

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal 187/2014
Girraj Mehta, Proprietor M/s Oswal Udyog
v.
The Commissioner of Income Tax

Date of order 7.1.2016

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice J.K. Ranka

Mr. P.K. Kasliwal, counsel for appellant

By the Court (per J.K. Ranka, J.)

1. The instant appeal u/sec. 260A is directed against order dated 18.7.2014 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, in M.A. No.1/JP/2013 in ITA No.1069/JP/2010. It relates to assessment year 2007-08.
2. For the reasons assigned, the application u/sec. 5 of the Limitation Act stands allowed and the delay in filing appeal stands condoned.
3. The brief facts noticed for disposal of the said appeal are that the appellant-assessee submitted a return declaring income of Rs.2,15,330/- and thereafter on examination of books of account it was noticed that the assessee has shown sundry creditors of Rs.4,76,537/- in the name of Dee Jay Steels, New Delhi, and on a further enquiry from the said creditor u/sec. 133(6) it transpired that notice which was sent

by the Assessing Officer to the address given by the appellant of the said creditor, returned undelivered by the postal authorities. The AO again desired the assessee to file complete address of the party as also the confirmation and other material to substantiate the entry shown in the name of said creditor. On further enquiry it was noticed by the AO that the account was squared up in the financial year relevant to the assessment year 2007-08 and payment of Rs.1,50,000/- was shown through three cheques of Rs.50,000/- each and balance amount was shown to be paid in cash below Rs.20,000/- on various dates. On a further enquiry by the AO from the concerned bank where the cheques were drawn the bank conveyed that all the three cheques were presented over counter by bearer of the cheques and favouring self. Faced with the said material brought on record by the AO, the assessee filed a reply on 4.12.2009 mentioning therein that it could not get the confirmation from the said creditor and surrendered the amount for taxation in order to avoid further litigation and to have mental peace, and thus entire amount of Rs.4,76,537/- was offered for taxation. The AO accordingly made an addition u/sec. 41(1)(a) of the Income Tax Act, 1961. The other additions were also made.

4. The matter was carried in appeal before the learned Commissioner of Income Tax (Appeals), who also insofar as the above addition is concerned, after analysing the material on record upheld the

addition. On a further appeal by the assessee, the Tribunal also upheld the addition. Against the order of the Tribunal dated 27.5.2011 an appeal u/sec. 260A came to be filed by the assessee-appellant. Counsel for the appellant in the said appeal contended that the appellant was advised to file rectification application u/sec. 154 of the Act and that came to be dismissed and against that order a separate appeal was filed before the learned Tribunal which is still subjudice and pending consideration, and on prayer of the counsel for the appellant accordingly the said appeal was dismissed with liberty, if so advised, to file appeal after being aware of the outcome of pending appeal before the learned Tribunal. The Tribunal vide order dated 18.7.2014 in M.A. No.1/JP/2013 arising out of ITA No.1069/JP/2010, dismissed the miscellaneous application.

5. Learned counsel for the appellant contended that the surrender was made by the assessee subject to avoid further litigation and to have mental peace, that is to say that the AO ought not to have issued penalty notice u/sec. 271(1)(c), and ought not to have initiated the proceedings for concealment and furnishing of inaccurate particulars of income and it was only subject to this rider that the amount was surrendered but the AO though assured of not initiating penalty proceedings, has also issued notice u/sec. 271(1)(c) and has also imposed penalty later-on which is contrary to the assurance granted to

the appellant. He further contended that the CIT(A) had accepted the contention of the assessee but wrongly upheld the addition and entirely a different case was made out so also the Tribunal erred in upholding the addition and contended that the order of the Tribunal is perverse and substantial questions of law arise out of the order of the Tribunal.

6. We have heard the counsel for appellant and perused the impugned order so also the material on record and in our view no substantial question of law can be said to arise out of the order of the Tribunal. We have already noticed the backdrop of the addition of Rs.4,76,537/- and it would be appropriate to quote the written reply of the assessee addressed to AO dated 4.12.2009 :-

“With reference to the above it is since we could not get the confirmation from the following sundry creditors, unsecured loans, we are hereby surrendering the following amounts for taxation in order to avoid further litigation and have the mental peace.

<u>Sundry Creditors</u>	<u>Amount</u>
M/s Dee Jay Steels, New Delhi	Rs.4,76,537/-”

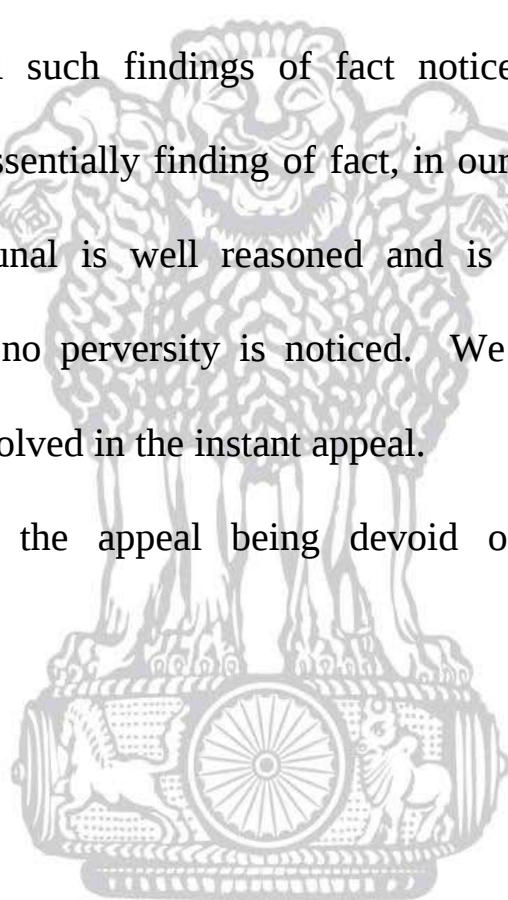
7. In our view, merely mentioning to avoid further litigation and to have mental peace does not make out that the assessee had offered the same amount subject to non initiation of penalty proceedings, and leaving that apart, the AO in our view could not have assured the assessee of non initiation of proceedings u/sec. 271(1)(c) of the Act or non imposition of penalty u/sec. 271(1)(c) for concealment and furnishing of inaccurate particulars of income as they are independent

and separate proceedings. The AO had also found as a finding of fact that it was established on record that the assessee has shown a bogus liability in the books of account and even the AO was able to go into further detail that even bearer cheques were issued which were “self cheques” and the amount was withdrawn by the assessee himself and even subsequent amounts were debited to the account of the creditor on several different dates showing payment to have been made by cash to the said creditor - Dee Jay Steels, New Delhi, all amounts below Rs.20,000/-. All such findings of fact noticed by all the three authorities being essentially finding of fact, in our view the impugned order of the Tribunal is well reasoned and is not required to be interfered with as no perversity is noticed. We find no substantial question of law involved in the instant appeal.

8. Accordingly, the appeal being devoid of merit, is hereby dismissed.

(J.K. Ranka) J.

(Ajay Rastogi) J.



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