Keshrichand Jaisukhlal Vs Commissioner of Income Tax

Court: Gauhati High Court

Date of Decision: Sept. 26, 2000

Acts Referred: Income Tax Act, 1961 â€" Section 131, 145, 145(1), 256(2)

Citation: (2000) 3 GLT 309 : (2001) 248 ITR 47

Hon'ble Judges: Brijesh Kumar, C.J; D. Biswas, J

Bench: Division Bench

Advocate: R. Gogoi, R.K. Joshi and U. Chakraborty, for the Appellant; B. Bhuyan, for the Respondent

Judgement

D. Biswas, J.
By this judgment and order, both the references made u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as

(the ""Act""), are being disposed of.

2. The identical questions to be answered are as follows :

(i) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal partly sustaining the additions made by the Income Tax

Officer in the broom account and the rapeseed oil account is supported by any material and is perverse ?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in sustaining the order of the Income Tax Officer disallowing

part of interest on borrowings ?

3. We have heard Mr. R. Gogoi, learned senior counsel assisted by Mr. R.K. Joshi, advocate, for the applicant, and Mr. U. Bhuyan, learned

standing counsel for the Revenue.

4. In both the references, the Assessing Officer made addition of Rs. 72,669 and Rs. 30,862 in respect of broom account on the ground that the

books of account maintained by the assessee-firm do not reflect the actual transactions so as to enable him to compute the correct income. In

respect of the rapeseed oil account, the Assessing Officer made addition of Rs. 72,669 and Rs. 41,676 on the ground that the shortage claimed by

the assessee-firm is on the higher side. The learned Tribunal, on appeal by the assessee, eventually upheld the reasons for addition of the aforesaid

amount but restricted the same to Rs. 55,000 in respect of the broom account and Rs. 80,000 in respect of the rapeseed oil account for the

assessment year 1984-85. In respect of the account for the year 1985-86, the amount was restricted to Rs. 20,000 in respect of the broom

account while the addition of Rs. 41,676 in respect of the rapeseed oil account was sustained. It would appear that the Assessing Officer while

making the additions invoked the provisions of the proviso to Sub-section (1) of Section 145 of the Act and rejected the claim for deduction.

5. Question No. 2 is relatable to the claim of deduction of interest on unsecured loan. The assessee-firm claimed deduction of Rs. 3,41,600 on

unsecured loan of Rs. 26.30,919 for the year 1984-85. The Assessing Officer noted that the assessee-firm made investment of Rs. 2,59,325 in the

said year in the house property belonging to Keshrichand Jaisukhlal, Hindu undivided family. According to the Assessing Officer, the interest

related to the said investment of Rs. 2,59,325 should have been debited to Keshrichand Jaisukhlal The Assessing Officer added Rs. 38,898 as the

interest on the aforesaid amount at the rate of 15 per cent, to the total income of the assessee-firm. The addition of Rs. 38,898 by way of interest

was deleted by the Commissioner of Income Tax (Appeals). On further appeal, the learned Tribunal carne to the conclusion that the addition was

wrongly deleted by the Commissioner of Income Tax (Appeals) and reversed the order and restored the assessment made by the Assessing

Officer.

6. The additions have been made in view of various shortcomings and absence of details. Mr. Bhuyan, learned counsel for the Revenue, submitted

that there has been marked deviation in maintaining the books of account from the normal practice which compelled the Assessing Officer to reject

the claim for deduction on account of the broom account and the rapeseed oil account. According to learned counsel, in view of the irregularities

and inconsistencies, the Assessing Officer had to invoke the powers under the proviso to Sub-section (1) of Section 145 of the Act in order to

arrive at a just computation of the income for the assessment years. Therefore, the decision of the Assessing Officer cannot be faulted.

7. In a similar way, for the assessment year 1985-86, the assessee-firm claimed deduction of interest of Rs. 3,07,036 on unsecured loan of Rs.

24,26,876. The Assessing Officer found that the assessee-firm made investment of about Rs. 2,64,530 in the house property belonging to

Keshrichand Jaisukhlal, Hindu undivided family, without charging any interest. The Assessing Officer worked out Rs. 39,680 as interest on the

investments of Rs. 2,64,530 at the rate of 15 per cent, and added this amount to the total income of the assessee. On appeal, the Commissioner of

Income Tax (Appeals) deleted the addition of Rs. 39,680 on the ground that the assessee-firm had not charged the interest on the ground that the

assessee-firm took on rent the premises covering approximately 11,100 square feet on a nominal rent of Rs. 12,000.

