is urged that confirmation of letters duly signed by the proprietor with addresses were submitted. The sales were made through brokers. In the parties bank account the relevant cheques were duly found recorded. In his submission the assessee had duly discharged his burden. It has next been contended that on the same material produced by the appellant, the Tribunal accepted his explanation for advance receipts against sale of Rs. 1,00,000. It has further been contended that the provisions of Sub-section 4A of Section 132 of the Act, 1961 comes to the rescue of the assessee and thus by mere production of these facts produced by the assessee the burden which was on him stands discharged. In his submission the learned Tribunal has not considered the case of

the assessee with reference to the said proviso. In support of his contention the learned counsel for the assessee placed reliance on the following decisions :

1. CIT v. Suresh Chandra Mittal : [2000]241ITR124(MP)

2. CIT v. Suresh Chandra Mittal : [2001]251ITR9(SC)

3. Shiv Lal Tak v. CIT (2001) 251 ITR 373

4. Dy. CIT v. Rohini Builders : [2002]256ITR360(Guj) .

7. Shri J.K. Singhi, appearing for the Revenue, per contra supported the order of the learned Tribunal. He placed reliance in support of his contentions on the following decisions :

1. Badri Prasad Om Prakash v. CIT

2. CIT v. Korlay Co. Ltd. (1998) 232 ITR 821.

8. It is not in dispute that these revised returns have been filed by the assessee after the search has been conducted at his business place by the IT Department. In the appeal, though, it is not disclosed but in para No. 2 it is mentioned that the appellant in order to avoid litigation and to buy peace included these amounts in the revised return. The last revised return filed had a specific note that additions are made in pursuance to petition under Section 273A of IT Act which was filed for waiver of interest and penalty.

9. We have carefully considered the rival submissions made by the learned counsel for the parties and perused the entire material available on the record and the orders passed by all the three authorities; the AO, the CIT(A) and the learned Tribunal,

10. In the memo of appeal though it is mentioned that to buy peace and to avoid litigation the revised returns have been filed by the assessee but the assessee did not give any reason before the assessing authority and the appellate authority as to why the returns have been revised by him. The amounts which were subject-matter of enquiry by the AO stand included as income in these revised returns.

The learned counsel for the appellant vehemently contended that Rs. 3,20,000 was received by the assessee in advance from the different persons against the sale of the goods but we find from the order of the learned Tribunal that it was not the case before the AO. There the case of the assessee was that these amounts of the deposits received by him from the firms, namely, M/s Sethi Jems, R.C. Jewellers, Jain Traders and Shri Gem Traders, on interest through brokers. The assessee has taken a somersault before the learned Tribunal that this amount was the advance receipt against the sale of the goods. It is contended by the learned counsel for the appellant that the material produced on record by the assessee was more than sufficient to accept that this amount was the advance receipt of the money against the supply of the goods. It is not in dispute that the appellant has not produced any person out of four persons from whom these amounts were taken, either before the AO or in the penalty proceedings. The learned counsel for the appellant submitted that he raised the bills for the supply of these goods against the amount received. In the bills the sales-tax number of these persons have been mentioned and sales-tax was not charged as ST 17 form has been supplied by these purchasers. The learned counsel for the appellant has failed to show any material from the record of the case of the appeal that the goods were actually and physically delivered to these four persons. The learned counsel for the appellant, on the suggestion of the Court, does not dispute that there is no documentary evidence on the record to show that goods for which the bill have been raised, have been delivered to the alleged purchasers thereof.

11. In the absence of this important and relevant evidence, it has rightly not been accepted by the learned Tribunal that this amount of Rs. 3,20,000 was received from the four persons against the sale of the goods. So far as to the plea of the appellant raised before the AO that this amount was taken as advance through brokers; the brokers except one, were not produced. One of the brothers was produced but he has denied the advance through him to the appellant-firm. A categorical finding of fact has been recorded by the taxation authority that the appellant has not produced any proof for delivery of goods alleged to have been made to these four parties. In absence of the important and relevant evidence linking this transaction, merely on the basis of bills which have been issued and debited to the account of those alleged purchasers and sales-tax number shown is

not sufficient to relieve of the heavy burden that lies upon the appellant to prove that it was a bona fide transaction, that it was the amount taken on loan or against the sale of the goods. The learned Tribunal recorded another finding of fact that the sales-tax number shown in the ST 17 forms were not found to be genuine. The particulars of income which the assessee was required to disclose in the original return were not found to be accurate to the extent of Rs. 3,20,000. This explanation furnished by the assessee is also not bona fide in this regard. Thus, the AO was correct in his approach that the assessee is liable to be penalised on the alleged advance of Rs. 3,20,000. That finding of fact has been confirmed by the first appellate authority and the Tribunal in the second appeal. Either of two pleas has to be established to the satisfaction of the AO. Either he would have established genuineness of the loan or advance received for sale of the goods to the alleged purchasers. The appellant has failed to prove both and thus the learned Tribunal was correct in its approach to uphold the order of the CIT(A).

