Cit Vs. Ajay Kumar Sharma

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Court : Rajasthan

Decided On : Aug-13-2002

Reported in : (2002)177CTR(Raj)539

Appeal No. : IT Appeal No. 65 of 1999 13 August 2002 Block period 1987-88 to 1996-97

Appellant : Cit

Respondent : Ajay Kumar Sharma

Advocate for Pet/Ap. : Anuroop Singhi for J.K. Singhi, *for the Revenue* Vaibhav Kasliwal for A. Kasliwal, *for the Assessee*

Judgement :

By the Court

This appeal has been admitted in terms of the following questions :

'Whether the learned Tribunal was right in its wisdom to hold that entries reflecting in the regular books of accounts cannot be considered for the block assessment period ?'

'Whether the learned Tribunal was justified in deleting additions by holding that the assessee had discharged its onus by producing the creditors ?'

'Whether it can be said that the mere production of creditors is sufficient to discharge the onus of assessee and the creditworthiness/paying capacity is of no relevancy at all ?'

'Whether the learned Tribunal was justified in deleting the additions without rejecting the findings of assessing officer with regard to the creditworthiness and genuineness of the transactions ?'

'Whether the learned Tribunal was justified in not applying the ratio in the case of Shanker Industries v. CIT : [1978]114ITR689(Cal) as decided by the Hon'ble court to the present matter ?'

2. A search and seizure operation was carried out under section 132 of the Income Tax Act on 2-8-1996, at the business premises of M/s. Om Shanti & Sons, Bapu Bazar, Jaipur, M/s. Marcopolo, Choudhary House, and at M/s. Rajdeep Hotel, Bapu Bazar, Jaipur. During the course of search incriminating documents and loose papers pertaining to the assessee Ajay Kumar Sharma, partner of M/s. Holiday India Travels 'N' Tours were seized.

Accordingly on 26-6-1997, notice under section 158BD of the Act was issued to the assessee, that was served on him on 30-6-1997. In response to the notice assessee filed return for assessment year 1995-96 and 1996-97 on 16-1-1998. The assessee was also asked to file return for the block period, i.e., from 1986-87 to 1996-97. In response to that notice, assessee filed the return for block period also.

During the course of scrutiny of the returns and relevant material available for assessing the income for block period, assessing officer made an addition of Rs. 1,11,000 on account of unexplained cash credits. It is noticed by the assessing officer that assessee has shown loan from following parties :

S. No.

Name of Depositors

Date

Amount

1.

Shri Jai Nath

22-4-1994

1,500

Do

5-7-1994

10,000

1,500

2.

Shri Sunesh Sharma

28-5-1994

9,500

9,500

3.

Smt. Asha Sharma

15-6-1994

5,000

15-11-1994

14,000

6-1-1995

2,000

21,000

4.

Shri Tarun Arora

5-7-1994

10,000

10,000

5.

Shri S.P. Rajoria

5-7-1994

8,000

5-11-1994

10,000

18,000

6.

Shri Virendra Singh

15-11-1994

1,000

9-1-1995

7,000

8,000

7.

Shri Harish Chaturvedi

15-11-1994

10,000

10,000

Asst. yr. 1995-96

1.

Shri S.P. Rajoria

8-4-1995

11,500

11,500

2.

Smt. Savitri Devi

10-9-1995

11,500

11,500

The summons were issued to these cash creditors. They except Savitri Devi, appeared before the assessing officer and they were examined by the assessing officer. Assessing officer disbelieved the genuineness of the loan advanced by the aforesaid cash creditors, assessing officer added Rs. 1,11,000 on account of bogus cash credits shown in the books.

3. In appeal before the Tribunal, Tribunal has deleted the addition holding that cash credits are genuine. Otherwise also the Tribunal has taken the view that once the cash credits have been shown in the books of accounts maintained by the assessee in the regular course of business activities, no addition is warranted. He deleted the addition so made.