8. The Commissioner of Income Tax (Appeals) accepted the contention of the assessee-firm that the interest-free advance was made to

Keshrichand Jaisukhlal in order to compensate the loss on account of nominal rent. But on appeal, the learned Tribunal noted that the unsecured

loan was borrowed on interest payable at the rate between 12 per cent, to 18 per cent. and the same was diverted and advanced to Keshrichand

Jaisukhlal. The learned Tribunal also rejected the contention of the assessee-firm that the partners would have utilised their capital in any manner

they would have liked. The Tribunal observed that as soon as any capital whether in cash or kind was brought by the partner in the partnership

firm, the partner ceases to be the owner of the money. On this finding, the learned Tribunal reversed the order of the Commissioner of Income Tax

(Appeals) and restored that of the Assessing Officer.

9. In so far as the broom account for the assessment year 1984-85 is concerned, it would appear that the Assessing Officer noticed that the

purchases are not supported by vouchers/memos and that the three truck owners examined by the assessee u/s 131 of the Act also failed to

produce any documentary evidence in support of the transaction with the assessee-firm. They also could not furnish any details with regard to the

price of the brooms sold by the assessee-firm. That apart, the Dagpatty Bahi maintained by the assessee-firm for the purchase of brooms reflected

the names of the parties in abbreviated form. The assessee-firm was not in a position to furnish the identity of the parties and information about

their present whereabouts. The purchase price and sale price of the brooms have been shown to be the same, while the assessee-firm charged

commission at the rate of Rs. 4 per quintal in addition to the purchase price of the brooms and other incidental charges. The opening stock of

79.10 quintals of brooms could not be corroborated with the sales reflected in the books of account. The assessee also failed to corroborate the

same. In their written reply dated March 19, 1983, the assessee-firm submitted that 57.50 quintals were sold on May 26, 1983, at the rate of Rs.

251 and 21.50 quintals at the rate of Rs. 250 whereas the value of the opening stock has been shown at the rate of Rs. 230 per quintal. The

Assessing Officer found that on the same day 60 quintals of brooms were purchased at the rate of Rs. 261 per quintal. The sale price of the

opening stock of 79.01 quintals at the rate of Rs. 251 and Rs. 250 per quintal could not be explained. Since the value of the opening stock has

been shown at the rate of Rs. 230 per quintal, the assessee should have charged the same amount for despatch of the opening stock to outside

parties with its usual commission of Rs. 4 per quintal and other incidental charges. The assessee also could not furnish any satisfactory explanation

as to why there has been wide variation in the value of the closing stock shown by the assesses with that of the purchase and sale price of the

brooms on the last day of the accounting year. The Assessing Officer also noticed that the assessee has charged more price than the purchase

price in addition to Rs. 4 per quintal. Instances of such transaction are reflected in the assessment order. This is a deviation from the normal

practice followed in the business of brooms. That apart, the assessee also failed to explain the sale of brooms at a lower price than the purchase

price. In view of all these inconsistencies and infirmities, the Assessing Officer came to the finding that income from the dealings in brooms cannot

be properly deduced from the books of account produced by the assessee-firm and on that ground the sales, and the gross profit have been

reconstituted as per the provisions of the proviso to Sub-section (1) of Section 145 of the Act of 1961.

10. Almost the same infirmities as had been noticed by the Assessing Officer in respect of the assessment year 1985-86 have been found in the

books of account produced. It is pertinent to mention here that the assessee made a purchase of 116 quintals of brooms at the rate of Rs. 221 on

March 28, 1985, and as there was no sale thereafter before the closing of the accounting year, the closing stock should have included 116 quintals

purchased at the rate of Rs. 221. But the books of account reflected only 112.50 quintals as against 116 quintals, thus 3.50 quintals of a particular

variety of broom in a day or two taking into consideration that the total shortage during the year has been shown at 1.50 quintals in the trading

account. That apart, 230 quintals of brooms purchased at the rate of Rs. 425 in the later part of the year which remained unsold were valued in the

closing stock at the rate of Rs. 421 per quintal. This deviation in the closing stock also could not be explained. No evidence could be produced in

support of the claim of the assessee that the stock has been valued on the basis of the market report. The Assessing Officer refused to accept the

explanation given by the assessee-firm with regard to shortfall in the gross profit rate in comparison to the gross profit rate of the previous year.

The assessee-firm claimed that in view of complaints from the customers for higher profit charged last year, the brooms were sold with a nominal

profit. This explanation has not been accepted by the Assessing Officer mainly on the ground that purchases were not supported by

vouchers/memos from the sellers of the products. For all these reasons, the Assessing Officer was of the opinion that the income from the dealings

in the brooms has not been disclosed correctly in the books of account and, therefore, he invoked the proviso to Sub-section (1) of Section 145 of

the Act of 1961 taking the gross profit at the rate of 4 per cent.

