(2001) 02 DEL CK 0151

Delhi High Court

Case No: IT Ref. No''s. 150 and 151 of 1982 6 February 2001 A.Y. 1970-71 and 1972-73

Daya Chand		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Feb. 6, 2001

Citation: (2001) 167 CTR 446 : (2001) 117 TAXMAN 438

Hon'ble Judges: Arijit Pasayat, C.J; D.K. Jain, J

Bench: Full Bench

Advocate: None, for the assessed Sanjiv Khanna and Mrs. Prem Lata Bansal and Ajay Jha, for the Revenu, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of assessed, following questions have been referred for opinion of this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as `the Act), by the Appellate Tribunal, Delhi Bench A (hereinafter referred to as `the Tribunal) :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in its interpretation of the provisions of sub-section (4A) of section 132 of the Income Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in sustaining the addition made by the lower authorities u/s 68 when the cash credits are found in the books of account seized u/s 132 ?"

2. The dispute relates to two years, i.e., assessment years 1970-71 and 1972-73. Brief reference to the factual aspects would suffice. A search was conducted in the premises of assessed on 8-12-1972 u/s 132 of the Act. During the course of search, certain books of account and other documents were seized by the authorised officials. Certain cash credits were noticed in the books of account seized. At the time of assessment for the assessment years 1970-71 and 1972-73, Income Tax Officer sought to include these cash credits u/s 68 of the Act in assesses income and

asked the assessed to explain the sources of these cash credits. Explanation was offered by the assessed which was not found acceptable and, Therefore, additions of Rs. 43,882 and Rs. 52,245 were made u/s 68 of the Act for the two years respectively. assessed preferred appeals before the Appellate Assistant Commissioner. After examining the materials brought on record, Appellate Assistant Commissioner sustained the addition to the extent of Rs. 35,170 for the assessment year 1970-71. Though he deleted the addition for the assessment year 1971-72, he directed enhancement of income for the assessment year 1972-73 by adjusting the extra peak credit of Rs. 3,265. assessed carried the matter in appeals before the Tribunal. One of the main grounds urged by the assessed before the Tribunal was that in view of provisions of section 132(4A) of the Act, section 68 of the Act cannot have any application. In other words, provisions of section 132(4A) would have overriding effect over the provisions contained in section 68 of the Act. Tribunal was of the view that section 132(4A) is merely a rule of evidence and, Therefore, procedural in character. It was applicable to matters of search and seizure u/s 132 of the Act, relating to matters which were concluded before 1-10-1975. Before of this view, application of section 68 of the Act was upheld. On being moved for reference as aforesaid, the two questions have been referred for opinion of this court.

3. We have heard learned counsel for revenue. There is no appearance on behalf of assessed in spite of notice. Learned counsel for the revenue submitted that section 132(4A) and section 68 operate in different fields and, Therefore, the Tribunal was justified in its conclusions.

4. In order to appreciate the stand of revenue , it would be relevant to quote sections 132(4A) and 68 of the Act as they stood at the relevant point of time.

"Section 132(4A) : Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed :

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true, and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that persons handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested,"

"Section 68 : Where any sum is found credited in the books of an assessed maintained, for any previous year, and the assessed offers no Explanation about the nature and source thereof or the Explanation offered by him is not, in the opinion of

the Income Tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessed of that previous years."

5. Section 68 is a specific provision about cash credits and the burden is on the assessed to explain the nature and source of credits in his books. assessed is required to discharge this onus. Section 132(4A) does not override this specific provision. Section 132(4A) was introduced by the Taxation Laws (Amendment) Act, 1975, with effect from 1-10-1975. Clause (ii) thereof, on which reliance was placed by the assessed before the authorities, provides that contents of "such books of account and other documents are true". The expression relates to any books of account or other documents etc. found in possession or control of any person in the course of a search. Presumption arises in respect of contents of such books of account and other documents. Such presumption arising u/s 132(4A) is clearly linked with the search and seizure. Sections 132(A) to 132B of the Act provide an integrated scheme laying down the procedure for search and seizure and the power of the authorities making the search and seizure to order the confiscation of assets seized u/s 132 of the Act. In other words, the presumption arising u/s 132(4A) must be held to be applicable only in relation to the provisional adjudication as contemplated under sub-section (5) of section 132. The presumption cannot be said to have the effect of excluding operation of section 68. Question of applicability of section 68 arises only in the course of regular assessment. It provides that where any sum is found credited in the books of an assessed maintained for any previous year, and the assessed offers no Explanation about the nature, and source thereof or the Explanation offered 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 assessed of that previous year. The provision has general application and applies to all cases of regular assessment. As noticed above, the provisions of section 132(4A) are restricted to search and seizure as provided in Chapter XIII Part C. In essence, section 132(4A) does not override or exclude application of section 68. The requirement of section 68 has to be fulfilled by the assessed.

6. Above being the position, Tribunal was justified in its view about the non-applicability of section 132(4A). Our answer to the first question is in the affirmative, in favor of revenue and against the assessed. So far as the second question is concerned, its answer depends upon factual aspects which the Tribunal has elaborately dealt with. As the question is essentially one of fact, we decline to answer the same.

7. Both the references are accordingly disposed of.