4. Heard learned counsel for the parties. Mr. Singhi, learned counsel for the revenue, submits that when the cash credits are not genuine, the assessing officer has rightly taxed that amount in the hands of assessee. He placed reliance on the decision of Calcutta High Court in the case of CIT v. Korlay Trading Co. Ltd. : [1998]232ITR820(Cal) . He further submits that even if the cash credits have been shown in the cash books, but unless that has been disclosed as income in the relevant assessment years, that can be taxed in the block assessment year treating that income as undisclosed income of the assessee.

5. We have considered the submissions of the learned counsel and also perused the orders of the authorities below, i.e., assessing officer and the Tribunal. Statements of cash creditors have been recorded, the reason have been given as to why the cash credits should not be treated genuine.

6. In appeal before the Tribunal, after considering the contents of the statements of the cash creditors, Tribunal has concluded the issue in para 10 of its order, which reads as under :

'We have heard the rival parties and have perused the material placed on record. We are of the opinion that in regard to the cash creditors assessee has discharged his primary onus by producing the creditors, another person who were duly examined by the assessing officer on oath. These creditors have accepted the fact of advancing loans. Besides, these loans are duly reflected in the books of accounts maintained by the assessee in the regular course of business activities. We, therefore, feel that the assessing officer was not justified in making the addition on these accounts. The additions are, therefore, deleted. '

7. The perusal of reasons given by the assessing officer for disbelieving the cash credits do not appear to be justified. The creditor Tarun Arora is a commission agent on sale of chappals. He advanced Rs. 10,000 and confirmed the genuineness of loan. Harish Kumar Chaturvedi, the other creditor, who advanced Rs. 10,000 and confirmed the loan. He receives commission from the United India Insurance Company. He earns commission roughly Rs. 30,000 to 40,000 per year. Next creditor in Shri Sunesh Sharma, who is working as Accounts Assistant in Taj Trade & Transport Co. Ltd. He advanced Rs. 9,500 and confirmed the loan advanced. The other creditor is Shri S.P. Rajoria, who is a retired employee and getting Rs. 2,000 as pension per month. He advanced Rs. 11,500 and confirmed the loan advanced. Next creditor is Jai Nath, who is a constable and his salary is Rs. 4,000 per month. He advanced Rs. 11,500 and confirmed the genuineness of the loan advanced by him to the assessee.

Next creditor is Smt. Asha Sharma. She is mother of the assessee. She advanced Rs. 21,000. She is a teacher. She has stated that she advanced loan out of her savings and part of the amount has been withdrawn from the bank. Next creditor is Shri Virender Singh. He advanced Rs. 8,000. He has explained that his source of income is agriculture. He is in joint family. He confirmed the loan of Rs. 8,000 advanced to the assessee.

Smt. Savitri Devi advanced loan of Rs. 11,500. Neither she has been produced nor she filed the confirmation. The facts are not in dispute that except Smt. Savitri Devi all cash creditors appeared and confirmed the advancement of loan to the assessee. They have even disclosed their source of income. The identity of the creditors are not in dispute.

With regard to creditworthiness of such petty amount, in our view it cannot be said that creditors are not capable to advance this petty amount, which has been shown against their names. Therefore, the identity of the creditworthiness of the creditors and their confirmation, the genuineness of the cash credit should not be disbelieved except in case of Savitri Devi, as neither she has been produced nor she filed the confirmation. Initial burden is on the assessee to discharge that the cash credits are genuine. Therefore, except the advance shown in the name of

Smt. Savitri Devi, we do not find any justification to interfere in the order of Tribunal so far as the rest of the cash creditors are concerned.

8. However, we agree with Mr. Singhi that merely some entries in the books of accounts if shown, does not prohibit the assessing officer to tax that amount in the block period, if that amount has not been taxed in the regular assessment. When the cash credits are not taxed in the relevant assessment years, that can be treated as undisclosed income and can be taxed after search in the block period.

9. In the result, we direct that except the cash credit shown in the name of Smt. Savitri Devi all other cash credits should be accepted as genuine. No addition can be made on account of those cash credits. However, we restore the order of assessing officer regarding advance shown in the name of Smt. Savitri Devi. We further clarify that if the income is not offered for tax in the regular assessment years, showing the same in the regular books of accounts does not prohibit the assessing officer to tax that income in block assessment in block period.

In the result, the appeal is partly allowed.

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