11. The invocation of the provisions incorporated in the proviso to Sub-section (1) of Section 145 of the Income Tax Act, 1961, has been upheld

by the Commissioner of Income Tax (Appeals). The Tribunal, after considering the nature and line of business, profit earnings, extent of business

and other surrounding circumstances also affirmed the same. However, the Tribunal restricted the addition to a lesser amount as indicated

hereinbefore.

12. Shri R. Gogoi, learned counsel for the assessee, submitted that the Assessing Officer has not given any reason in the assessment order while

taking the gross profit at the rate of 4 per cent. This action, according to Shri Gogoi, is arbitrary. That apart, on the facts and circumstances of the

case, Shri Gogoi also assailed the invocation of the proviso to Sub-section (1) of Section 145 of the Act of 1961.

13. We have given our thoughtful consideration to the above submission with regard to the broom stick account. The infirmities and the

inconsistencies evinced by the Assessing Officer and also affirmed by the Commissioner (Appeals) and the learned Tribunal suggest that there is

deviation from the normal practice generally followed in this line of business. The Assessing Officer, because of the infirmities and inconsistencies

was not in a position to deduce the correct income of the assessee-firm, and, as such, he had to take resort to the extraordinary powers vested in

him under the proviso to Sub-section (1) of Section 145. The nature of deviation in the books of account and the infirmities and inconsistencies

which remained unexplained appear to be the compulsion on the Assessing Officer to apply the proviso to Sub-section (1) of Section 145. We

are, therefore, of the opinion that under the given circumstances the Assessing Officer had no other alternative but to evolve a method of his own to

deduce the correct income. We find no error in the procedure adopted by the Assessing Officer.

14. The Assessing Officer computed the profit taking the gross profit at the rate of 4 per cent. Shri Gogoi, learned counsel for the assessee

objected to the figure being arbitrary and unjust. He also found fault with the rate of gross profit for want of reason. We have given our thoughtful

consideration to the submission of Shri Gogoi. It appears that the assessee has all along, maintained that they have been charging Rs. 4 as

commission over the purchase price per quintal. Therefore, the Assessing Officer was obviously not in error in accepting 4 per cent, as the gross

profit for the purpose of computation of the income. We do not find any error in the finding of the Tribunal sustaining the method applied by the

Assessing Officer in computing the income of the assessee-firm applying the gross profit at the rate of 4 per cent.

15. In so far as the rapeseed oil account is concerned, the inconsistencies and irregularities as has been evinced in respect of the brooms accounts

are also very much predominant there. For the assessment year 1984-85, the Assessing Officer noticed that huge shortage has been accounted for

due to leakage of tin containers both in transit and in storing. The Assessing Officer rejected the contention on the ground that the shortage shown

is abnormally high, i.e., 4.2 per cent. According to the Assessing Officer, there cannot be any substantial loss of oil when stored in the godown

since the oil leaking out could be very well refilled for marketing. The opening stock of rapeseed oil was 860 tin containers and the total purchase

of rapeseed oil during the year was 12,666 tin containers. The total shortage has been shown at 573 tin containers but the assessee-firm could not

explain the manner in which 573 empty tin containers have been disposed of during the year. That apart, the Assessing Officer found that there was

shortage of 231 tin containers of rapeseed oil out of 3,520 tin containers within a period of ten days. This huge shortage, according to him, is an

absurd proposition. Moreover, no shortage was reflected in the accounts at the time of receipt of the goods. This omission, according to the

Assessing Officer, suggests that the shortage reported obviously took place in the godown during the storage. The Assessing Officer on

consideration of the circumstances was of the opinion that such a huge quantity of rape-seed oil cannot ooze in the godown within such a short

period. Therefore, the Assessing Officer allowed shortage at the rate of 2 per cent, and added the value of 302 tins of rapeseed oil to the income

of the assessee.

16. With regard to the assessment year 1985-86, the assessee claimed shortage of 1,777 tins during transit and storing. The contentions of the

assessee were the same as taken for the previous year referred to above. For the same reasons, the Assessing Officer held that such a huge

shortage of 6.8 per cent, cannot occur in the godown during storage. No shortage was noticed when the assessee lifted the quota from the STC

godown at Guwahati and there is no record of shortage on arrival of the rapeseed oil at the godown of the assessee. Therefore, the Assessing

Officer was of the opinion that the shortage shown by the assessee is not the actual shortage as claimed. In the facts and circumstances, the

Assessing Officer allowed shortage at the rate of 2 per cent, of the total number of tins of rapeseed oil which works out to 894 tins. Thus, the

shortage was brought down from 1,542 tins to 894 tins and the value of the remaining 648 tins at the rate of Rs. 153 being Rs. 99,144 was added.

