

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT  
JAIPUR**

D.B. Income Tax Appeal No. 75 / 2006

M/S Kailash Chand Agarwal, Opposite Circuit House, Dholpur,  
through its partner Shri Ramesh Chand Agarwal.

----Appellant

Versus

The Income Tax Officer, Ward-3, Income Tax Office, Bharatpur.

----Respondent

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For Appellant(s) : Mr. Naresh Gupta.

For Respondent(s) : Mrs. Parinitoo Jain.

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**HON'BLE MR. JUSTICE K.S. JHAVERI**

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Judgment**

**Per Hon'ble Jhaveri J.**

**17/01/2017**

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has reversed the finding of the CIT(A).
2. This Court while admitting the appeal on 23.08.2012, has framed the following substantial questions of law:

"(i) Whether the findings of the Tribunal are perverse in holding that the cash credits of Rs.22.46 lacs are not genuine?

(ii) Whether under the facts and circumstances of the case the Ld. Tribunal was justified in confirming the additions of Rs.22,46,000/- under Section 68 when the confirmations and identity of such cash creditors were assessed with the same Assessing Officer and no attempt under Section 131 was made by the Assessing Officer?"

3. Counsel for the appellant Mr. Gupta has taken us to the order of the CIT(A) and contended that the observations are made by it at page 38.

3/1. The observation of the CIT(A) are as under:

"I have considered the arguments of both the sides and the evidences produced during the course of appellate proceedings. I have also considered the various case laws cited by the appellant. As per the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Kishori Lal Santoshi Lal 216 ITR, 9 14 where some cash credits are found in the books of the firm the burden of providing the identity, capital and genuineness is on the firm. The firm has to establish that the amount was actually given by the leaders. No distinction can be made between the cash credit of a partner of of a third party. If the cash credits are not satisfactorily explained the AO is justified to treat them as income from undisclosed sources. If the explained offered is not supported by documentary for other evidences, then also the deeming fiction u/s 68 of the Income Tax Act can be invoked. Therefore, simply because the amount is credited in the books of the firm in the partners capital account it cannot be said that it is not the undisclosed income of the firms and in all cases it has to be assessed as an undisclosed income of the partner alone. The AO is therefore, justified in examining the sources of the credits in the capital accounts of the partners appearing in the books of the firm. The decisions of the Hon'ble Allahabad High Court in the cases of India Rice Mills Vs. CIT and Surendra Mohan Seth vs. CIT cited by the appellant are not applicable on the facts of the case because the capital contributions made by the partners have not been made prior to the commencement of the business by the appellant firm. However, if there are credit entries in the books of the firm through the capital account of the partners and it is found as a fact that the cash was received by the firm from its partners, then, in the absence of any material to indicate that these were the

profits of the firm, it could not be assessed in the hand of the firm. This is so because in such a case the onus placed on the assessee firm by section 68 of the IT Act could be deemed to have been discharged. (CIT Vs. Jaiswal Motor Finance 141 ITR 706, All.) The fact that an assessee was unable to satisfy the authorities as to the source from which the depositor received the money cannot be used against the assessee. (CIT Vs. Daulat Ram Rawat Mull 87 ITR 349 SC). If the firm has satisfactorily explained the nature and source of the credit then it is absolved from any further liability. The obligation will then be of the partner concerned to explain the source etc. and his case may fall in section 69 of the IT Act. Therefore, it is only in those cases where the firm offers no explanation or the explanation offered is found false, that the capital contributions or the cash credits in the names of the partners can be treated as the unexplained income of the firm u/s 68 of the IT Act. In this case it is not so. The firm has offered an explanation in regard to the sources of the capital contributions by the partners. It has also given enough evidences in the shape of entries in the books of accounts of the firm as well as the partners for these capital contributions, in the shape of confirmations from the creditor who have given the money to the partners and in the shape of the copies of the returns of income/ statements of computation of income/ capital accounts of all the creditors for AY 92-93, 93-94 & 94-95, to support the explanation. The onus cast upon the appellant firm in regard to the capital contributions made by the partners as per section 68 of the IT Act has therefore been duly discharged. This fact has even been admitted by the present AO in his remand report dated 11.3.2003 wherein he has suggested that action should have been taken in the hands of the partners. But in this case even the sources in the hands of the creditors to the partners have also been prima facie explained. All the 25 creditors are assessed to tax since past several years and have incomes from various businesses such as trading in cosmetics, kirana goods, garments etc., running printing press and agency of life insurance etc.

besides income from house rent, interest, salary and agriculture. Though it has been alleged by the AO that no interest has been paid to the depositors by the partners but actually interest has been duly paid by the partners on the loans obtained by them from these creditors. The returns filed by these creditors have also been accepted by the AO who incidentally is the AO of the firm. There is no evidence on records brought by the AO to indicate that the funds brought in by the partners as the capital were from the profits of the firm. Under these facts, the AO is not at all justified in treating the capital contributions made by the partners of Rs.22.46 lacs as undisclosed income of the firm according to the provision of section 68 of the IT Act. The addition made to the income of the firm on this account of Rs.22.46 lacs is therefore deleted."

4. From the perusal of the order of the CIT(A) it is clear that while considering the case of the assessee, it has accepted that the partners have taken loan for 25 persons who have filed return and the same was shown in the return.

