(2010) 01 KAR CK 0076

Karnataka High Court

Case No: IT Appeal No. 138 of 2001

Commissioner of Income Tax		APPELLANT
	Vs	
United Breweries Ltd. and Another		RESPONDENT

Date of Decision: Jan. 4, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 139, 143 (1) (a), 156, 260 A

Citation: (2010) 231 CTR 22 : (2012) 344 ITR 488

Hon'ble Judges: N. Ananda, J; D.V. Shylendra Kumar, J

Bench: Division Bench

Advocate: R.B. Krishna, for Murthy and Kumar, for the Appellant; S. Parthasarathi, for the Respondent

Final Decision: Allowed

Judgement

D.V. Shylendra Kumar, J.
This appeal is by the Revenue u/s 260A of the IT Act against the order of the Tribunal, Bangalore Bench "B" in ITA No. 273/Bang/1999 (asst. yr. 1997-98) in terms of Annex. "D". This appeal had been admitted to examine the following substantial questions of law:

(A) Whether the Tribunal was right in deleting the prima facie adjustment made by the AO pertaining to the interest of Rs. 74.75 lakhs accrued on inter-corporate loans without realising that the AO had full powers to make an adjustment with reference to deductions claimed by the assessee which is at variance in the P&L a/c and balance sheet filed along with the return?

(B) Whether the AO is entitled to make a prima facie adjustment with regard to an item of income taken credit for in the P&L a/c by the assessee but excluded from the computation of income with a comment or note?

2. Brief facts leading to the appeal are that: The assessee is a public limited company listed on the Bangalore Stock Exchange amongst others. For the asst. yr. 1997-98, in the return filed by the assessee, a sum of Rs. 74.75 lakhs, which had been shown as interest on a sum of Rs. 3.25 crores lent to another company managed by Bangur Group on accrual basis had been reduced in the income computation exercise for the reason that the borrower was not in a sound state of health and the assessee company has shown that the borrower leave alone paying interest but was not even in a position to repay the principal amount and it was likely that the assessee company may lose the entire amount etc.

3. With the assessee following the mercantile system of accounting and the assessing authority noticing that the assessee company under an agreement, had lent a sum of Rs. 3.25 crores to another company with a condition that the amount should be repaid with simple interest at 21 per cent per annum and as the P&L a/c of the assessee had already been prepared wherein the assessee in fact had shown this amount as an income accrued to the company during the accounting year relevant for the assessment year, the AO acting u/s 143(1)(a) of the Act sent an intimation to the assessee informing the assessee that the claim for reducing this interest income from the total income of the assessee is not permissible.

4. It is on such intimation, the controversy has developed further leading to one appeal by the assessee which came to be dismissed and a second appeal to the Tribunal which has met with success and the Tribunal very strangely accepting the real income theory put forth by the assessee in the following terms:

We have examined the facts of the case and considered the arguments. We have also perused the order of the CIT(A). The preliminary issue herein is regarding the applicability of Section 143(1)(a) with regard to inclusion of income in the hands of the assessee. We have already held in other appeals that the AO cannot traverse beyond the powers accorded u/s 143(1)(a). Sri Parthasarathi cited the judgments of the Karnataka High Court and the jurisdictional High Court in that judgment in the case of God Granites and Ors. has held that matter is in favour of the assessee. Apart from this several judgments cited by the learned advocate strengthen the case of the assessee. Applying the same principles herein also the addition made by the AO and confirmed by the CIT(A) has to be deleted from the total income and the additional tax levied also needs to be deleted.

5. The Tribunal has reversed the order of the first appellate authority and the view taken by the assessing authority, therefore the Revenue is in appeal before us on the questions of law as indicated above.

6. We have heard Dr. Krishna, learned special Government advocate appearing for the Revenue and Sri Parthasarathi, learned Counsel appearing for the assessee.

7. Dr. Krishna, learned Counsel would point out that the order of the Tribunal suffers from the basic defect of not even indicating the reasons to record a finding "applying the same principles herein also the addition made by the AO and confirmed by the CIT(A) has to be deleted from the total income and the additional tax levied also needs to be deleted."

8. The statutory provisions of Section 143(1)(a) at the relevant point of time read as under:

143(1)(a). Where a return has been made u/s 139 or in response to a notice under Sub-section (1) of Section 142,-

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of Sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued u/s 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee:

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the return, namely:

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(ii) any loss carried forward, deduction, allowance or relief which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed;

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible shall be disallowed.

9. Dr. Krishna, learned Counsel has taken us through the order passed by the first appellate authority affirming amount of Rs. 74.75 lakhs as part of income of the assessee for the accounting period relevant for the assessment year, to draw our attention to the balance sheet presented by the assessee to the shareholders in the annual general body meeting of relevant year, wherein the accounts have been approved and in fact, this amount is shown as an income on the basis of accrual of interest from the company due from the borrower.

10. The learned Counsel has also pointed out that the assessee was aware of the so-called bouncing of the cheque for whatever amount, intimated by the Punjab and

Sindh Bank (assessee"s bank) even as on 2nd Nov., 1996. This development has not been taken into account while presenting the accounts before the shareholders at the annual general body meeting wherein the assessee itself had treated this as an income accrued to the company. Therefore, there ks no question of assessee coming up with the theory of real income/not real income.

11. On the other hand, Sri Parthasarathi, learned Counsel appearing on behalf of the assessee, vehemently urged that the Tribunal having noticed that the borrower being virtually a defunct company which was neither capable of paying principal amount nor interest had taken a pragmatic and practical view of the matter in accepting the theory of no real income and thus allowed the appeal directing the assessing authority to accept the version of the assessee that a sum of Rs. 74.75 lakhs cannot be treated as part of the total income for the assessment year. Therefore, question of adding this amount to the total income of the assessee and levying tax on that does riot arise.

