

Additional Commissioner of Income Tax Vs Precision Metal Works and others

Court: Delhi High Court

Date of Decision: May 28, 1984

Citation: (1985) 156 ITR 693 : (1984) 19 TAXMAN 584

Hon'ble Judges: D.P Wadhwa, J; D.K. Kapur, J

Bench: Division Bench

Judgement

D.K. Kapur, J.

M/s. Precision Metal Works has two partners, Shri R. L. Kapoor and Shri S. N. Sood, with a 75 per cent. share and 25

per cent. share, respectively. There are three references before us (ITR Nos. 29 to 31 of 1975) for the assessment year 1964-65, which related to

the firm as well as each of the partners. The questions are as follows :

A. IN THE CASE OF THE FIRM :

Whether, on the facts and in the circumstances of the case, the order of the Income Tax Officer could be said to be erroneous and prejudicial to

the interests of the Revenue inasmuch as the ITO failed to add the sum of Rs. 40,750 in the assessment of the firm accepting the surrender made

by the partners, particularly having regard to the provisions contained in section 68 of the I.T. Act ?

B. IN THE CASE OF EACH OF THE PARTNERS :

Whether, on the facts and in the circumstances of the case, the assessment order dated July 18, 1968, could be said to be erroneous and

prejudicial to the interests of the Revenue, because the ITO failed to initiate penalty proceeding under sections 273 and 271(1)(c) while completing

the assessment ?

2. The facts of the case were as follows : The Income Tax Officer computed the firm's income on July 18, 1968. According to him, the purchase

of raw material was not fully vouched because it was purchased in the black market; he accordingly made disallowances and additions to profits

and observed ""the two partners of the firm have surrendered in all a sum of Rs. 40,750 in their personal accounts. These additions are on account

of the trading in this firm only. Therefore, no addition is made in the case of the firm."" On the same day, the two partners were also assessed by the

same Income Tax Officer. In the case of Shri S. N. Sood, a sum of Rs. 25,000 was added as his personal income on account of cash credits in

the account of the firm and in the case of Shri R. L. Kapoor, an addition of Rs. 15,750 was made.

3. Thus, in effect, what the Income Tax Officer did was not to make an addition to the firm's income, but to make the same in the personal

account of each partner.

4. u/s 263 of the Act, the Additional Commissioner of Income Tax, Delhi-III, was of the view that the order of the Income Tax Officer was

prejudicial to the Revenue for three reasons-(1) the Income Tax Officer should have invoked section 145 when there were black market

transaction, (2) the total deposits in the names of partners amounted to Rs. 86,650, but no addition had been made though these deposits

represented trading by the firm, and (3) the Income Tax Officer had only considered deposits amounting to Rs. 40,750 and did not consider the

balance of Rs. 45,900. According to him, an Explanation should have been called for the balance and penalty proceeding initiated. And further, as

no estimate of advance tax had been filed, action should have been taken for imposing penalty u/s 273 and charging penal interest u/s 217. As a

result, the order was set aside and the Income Tax Officer was directed to make a fresh assessment, after giving due opportunity to the assessed.

Orders were passed in respect of all the three assesseds.

5. The firm as well as the two partners filed separate appeals which were disposed of together. The conclusion of the Tribunal on the points raised

before it were as follows. After analysing the accounts, it was held that though the order of the Income Tax Officer was cryptic, he had examined

the cash credits and had come to the conclusion that credits were explained on the extent of Rs. 45,900 and the balance had been added back to

the partners themselves. As this conclusion seems to be one of fact, we do not see how to answer the first question because it was open to the

Income Tax Officer to add this amount to the firm's income, i.e., Rs. 40,750. However, as the assessment of the partners was also before him and

they agreed to take the sum of Rs. 40,750 as part of their personal income, the Income Tax Officer added the sum of Rs. 25,000 to the income of

Shri S. N. Sood and Rs. 15,750 to the income of Shri R. L. Kapoor. The income could either be the income of the firm or it could be the income

of the individual partners. It could not be the income of both. Once having accepted the amount as the income of the partners themselves, it could

not be added to the income of the firm. We are, Therefore, of the view that the assessment on the firm could not be set aside and the answer to the

first question regarding the firm does not depend on section 68 of the Act.

6. Learned counsel for the Department urged that the amount should be added to the income of the firm, but this can only be done if it is not added

as income of the partners. The assessment of the partners has resulted in this sum being charged to tax and it does not appear to make much

difference whether the sum is taxed in the hands of the partners or in the hands of the firm. Moreover, there is one important aspect of this case.

Shri R. L. Kapoor had a share of 75 per cent. and Shri S. N. Sood had a share of 25 per cent. If the amount is taxed in the hands of the firm, then

the share of Shri S. N. Sood would not be 25 per cent. but would be only 25 per cent. of Rs. 40,750, which is about Rs. 10,000 and the share of

Shri R. L. Kapoor would be 75 per cent. which would be about Rs. 30,000 instead of Rs. 15,750. When the true picture was explained to the

Income Tax Officer, we think that he was right in adding the income to the persons to whom it belonged rather than to tax the wrong person on the

wrong amount. So, the answer to the first question has to be in the negative in the sense that the order is not erroneous and, Therefore, not

prejudicial to the interests of the Revenue. The addition of the sum of Rs. 40,750 to the (income of the) firm would have been erroneous.

7. Moreover, section 68 of the Act only applies when the Explanation is not accepted, but if the Explanation is accepted, then the section does not

apply.

8. Turning now to the case of penalty which is covered by the second question, the Tribunal held that the matter was outside the jurisdiction of the

Commissioner. On this part of the case, the decision of this court in *The Additional Commissioner of Income Tax, New Delhi Vs. Achal Kumar*

Jain, has been referred to us in which it was held that the Commissioner is not justified in setting aside the assessment order to direct initiation of

penalty proceedings. Following the same, we answer the second question in favor of the assessed and against the Department, but leave the parties

to bear their own costs in all the three references.