5. It is also observed that all the creditors like assessee of the Income Tax have filed return for last several years inspite of that the Tribunal has in its para 9 has observed as under:

"We heard the rival submissions and perused the materials available on record since the partners do not have any source of income and the expenses have to be met out of the withdrawals from the firm. No details of expenses have been provided by the assessee firm regarding expenses of each partners on withdrawals. The withdrawals of each partner appear to be very low and the additions made by the AO appear to be on higher side. Therefore, we restrict the addition on account of law withdrawal at Rs.25,000/- thus giving a relief to the assessee by Rs.47,000/- from the order of the AO. Thus, both the grounds of the Department are partly allowed."

6. Counsel for the respondent Mrs. Jain has taken us to para 5 order of the Tribunal which reads as under:

"We heard the rival submissions and perused the materials available on record. The assessee firm has received the cash credits of Rs.23.46 lacs as capital of partners out of which Rs.1.00 lac has been paid back thus, retaining Rs.22.46 lacs. The source of the said amount by the partners was the sum received from almost all the twenty five ladies to each partners in cash and each deposit was less than Rs. 20,000/- during the year and total of the balance sheet of each lady was Rs. 1.00 lac approximately and total amount advanced to all the partners together was almost the same amount i.e. Rs.1.00 lac. The returns of income of all these ladies were filed on the same date through one advocate. As per the notes in the balance sheet, the interest income in the hands of these ladies was from farmers and other needy persons whereas the partners are not the farmers or the small needy persons. It cannot be believed that all the twenty five ladies lent cash to the all the partners without any purpose i.e. without receiving any interest, because the interest income shown by these ladies is not from these partners but from farmers and other needy persons and no evidence has been brought on record by the assessee to prove the genuineness of these transactions. Therefore, these cash creditors appear to be name lenders to the partners where firm has credited these sums in the form of partners capital. Therefore, the sum invested by the partners does not prove the creditworthiness and availability of funds with the partners and also does not the genuineness of the transactions. When the availability of funds with the partners and genuineness of the amount invested by the partners is not established and the explanation offered by the assessee firm is not satisfactory, then it cannot be said that the partners have made the investment in the firm of their own capital and the argument of the Id. AR that it should be taxed in the hands of the partners does not have nay merit since the amount has been found credited in the books of the firm and the cash credit has

been routed through the ladies and the partners in the firm. The sum so found credited in the books of the firm remained unexplained to the satisfaction of the AO. We rely upon the decision in the case of Jagmohan Ram Chandra Vs. CIT, 274 ITR 405 (All) wherein it has been held that if an entry of cash credit is found in the books of account of a firm, it is for the firm to give an explanation regarding their identity and source of such deposits and if the explanation is disbelieved then it is to be added as an income u/s 68 of the Income-tax Act, 1961, in the hands of the firm. We also rely upon the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Kishorilal Santoshilal, 216 ITR 9,13,14 where it has been held as under:-

"On the basis of the language used u/s 68 and the various decisions of different High Courts and the apex court, the only conclusion which could be arrived at is:

(I) That there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party.

(II) That the burden to prove the identity, capacity and genuineness has to be on the assessee.

(III) If the cash credit is not satisfactorily explained the Income Tax Officer is justified to treat it as income from 'undisclosed sources'

(IV) The firm has to establish that the amount was actually given by the lender.

(V) The genuineness and regularity in the maintenance of the account has to be taken into consideration by the taxing authorities.

(Vi) If the explanation is not supported by any documentary or other evidence then the deeming fiction credited by section 68 can be invoked.

In these circumstances, we are of the view that simply because the amount is credited in the books of the firm in the partner's capital account it cannot be said that it is not the undisclosed income of the firm and in all case it has to be assessed as an undisclosed income of the partner alone.

In these circumstances, we are of the view

that the Tribunal was not justified in holding that the cash credits of Rs 11,502/- in the account of Shri Kishorilal, one of the partners could not be assessed in the hands of the firm and in deleting the same”.

Also, we rely upon the decision in the case of CIT Vs. Jai Ram Dass Lokesh kumar, 250 ITR 526,527,528 (Raj.) where it has been held as under:-

“In the present case, it has been found by the Tribunal that the income actually belongs to the assessee. Therefore, there was no impediment in levying tax on the income of the assessee irrespective of whether some other persons have already been made to submit returns in respect of the income and have been assessed on the basis of the declaration submitted by them. We are not concerned with the remedies which other persons may follow.

We accordingly hold that the Tribunal was not justified in directing to delete the addition of Rs.84,769/- and Rs.22,127/-, from the income of the assessee firm which the Tribunal has found to be the income of assessee firm and not of the other persons named above. Accordingly, we answer the question referred to us in the negative i.e. against the assessee and in favour of the Revenue.”

7. We have heard learned counsel for both the parties.
8. Taking into consideration the loans which are accepted merely on some amount of the ladies for which return was filed on the same date through one advocate is not a ground for reversing the finding but reasoning adopted by the CIT(A) is genuine and no reasons are adopted by the Tribunal while reversing the finding of the CIT(A).
9. In that view of the matter, the Tribunal has seriously committed an error in reversing the finding of the CIT(A) and the appeal deserves to be allowed.

10. Both the issues are answered in favour of the assessee and the view taken by the CIT(A) is required to be confirmed the finding arrived at by the Tribunal is reversed.

11. The appeal stands allowed.

(VINIT KUMAR MATHUR)J.

(K.S. JHAVERI)J.

Asheesh Kr. Yadav/96

RAJASTHAN HIGH COURT



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