17. The above conclusion on the facts and circumstances in respect of rape-seed oil was not disturbed by the learned Tribunal. After a careful

consideration of the matter in its depth and for the reasons reproduced above, we are of the opinion that the Assessing Officer did not commit any

error in adding the value of 648 tins to the total income of the assessee-firm.

18. The discussions above do not warrant interference so far the decision with regard to the broom account and the rapeseed oil is concerned.

Hence, our answer to question No. 1 is against the assessee.

19. The next point for consideration is whether the decision of the Assessing Officer in respect of addition of interest of Rs. 72,669 for the

assessment year 1985-86 and Rs. 39,680 for the preceding year for unsecured loan is sustainable in law. For the year 1984-85, the Assessing

Officer noticed that the assessee-firm made investment of Rs. 2.64,530 in the house property belonging to Keshrichand Jaisukhlal, Hindu

undivided family, without charging any interest an amount of Rs. 39,680 was worked out at the rate of 15 per cent, and added back to the total

income. Similarly, for the year 1985-86 a sum of Rs. 2,59,325 was invested in the house property belonging to the said Hindu undivided family.

The Assessing Officer worked out Rs. 38,898 as interest payable at the rate of 15 per cent. on the said investment and added back the said

amount to the total income of the assessee. Eventually the Tribunal rejecting the contention of the assessee-firm affirmed the addition made by the

Assessing Officer. The Tribunal while reversing the order passed by the Commissioner of Income Tax (Appeals) observed that as soon as the

amount of capital is brought by the partner in the partnership firm, the partner ceased to be the owner of the said amount and for the purpose of

Income Tax, the firm being a separate entity and having utilised the amount in its working capital or fixed capital, the said amount could not be held

as the exclusive property of the partner. On this ground, the Tribunal restored the addition made by the Assessing Officer.

20. The contention of the assessee-firm was that they have been in use of the premises of the Hindu undivided family at a nominal rent and, as a

consideration thereof, interest-free loan was extended. This contention did not find favour with the Assessing Officer as well as the Tribunal on the

ground that the assessee-firm claimed exemption of interest paid on unsecured loan of Rs. 24,26,876 for the assessment year 1984-85 and on

unsecured loan of Rs. 26,30,919 for the following year.

21. An identical question was dealt with by a Division Bench of this court in Income Tax Reference No. 1 of 1996--B and B and A Plantations

and Industries Ltd. (formerly Barasali Tea Co. Pvt. Ltd.) Vs. Commissioner of Income Tax, . In the said case, notional interest was added to the

income on the interest-free advance of Rs. 19,58,256 to Jorhat Investments Ltd., a sister concern of the applicant-firm. The assessee''s case was

that they had not charged interest on that advance in consideration of the fact that they got the premises of the sister firm at a very low rent. A

Division Bench of this court following the decision rendered by this court in Highways Construction Co. Pvt. Ltd. Vs. Commissioner of Income

Tax, , answered the question in favour of the assessee and against the Revenue. The relevant observation of this court in Highways Construction

Co. Pvt. Ltd. Vs. Commissioner of Income Tax, , is reproduced below for better appreciation (page 708) :

There is no finding of fad to the effect that actually the loan had been granted to the managing director or any other person on interest, or that

interest had actually been collected and the collection of the interest was not reflected in the accounts. The finding of the Income Tax Officer is that

the assessee ought to have collected interest. In other words, the view of the Income Tax Officer, which has been accepted by the Tribunal, was

that the assessee, as a good business concern, should not have granted interest-free loan, or should have insisted on payment of interest. If the

assessee had not bargained for interest, or had not collected interest, we fail to see how the Income Tax authorities can fix a notional interest as

due, or collected by the assessee. Our attention has not been invited to any provision of the Income Tax Act empowering the Income Tax

authorities to include in the income interest which was not due or not collected. In this view, we answer question No. (ii) in the negative, that is, in

favour of the assessee and against the Revenue.

22. We do not find any reason to deviate from the decisions rendered by this court in the cases referred to above. Our answer will be obviously in

favour of the assessee and against the Revenue.

23. The references are disposed of. Question No. (i) is answered against the assessee and in favour of the Revenue and question No. (ii) is

answered in favour of the assessee and against the Revenue.