12. The contention of the learned counsel for the appellant that on the same material the Tribunal has accepted the transaction to the extent of Rs. 1,00,000, is devoid of any merit and substance. That goes to show how fairly, impartially and reasonably the matter has been considered by the AO, the CIT(A) and the learned Tribunal. Where the appellant has produced the material and established genuineness of the transactions of Rs. 1,00,000 that has been accepted and to that extent the penalty imposed has been set aside by the learned Tribunal. It is not correct to contend by the learned counsel for the appellant that the finding of the Tribunal on these two amounts was based on the same material. We find from the judgment of the learned Tribunal that as regards to the amount of Rs. 1,00,000 which was deposited with the appellant by Amit Enterprises through its proprietor Shri Sudhir Kumar Rs. 50,000, Shri Om Prakash Ghiya Rs. 25,000 and Shri Kamal Kumar Kasliwal Rs. 25,000, there is strong evidence on record to establish their genuineness. These creditors, as per the finding of fact recorded by the learned Tribunal, are stated to be existing assesseees. When those persons were existing assesseees the learned Tribunal is correct in its approach that the AO to make enquiries of this aspect of the matter. Having regard to the fact that the credits were taken from the existing assesseees, this exercise has not been undertaken. A fact which was confirmable from the record of the Department itself, has not been

confirmed and thus rightly the benefit has been given by the learned Tribunal to the appellant. As regards other amounts, the AO has made all attempts to get these creditors summoned but the summons issued to them were not served. That creates serious doubt on the genuineness of this credit.

13. The learned counsel for the appellant relying upon the decision of the Gujarat High Court in the case of Dy. CIT v. Rohini Builders (supra) contended that merely summons issued to some of the creditors could not be served or they failed to attend before the AO, cannot be taken a ground to treat loans taken by the assessee from those creditors as not genuine. It is suffice to say that in the case before the Gujarat High Court the facts were altogether different. There the deposits were made by the creditors by account payee cheques. The interest on the deposits was paid by the assessee by account payee cheques. The returns have also been made to some of the depositors during the account year under consideration and to the two other depositors in subsequent years. The returns were also made by account payee cheques. There the assessee also furnished the necessary information along with the companies addresses with GIR numbers and permanent account numbers. Not only this, though these deposits in that case were taken non-genuine but the AO has not made any addition on account of the interest paid by the assessee in respect of these credits in his books of account. These payments have been duly allowed by the AO as normal business expenses. For some of the creditors the tax was deducted at source out of the interest paid to their accounts.

14. If we compare the facts of this case with the facts of the case before the Gujarat High Court, here the appellant has not produced any evidence to establish these credits as genuine. It is the case of the assessee that confirmation of these deposits is produced but GIR or PAN are not given nor anybody has been examined nor an affidavit has been filed. There is the case before Gujarat High Court, in the presence of the material and sufficient evidence, non-service of summons on the creditors was not taken seriously but here only credit entries are there and the appellant has failed to establish the repayment thereof by the supply of the goods to them. In these facts the non-service of the summons on these creditors is an important circumstance which has reasonably been taken adverse

to the assessee.

15. In CIT v. Suresh Chandra Mittal (supra), the explanation furnished by the assessee for the alleged concealing income was accepted. There also the Tribunal accepted the explanation furnished by the assessee for the revised return so as to buy peace and to come out of the litigation accepted to be bona fide. That case is also of little help to the assessee. In this case explanation furnished appears to be concocted one.

16. Reliance placed by the learned counsel for the assessee on the decision of this case in Shiv Lal Tak v. CIT (supra) is also of little help to him. In that case the plea of assessee has been accepted during the course of assessment and additions have been made at his behest. The question of making addition by rejecting the explanation which was not sustainable or could not be substantiated would not arise, and in that event the question of bona fide of assessee could not be doubted.

17. Now we advert to the last contention raised by the learned counsel for the assessee relying on the provisions of Sub-section 4A of Section 132 of the Act, 1961. It is suffice to say that this is not available to the appellant as the question framed in this regard in the memo of appeal has not been accepted. The Court has not framed any question on this point. Otherwise also having gone through the provisions of Section 132(4A) of the Act, 1961, we find that it is a rule of evidence with regard to the entries in the account books which will not relieve of the assessee to prove the genuineness of the transactions i.e. of the cash receipts in this case.

18. In view of the aforesaid discussion we are satisfied that the appeal has no force. In the result, the appeal fails and the same is dismissed.