P.K. Sethi Vs Commissioner of Income Tax

Court: Gauhati High Court

Date of Decision: July 26, 2006

Acts Referred: Evidence Act, 1872 â€" Section 106
Income Tax Act, 1961 â€" Section 260A, 68

Citation: (2006) 206 CTR 445 : (2006) 286 ITR 318

Hon'ble Judges: P.G. Agarwal, J; A. Hazarika, J

Bench: Division Bench

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

Final Decision: Allowed

Judgement

P.G. Agarwal J.

1. Heard Mr. D.K. Mishra, learned senior advocate appearing for the appellant, and Mr. U. Bhuyan, learned Counsel for the Income Tax

Department.

2. This is an appeal u/s 260A of the Income Tax Act, 1961, directed against the order dated March 15, 2002, passed by the Income Tax

Appellate Tribunal, Guwahati, in I. T. A. No. 476(Gau) of 1993.

3. For the assessment year 1989-90, the assessee Mohanlal Sethi of Paona Bazar, Imphal (since deceased and at present represented by a legal

heir Pramod Kumar Sethi), filed a return before the Income Tax Officer showing the total income of Rs. 69,408. The assessee had also shown

investment in land and building amounting to Rs. 12,18,750. The assessee disclosed certain amounts as loan from family members and relations

and the assessing authority holding, inter alia, that out of the said loan a sum of Rs. 8,35,000 on account of loan is not genuine and accordingly it

was added as income of the assessee.

4. The said assessment order was challenged before the Commissioner of Income Tax in Appeal No. Imp-14/91-92 and the appellate authority

allowed the appeal and directed deletion of the said amount.

5. Feeling aggrieved, the Revenue preferred an appeal before the Appellate Tribunal and the Tribunal vide impugned judgment set aside the order

of the appellate authority and restored the order of the assessing authority and hence the present appeal.

6. So far as the fact that the assessee had shown receipt of Rs. 5,20,000 from as many as seven relatives and a sum of Rs. 3,15,000 from other

creditors of total worth Rs. 8,35,000 is concerned there is no dispute at the Bar. We also find that the assessing authority held an enquiry in

respect of the above transactions to find out :

(1) the identity of the creditors.

(2) the creditworthiness of the creditors.

(3) the genuineness of the transactions.

7. So far as the identity of the creditors is concerned, from the materials produced by the assessee it is found that all the thirteen creditors are

Income Tax assessees before the said Income Tax Officer at Imphal and the file numbers were reflected in the order. Some of the assessees were

produced in person that the fact that the amounts were shown to be withdrawn from the account available to them and shown in their Income Tax

file. Moreover, all the amounts were paid by the creditors by account payee cheque. We, however, considering the fact that all the five accounts

were opened in between July 18 and July 26, 1988, and in a particular branch of the bank and as such the genuineness of the transactions was

doubted.

8. Vide order dated March 28, 2003, the appeal was admitted for hearing on the following questions of law :

1. Whether, on the facts and in the circumstances of the case, the order passed by the Tribunal is vitiated in law for not recording its own

independent findings on the different issue on facts on due consideration of the evidence and materials on record in reversing the decision of the

Commissioner of Income Tax (Appeals) without passing a speaking and reasoned order ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal had any material to justify its finding and conclusion when the

Commissioner of Income Tax (Appeals) had given a finding that the assessee had discharged the onus to prove the identity, genuineness and

capacity of the creditors as required u/s 68 of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the addition of loan creditors worth Rs.

8,35,000 by ignoring the fact that the Assessing Officer himself was the Assessing Officer of such creditors and had accepted the returns of income

filed by them showing the loans advanced by them to the assessee ?

9. Mr. Bhuyan, learned Counsel has submitted that no substantial question as such is involved in the present appeal and the Tribunal being the final

court as regards the facts, which had disposed of the appeal on the basis of the facts only. In support of the above submission learned Counsel has

placed reliance on the decision of the apex court in the case of Commissioner of Income Tax, U.P. Vs. Bharat Engineering and Construction Co.,

It is a case of income from undisclosed sources and in the facts of in the above case, the apex court observed (page 189):

Hence, it is reasonable to assume that those cash credit entries are capital receipts though for one reason or other the assessee had not come out

with the true story as regards the person from whom it got those amounts. It is true that in the absence of satisfactory explanation from the assessee

the Income Tax Officer may assume that cash credit entries in its books represent income from undisclosed sources. But what inference should be

drawn from the facts proved is a question of fact and the Tribunal''s finding on that question is final.

