Commissioner of Income Tax Vs Muthoot M. George Bankers

Court: High Court Of Kerala

Date of Decision: April 4, 2008

Acts Referred: Income Tax Act, 1961 â€" Section 143(3), 40, 40A(3)
Income Tax Rules, 1962 â€" Rule 6DD

Citation: (2008) 220 CTR 517

Hon'ble Judges: T.R. Ramachandran Nair, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: P.K.R. Menon and George K. George, for the Appellant; P. Balachandran and Preetha S. Nair, for the Respondent

Final Decision: Allowed

Judgement

T.R. Ramachandran Nair, J.
Revenue is the appellant. The challenge is against the order passed by the Tribunal in ITA No. 593/1996.

2. The assessment year is 1989-90. The assessee is a firm engaged in the business of money-lending. The assessment was completed u/s 143(3)

of the IT Act fixing a total income of Rs. 7,45,410. While computing the total income, the AO disallowed a sum of Rs. 5,15,000 u/s 40A(3) of the

Act which represents interest paid in cash in favour of the minor daughter of a partner. In appeal, the CFT(A) took the view in favour of the

assessee and accordingly allowed the appeal. The Tribunal after agreeing with the view taken by the CIT(A), dismissed the appeal filed by the

Revenue.

3. We heard Shri P.K.R. Menon, learned senior Counsel for the Revenue and Shri P Balachandran, learned senior Counsel appearing for the

assessee. Learned standing Counsel for the Revenue contended that it is actually a case where the relationship of the parties and the manner in

which, the father of the minor was doing the activities, will justify the view taken by the AO. A reading of the assessment order shows that during

the year the assessee had paid an interest of Rs. 19,48,990 on the deposits accepted by it. Out of this, an amount of Rs. 5,15,000 has been paid

to one Ms. Susan M. Jacob, who is the minor daughter of Mr. George Jacob, one of the partners of the firm. This amount of Rs. 5,15,000 is paid

for a deposit of Rs. 10 lakhs for 4 months. The explanation offered is that the interest paid includes interest payable for the earlier year also and it

was pointed out that the minor had deposited Rs. 23,50,000 in December, 1986 for nearly 8 months. In fact, during the relevant year she had

deposited an amount of Rs. 10 lakhs in November and Rs. 2 lakhs in March for which interest as noted above, was paid. The sworn statement

given by the father was also referred to by the AO. In fact, he explained that the transactions are with the connected firms only and whenever a

firm requires money they approach the minor and she in turn accepts money from other firms which are having excess funds and advance it. It is

also revealed from the sworn statement that the interest of Rs. 5,15,000 was received in cash. On the admitted facts, the AO was of the view that

the above interest said to be received by the minor from the firm is interest received by the father for the transactions undertaken by him. It is

accordingly held that this payment is hit by the provisions of Section 40(b) of the Act.

4. Apart from the above, the transactions show that there were no exigencies which warranted payment by cash. The amount has been utilised for

payment of interest to other partners also. It is revealed from the assessment order that the party is having a bank account and the firms with which

she is dealing are also having bank accounts. Therefore, it is clear that none of the conditions stipulated in Rule 6DD is present here. Therefore, the

AO was of the view that the expenditure has to be disallowed u/s 40A(3) of the Act.

5. Relying upon the above view taken by the AO, learned standing Counsel for the Revenue contended that the view taken by the AO is perfectly

in order and the CIT(A) and the Tribunal have not correctly appreciated the relevant evidence and facts in the light of the provisions of the Act. It

is submitted that the relevant evidence has been overlooked by the appellate authority and the Tribunal and therefore, the view taken is so perverse

and requires interference.

6. As held by the Supreme Court in McDowell and Co. Ltd. Vs. Commercial Tax Officer, colourable devices cannot be accepted as it will invite

evading of payment of tax. The principle as laid down therein will apply to the facts of this case. The transactions have been performed with a

minor who is the daughter of one of the partners. The rate of interest that was being granted by the assessee at the maximum was only 18 per cent.

But herein for the four months period for Rs. 10 lakhs, the assessee has paid interest to the tune of Rs. 5,15,000. All these will show that the

transactions are of colourable nature and the view taken by the AO is perfectly justified.

7. Section 40A(3) as it stood at the relevant time is in the following terms:

Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March,

1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding ten thousand rupees

otherwise, than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction.

8. Herein, going by the above provision, any amount exceeding Rs. 10,000 shall not be allowed as deduction. In the light of the above, the view

taken by the AO by disallowing the payment by way of interest, u/s 40A(3) of the Act is perfectly correct. It is clear from the facts and evidence

discussed by the AO that the interest received by the minor from the firm represents the amount actually received by her father from the firm. In

that view of the matter, the payment of interest is hit by the provisions of Section 40(b) of the Act, as rightly found by the AO. Section 40(b) as it

stood at the relevant time is extracted below:

(b) In the case of any firm, any payment of interest, salary, bonus, commission or remuneration made by the firm to any partner of the firm.

Explanation 1: Where interest is paid by a firm to any partner of the firm who has also paid interest to the firm, the amount of interest to be

disallowed under this Clause shall be limited to the amount by which the payment of interest by the firm to the partner exceeds the payment of

interest by the partner to the firm.

Explanation 2: Where an individual is a partner in a firm on behalf or for the benefit, of any other person (such partner and the other person being

hereinafter referred to as "partner in a representative capacity" and "person so represented" respectively,-

(i) interest paid by the firm to such individual or by such individual to the firm otherwise than as partner in a representative capacity, shall not be

taken into account for the purposes of this clause;

(ii) interest paid by the firm to such individual or by such individual to the firm, as partner in a representative capacity and interest paid by the firm

to the person so represented or by the person so represented to the firm, shall be taken into account for the purposes of this clause.

Explanation 3: Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such

individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf or for the benefit of any other

person.

9. In the appeal, the appellate authority took the view that the firm had made cash transactions under exceptional circumstances. It was on this

premise that the CIT(A) took the view that the provisions of Section 40(A)(3) are not applicable. We are of the view that the said view taken by

the CIT(A) which stands confirmed by the Tribunal is totally perverse in the light of the facts and evidence discussed by the AO.

10. In view of the above, we allow the appeal filed by the Revenue setting aside the orders passed by the CIT(A) and the Tribunal and restoring

the order passed by the AO.