

(2016) 05 CAL CK 0003

CALCUTTA HIGH COURT

Case No: G.A. No. 1116 of 2016 and ITAT No. 142 of 2016

Principal Commissioner
of Income Tax

APPELLANT

Vs

M/s. Dutta Automobiles
Pvt. Ltd.

RESPONDENT

Date of Decision: May 17, 2016

Acts Referred:

- Income Tax Act, 1961 - Section 68

Citation: (2016) 287 CurTR 684

Hon'ble Judges: Girish Chandra Gupta and Asha Arora, JJ.

Bench: Division Bench

Advocate: Mrs. Smita Das De, Advocate, for the Appellant; Mr. J. P. Khaitan, Sr. Advocate, Mr. S. Bhowmick and Mr. C. S. Das, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

1. The appeal is directed against a judgment and order dated 5th October, 2015 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA no.407/Kol/2015 Dutta Auto Mobiles (P) Ltd. v. Asstt. CIT, (2016) 180 TTJ (Kol) 128 : (2016) 138 DTR (Kol)(Trib) 361 pertaining to the assessment year 2010-11.

2. Aggrieved by the order of the learned Tribunal, the revenue has come up in appeal. The question of law suggested by Ms. Das De, learned advocate for the appellant/revenue, is as follows:

"Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in not deciding the merits of the case and the applicability of Section 68 of the Income Tax Act and arrived at a finding which is contrary to the evidence on record thus giving rise to perversity."

3. It appears that nearly a sum of Rs. 4 crores was found credited to the books of accounts of the assessee allegedly on account of advance received from the buyers of motor cycles. The Assessing Officer was of the opinion that a bogus liability was created and he, therefore, added the amount to the income of the assessee.

4. The CIT(A) concurred with the Assessing Officer and added another ground that payments were all received in cash. He was of the opinion that the assessee had failed to discharge the burden that the aforesaid credit entry was a genuine entry.

5. In an appeal preferred by the assessee, the learned Tribunal deleted the addition. The views expressed by the learned Tribunal are as follows:

"We find that the assessee is following mercantile system of accounting, wherein it is receiving advance deposits from customers on account of sale of motor cycle being a dealer in automobile. Whenever the sale is taken place, within one to two months, these deposits are adjusted against sale price of the motor cycle. This fact is admitted by both the sides. The issue is whether the assessee is consistently following certain system of accounting which had been accepted by the department from the very beginning and even in future years. There is no change of system of accounting followed by the assessee. Allowing the department to adopt a different approach altogether in this assessment year in question would create an anomalous situation as far as the assessee is concerned. The issue that the dealer receiving advance money from customers where the item is in demand and there is scarcity of supply, it many a times happen that seller receives advance money from the purchaser and as and when supply is made the advance is adjusted against sale price. This is being done by the present assessee before us also. The advance money, in the present case before us, is adjusted the sale price of the motor cycle and sale is disclosed in the return of income i.e. the trading account of the assessee. Accordingly, we find no ambiguity in the system followed by the assessee.

From the details filed before us, Ld. DR could not point out the discrepancy in the same because these advances were adjusted against sales. When this was pointed out to Ld. Sr. DR, he stated that the assessee is unable to produce the PANs, names and addresses of the parties. He was specifically shown a tax/retail invoice wherein complete details were given except the PAN/Voter I. Card. In our view, PAN/Voter Identity Card is a KYC norm, which does not apply to the sale of goods under the Sale of Goods Act. In view of the above, we are of the view that the AO and CIT(A) both have erred in making and confirming this addition and accordingly, we delete the same. The sole issue of assessee's appeal is allowed."

It is against this order that the appeal has been preferred.

6. Mr. Khaitan, learned senior advocate appearing for the respondent, on 6th May, 2016 when the matter was taken up for hearing submitted that he would like to produce the

paper book used before the learned Tribunal in order to show that all particulars were duly produced before the learned Tribunal as also before the Assessing Officer and the CIT(A). The Assessing Officer and the CIT(A) chose to draw an inference unfavourable to the assessee because they insisted upon records which are not legally required. It was not required by law that before taking advance from the customers of motor cycles, the assessee should have obtained their PAN Card number. The assessee has taken advance against proper receipt and the amount taken by way of advance has been adjusted at the time of giving delivery of the motor cycles as regards which full particulars were furnished.

7. Mrs. Das De, learned advocate appearing for the appellant/revenue, took time to go through the paper book filed by Mr. Khaitan. Thereafter when the matter was taken up, she drew our attention to the deposition of one of the directors of the assessee and consequent opinion formed by the Assessing Officer which inter alia is as follows:-

"But one of the Directors in his deposition stated that they did not maintain detailed record of the customers but at the time of delivery of two wheelers they issue invoice to the customers and take back the money receipts of advance payments and adjust the advance against sale price of two wheelers."

8. The assessee may not have maintained detailed record of the customers. But question is whether the receipt has satisfactorily been established to be on account of advance payment. That question has been answered by the learned Tribunal in the affirmative by holding as follows:

"The advance money, in the present case before us, is adjusted the sale price of the motor cycle and sale is disclosed in the return of income i.e. the trading account of the assessee. Accordingly, we find no ambiguity in the system followed by the assessee."

9. The aforesaid finding was recorded by the learned Tribunal on the basis of evidence disclosed before them which is also found in the paper book filed before us by Mr. Khaitan. It cannot, therefore, be said that the view taken by the Tribunal is perverse. The question essentially is a question of fact and the learned Tribunal on the basis of evidence was satisfied that the money had in fact been received by way of advance and therefore, no question of any bogus liability being created was there as held by the Assessing Officer.

10. In that view of the matter, we are of the opinion that the finding arrived at by the learned Tribunal is not perverse. Section 68 in the facts of the case had no applicability. The question is, thus, answered in favour of the assessee.

11. The appeal is, therefore, dismissed.

12. The parties shall, however, bear their own costs.