10. Mr. Bhuyan has also drawn our attention to a decision of the Punjab and Haryana High Court in the case of Raunaq Ram Nand Lal Vs.

Commissioner of Income Tax and Another, In Raunaq Ram Nand Lal Vs. Commissioner of Income Tax and Another, the High Court felt that

there is a finding of the Tribunal as regards the creditworthiness of the creditors and the finding is based on appreciation of evidence and as such no

question of law much less a substantial question of law arises.

11. At this stage, we may have a look at Section 68 of the Income Tax Act which reads as follows :

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about

the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may

be charged to Income Tax as the income of the assessee of that previous year.

12. On hearing learned Counsel for both sides, we find that there is no dispute at the Bar that it is a case of cash credit. Out of the three

requirements the first two questions, namely, the identity of the assessee and credit-worthiness of the creditors have been established and even the

Tribunal had no doubt about the same. The entire question revolved around the question of genuineness of the transactions and so far as the

assessee is concerned, he has proved that the entire amount involved was received by way of account payee cheques.

13. Mr. Bhuyan has submitted that there is no rule that payments made by cheque is to be treated as sacrosanct. We find that the above

submission was made in the case of Nemi Chand Kothari Vs. Commissioner of Income Tax and Another, and this Court held (page 266) :

Mr. Bhuyan''s contention that a payment made by cheque cannot be treated as sacrosanct and his reliance on the law laid down in Commissioner

of Income Tax Vs. Precision Finance Pvt. Ltd., are wholly misplaced inasmuch as even we do not hold that a transaction, which takes place by

way of cheque, is invariably sacrosanct. What we hold is that so far as the present assessee-appellant is concerned, his burden stood discharged,

when he had proved the identity of his creditors, the genuineness of the transactions, which he had with his creditors, and the creditworthiness of

his creditors vis-a-vis the transactions, which he had with the creditors. The burden had, then, shifted to the Revenue to show that though covered

by cheques, the amounts, in question, actually belonged to, or were owned by, the assessee himself, but no material, direct or indirect, exists on

record to come to such a conclusion confidently and boldly.

14. The case of Nemi Chand Kothari Vs. Commissioner of Income Tax and Another, was also in respect of cash credit and this Court relying on

the earlier decision in Tolaram Daga Vs. Commissioner of Income Tax, Assam, held that when the assessee had discharged his burden u/s 106 of

the Evidence Act, the burden shifts to the Assessing Officer to prove the contrary, on the basis of the material evidence on record to show that the

whole amount actually belongs to the assessee. In the absence of any substantive material no inference, adverse to the assessee, can be drawn.

15. In the present case, we find that so far as the identity of the creditors is concerned there is no dispute at the Bar that all these creditors were

Income Tax assessees before the same assessing authority.

16. According to Mr. Misra, learned senior counsel for the creditors filed their return wherein they had shown the loan to the assessee and thus on

the basis of the same facts, the Revenue had taken two different views. The transaction is held to be genuine on the part of the creditors but in the

case of the present assessee, it was held to be not a genuine transaction. Moreover, we find that there were as many as twelve creditors and the

allegation as regards opening of the bank account within a particular period is in respect of five creditors only.

17. In view of the above, there can be no room for doubt and no contrary inference could have been drawn that these are fake transactions.

Admittedly, there is no other evidence or material in support of the finding recorded by the Tribunal and the law is well-settled that where the

appreciation of evidence is not per se bad, and perverse, no substantial question of law arises.

18. If any authority is needed, the observations of the apex court in Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., may be perused.

19. Hence, on consideration of the facts of the present case, we hold that there was no evidence or materials before the Tribunal to come to the

finding that the above cash credits were not genuine transactions and as such the impugned order providing for adding of the said amount as

income of the assessee is bad in law.

20. We allow this appeal and set aside the order passed by the Appellate Tribunal.