12. The incidental question is the attraction of the provisions of Section 143(1)(A) of the Act, which reads as under :

143(1)(A). (a) Where as a result of the adjustments made under the first proviso to Clause (a) of Sub-section (1),-

(i) the income declared by any person in the return is increased; or

(ii) the loss declared by such person in the return is reduced or is converted into income, the AO shall,-

(A) in a case where the increase in income under Sub-clause (i) of this clause has increased the total income of such person, further increase the amount of tax payable under Sub-section (1) by an additional Income Tax calculated at the rate of twenty per cent on the difference between the tax on the total income so increased and the tax that would have been chargeable had such total income been reduced by the amount of adjustments and specify the additional Income Tax in the intimation to be sent under Sub-clause (i) of Clause (a) of Sub-section (1);

(B) in a case where the loss so declared is reduced under Sub-clause (ii) of this clause or the aforesaid adjustments have the effect of converting that loss into income, calculate a sum (hereinafter referred to as additional income tax) equal to twenty per cent of the tax that would have been chargeable on the amount of the adjustments as if it had been the total income of such person and specify the additional Income Tax so calculated in the intimation to be sent under Sub-clause (i) of Clause (a) of Sub-section (1);

(C) where any refund due under Sub-section (1), reduce the amount of such refund by an amount equivalent to the additional Income Tax calculated under Sub-clause (A) or Sub-clause (B), as the case may be.

(b) Where as a result of an order under Sub-section (3) of this section or Section 154 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount on which additional Income Tax is payable under Clause (a) has been increased or reduced, as the case may be, the additional Income Tax shall be increased or reduced accordingly, and,-

(i) in a case where the additional Income Tax is increased, the AO shall serve on the assessee a notice of demand u/s 156;

(ii) in a case where the additional Income Tax is reduced, the excess amount paid, if any, shall be refunded.

Sections 143(1)(a) of the Act speaks out the consequences of an intimation and the consequence is that the assessee is called upon to pay 20 per cent, additional tax on the actual tax found due in terms of the intimation.

13. We have perused the orders of the Tribunal and the first appellate authority and the assessing authority. We have heard and considered the submissions made at the Bar.

14. On hearing the learned Counsel for the Revenue and the assessee, it is clear to us that the controversy is brought to this Court only for the reason that the intimation u/s 143(1)(a) can lead to an additional tax at the rate of 20 per cent of the actual tax found due in terms of Section 143(1)(a) of the Act as per the statutory provisions stood at the relevant point of time.

15. While learned Counsel for the Revenue and the learned Counsel for the assessee are in agreement that even in respect of the interest amount i.e., Rs. 74.75 lakhs, appeal is still pending before this Court. In so far as this appeal is concerned, the real consequence is only relating to 20 per cent additional tax liability in terms of Section 143(1)(a) of the Act.

16. The assessee is following the mercantile system of accounting and it is also a fact that the assessee in terms of an agreement had lent a sum of Rs. 3.25 crores to another company with a stipulation that the borrower should repay the amount with simple interest at 21 per cent per annum. When these two informations are available even in terms of the return filed by the assessee, as the assessee is following the mercantile system of accounting, it automatically follows that the assessee has an income of Rs. 74.75 lakhs which accrues the moment the year is over from the date of lending, whether or not the amount is realised in reality.

17. We find that the observation of the first appellate authority to the effect that the assessee could have claimed the amount as a bad debt in respect of the principal amount which in turn, could have avoided further accrual of interest etc., is appropriate in this regard. If the assessee had not chosen to write off the amount lent to the other company and as long it is shown as outstanding amount and with an agreement to receive interest

at 21 per cent per annum as the outstanding amount, accrual of interest on adopting the mercantile system of accounting is inevitable. Accrual of income should definitely be brought to tax in terms of Section 5 of the Act.

18. When such is the legal position, there was no choice for the assessing authority but to add back this amount as part of the income, though the assessee might have claimed this as not a real income or on any other basis.

19. In the context of the admitted fact situation and legal position, we find the findings recorded by the Tribunal are rather perplexing. The order of the Tribunal suffers from the basic defect of not spelling out the reasons for reversing the well considered reasons of the assessing authority and the first appellate authority more particularly when the legal position is that the interest should be brought to tax as income on accrual basis. The assessing authority was bound to reject the claim of the assessee that a sum of Rs. 74.75 lakhs did not constitute income for the reason that it was not real income etc.

20. We are unable to accept the submissions made by Sri Parthasarathi, learned Counsel for the assessee as accrual of income in terms of Section 5 cannot be made dependant on the ability or inability of a borrower to either repay the principal or the interest. Assuming that it was so, there are other possibilities as provided for and recognized under the IT Act and as noticed by the first appellate authority, by way of claiming the lent amount as an irrecoverable debt and not by any other method. It is not open to the IT authorities, who are statutory functionaries under the Act to accept any theory propounded by the assessee which is not supported by statutory provision. The statutory provision is very clear and mandates the IT authorities to act in particular way.

21. We find the Tribunal has committed a grave error in law in simply allowing the appeal of the assessee and reversing the findings of the assessing authority and the first appellate authority on the aspect of the interest amount being taken as income on accrual basis.

22. Accordingly, we allow this appeal. The substantial questions framed are answered in favour of the Revenue and against the assessee and the order of the Tribunal is set aside. The order passed by the assessing authority and confirmed by the first appellate authority is restored. Parties to bear their respective costs.