
(2006) 09 P&H CK 0318

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sunam Rice and Dal Mills

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Sept. 27, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 144B

Citation: (2008) 304 ITR 189 : (2009) 177 TAXMAN 353

Hon'ble Judges: Rajesh Bindal, J; A.K. Goel, J

Bench: Division Bench

Judgement

1. At the instance of the assessee, the Income Tax Appellate Tribunal, Chandigarh Branch, Chandigarh (for short: "the Tribunal") has referred the following question of law arising out of its order dated August 19, 1985, in I.T.A. No. 10 of 1984, relating to the assessment year 1975-76 for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in sustaining the addition of Rs. 1,10,000 introduced by the assessee in its books of account on November 9, 1973, under the narration "cheque from Punjab National Bank, Tohana"?

2. During the course of examination of the cash book of the assessee relating to the assessment year under consideration, the Assessing Officer found that the assessee had introduced cash amounting to Rs. 1,10,000 received from the Punjab National Bank, Tohana. On verification from the bank, it was found that the payment from the bank had been received on November 12, 1973. The Assessing Officer noticed that the assessee needed money on November 9, 1973, for making payment to different parties and had, therefore, introduced its unexplained money showing it as receipt from the bank. The assessee's explanation that the money was received on November 9, 1973, against a cheque of Rs. 1,16,025.06 issued by the District Food and Supplies Controller, Hisar but, the entry in respect of the same was made on

November 12, 1973, was not found plausible and hence rejected by the Assessing Officer. These findings were reversed by the Commissioner of the Income Tax (Appeals). However, on further appeal by the Revenue, the Tribunal restored the addition made by the Assessing Officer. The Tribunal has recorded its findings in paragraph 8 of its order as under:

We have given our careful considerations to the rival submissions. We are unable to sustain the order of the Commissioner of Income Tax (Appeals) has mainly relied on the letter dated July 19, 1978, issued by Shri O.P. Gupta, manager, certifying that in his discretion he made payment on November 9, 1973, but has put the date as 12th on the cheque. He has completely ignored the statement made by him subsequently before the Income Tax Officer which was in pursuance of the directions given by him. If he was to rely on the letter dated July 19, 1978, there was hardly any point in setting aside the earlier of the Income Tax Officer and directing him to record the statement of the manager. In the statement made by him, the manager has time and again affirmed that the cheque was presented and passed on November 12, 1973, and the payment was also made on November 12, 1973. The records of the bank also confirmed his statement. The assessee's account in the bank was also debited on November 12, 1973. The stamped dated of passing the cheque is also November 12, 1973. On the fact of this evidence, on the earlier letter issued by the manager on July 19, 1978, the assessee procured the letter from the bank manager for the purpose of producing the same before the LAC in proceedings u/s 144B of the Income Tax Act probably under the impression that his words were final. When he was put to cross-examination by the Income Tax Officer, he fumbled and made the correct statement which also tallied with the records of the bank. With regard to the statement made by Shri Lakhi Ram, we are of the opinion that no reliance can be placed thereon. He has made contradictory statements against the established procedure of the bank. His statement that he did not take note of the date November 12, 1973, is also unbelievable. The rubber stamp putting the dates, as pointed out by the Income Tax Officer, is very important item from the angle of a cashier and it could not be changed by the peon at his will even three days before the date of occurrence. Taking into consideration the totality of the circumstances of the case as discussed above, we are unable to sustain the order of the Commissioner of Income Tax (Appeals). The same is reversed and that of the Income Tax Officer is restored.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the assessee submits that the Tribunal erred in reversing the view taken by the Commissioner of Income Tax (Appeals) adopting erroneous approach and without dealing with the reasons given by the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) observed:

6. After considering the facts and circumstances of the case and the totality of the circumstances, I would hold that the Income Tax Officer was not justified in coming

to the conclusion that the amount of Rs. 1,10,000 shown as received from the Punjab National Bank, Tohana, on November 9, 1973, represented the assessee's income from undisclosed sources. Because of the categorical statement made by Shri O.P. Gupta, manager, in his letter dated July 19, 1978, certifying that he had in his discretion allowed the payment to be made in cash after banking hours on November 9, 1973 and had put the date 12th on the cheque in his own handwriting and the repeated confirmation of Shri Lakhi Ram, cashier that the payment was made by him on November 9, 1973, itself after banking hours and that a certain omission in writing the date on the cheque was made by him, which could have been committed by anybody, I would hold that the payment of cheque amounting to Rs. 1,10,000 was made by the bank against the abovementioned cheque on November 9, 1973, itself. What gives credence to the entire situation is the fact that the entry regarding payment of Rs. 1,10,000 on November 9, 1973, after banking hours is recorded as the first entry on the next working date of the bank, i.e., November 12, 1973, since 10th and November 11, 1973, happened to be bank holidays. Considering the overall picture, evidence on record and the statements of the then manager, Shri O.P. Gupta and Shri Lakhi Ram, cashier, it is clear that the payment against the cheque in question was made on November 9, 1973, after banking hours and the said amount was available with the assessee for disbursing payments to various parties. In this view of the matter, the addition of Rs. 1,10,000 made by the Income Tax Officer to the total income of the assessee is deleted. This ground of appeal, therefore, succeeds.

5. Only reason given by the Tribunal for reversing the finding of the Commissioner of Income Tax (Appeals) was that the manager had made a statement which corresponded with the entry in the bank and the stamp on the cheque and that the statement of cashier Lakhi Ram was contradicted. This was not, in the facts and circumstances of the case, a correct approach. The Commissioner of Income Tax (Appeals) has relied upon the circumstance that on November 12, 1973 the payment was recorded as first entry which corroborated the version of the manager in his letter dated July 19, 1978, that he had made the payment after banking hours on November 9, 1973, and had put the date 12th on the cheque in his own handwriting. This aspect has not been dealt with by the Tribunal. The further question which has been high-lighted by learned Counsel for the assessee is that the assessee had no occasion for making entry one day before. There was no compulsion for the assessee to make entry of receipt and payments on November 9, 1973, instead of November 12, 1973. The assessee had entered in the books of account the transaction which had actually taken place on the date of transaction of his own. It had come on record that the then branch manager had stated that he had exercised his discretionary power in making payment to the assessee on November 9, 1973, after the banking hours and the same was entered in the books of the bank as payment on November 12, 1973, as first entry. The same was corroborated by the then cashier. Though, in his examination before the Income Tax Officer, the then

branch manager diluted his earlier statement by saving that he might have accommodated the party, as such accommodation was permissible as per banking norms, such diluted version did not affect veracity of the original version of payment having been made on November 9, 1973 itself.

6. We are in agreement with the stand taken by learned Counsel for the assessee. We are of the view that the Tribunal has not adopted a correct approach in dealing with the matter, which vitiates the finding recorded.

7. For the above reasons, we answer the question in favour of the assessee and against the Revenue.

8. Reference is disposed of accordingly.