

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

JUDGMENT

DB Income Tax Reference No.24/1992

Sind Medical Stores, Kota

VS

The Commissioner of Income-tax, Jaipur

Judgment reserved on ::: 16th October, 2014

Judgment pronounced on ::: 12th November, 2014

PRESENT

HON'BLE MR. JUSTICE AJAY RASTOGI.

HON'BLE MR. JUSTICE J.K. RANKA.

Mr. PK Kasliwal, for the petitioner.

Mrs.Parinitoo Jain, for the respondent.

By the Court : (Per Hon'ble Ranka, J.)

1. This income tax reference u/s 256(1) of the Income Tax Act (for short, 'IT Act') is directed against the order of Income Tax Appellate Tribunal, Jaipur (for short, 'ITAT') and relates to the assessment year 1994-95.

2. Following questions of law have been referred and are required to be answered by this Court:-

1. "Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the benefit of peak credit could not be automatically granted to the assessee?"

2. "Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that when the fiction provided in section 69 of the I.T. Act comes into play, all unexplained expenditure has to be added to the income of the assessee for such financial year?"

3. The counsel for the assessee does not press the question No.2 quoted above and thus this question is decided against the assessee.

4. Brief facts, with reference to question No.1, is that the assessee being a partnership firm carried on business of dealing in medicines on retail basis. On examination of books of account, the Assessing Officer (for short, 'AO') had noticed that certain goods purchased by the assessee from M/s. Suraj Medical Stores were accounted for in cash book on later dates than the date of bills. The AO further found that in the books of M/s. Suraj Medical Stores, the credit for cash received was on the same date when the bill was issued but in the books of the assessee, the payment was shown on a later date and on further verification, the AO found 31 such bills wherein this discrepancy was noticed. Noticing this discrepancy, the AO raised a query as to why the addition of Rs. 28,576/- be not made which were the totals of aforesaid purchases.

5. The assessee explained that the purchases from the local seller are accounted when they make payment, as per the prevailing system in the business and as regards mode for cash purchases, the seller sends the bill and assessee makes payment whether on single bill and couple of bills collected at one point of time and entries are made in the cash book when the amount is actually paid in cash. It was further narrated by

the assessee that in so far the assessee is concerned there is no discrepancy but if there is any it may be in the books of M/s. Suraj Medical Stores who made entries in advance. The Assessing Officer has also made an independent query from M/s. Suraj Medical Stores who however was firm in their stand and noticing this fact the Assessing Officer made an addition of Rs. 28,576/- u/s 69 of Income Tax.

6. Similarly, the Assessing Officer being not satisfied with the trading result also made a trading addition of Rs. 28,934/- by invoking provision of section 145 of Income Tax Act as the assessee did not maintain day to day stock register and accordingly ordered for addition of Rs. 28,934/-

7. Dissatisfied with the two additions of Rs. 28,934/- and Rs.28,576/- the matter was carried in appeal before the CIT (A). While CIT(A) in so far as the trading addition is concerned sustained rejection of books of accounts and affirmed total addition of Rs.5,000/- but in so far as the addition on account of cash purchases under section 69 is concerned did not agree with the contention of the assessee and approved finding of the Assessing Officer. However alternative argument of the assessee was accepted that only peak of these credits should have been taken and directed to the Assessing Officer to add only the peak amount and allowed consequential relief.

8. Dissatisfied with the relief granted by the CIT(A) on account of peak credits addition only, the respondent

department carried the matter in appeal before the ITAT which allowed the appeal of the revenue and upheld the addition of Rs. 28,576/- and held that the benefit of peak credit cannot be given to the assessee automatically and that too particularly where the assessee having denied any such investment outside the books of accounts.

9. Counsel for the assessee has contended that the addition of Rs. 28,576/- was unjustified and the assessee was following the system of accounting for the purchases when the payment is made and such system was being followed on regular basis and on account of smallness of transaction entries were made only when the amount was actually paid towards the purchases of such medicine from M/s. Suraj Medical Stores. He further contended that the addition if any has to be in the light of judgment rendered by the Hon'ble Apex Court in the case of **Anantharam Veerasinghaiah & Co. vs. Commissioner of Income Tax (1980) 123 ITR 457 (SC)** and judgment of this court in the case of **Commissioner of Income Tax Vs. Tyaryamal Balchand (1987) 165 ITR 453 (Raj.)** wherein the benefit of peak credit was allowed as the same fund has rotated and therefore, the addition of Rs. 28,576/- in the light of aforesaid judgments could not have been made and the Tribunal wrongly sustained the addition ignoring the peak credit theory propounded by the Hon'ble Apex Court and this Court.

He has limited his argument that the question is squarely covered by the judgment of the Hon'ble Apex Court and judgment of this Court.

10. Per contra Id. counsel for the Revenue has contended that the Tribunal has rightly discarded this theory of the assessee and automatic benefit of peak credit cannot be given to the assessee and that too particularly in the present case when the assessee himself denied having investment outside the books of accounts and thus contended that this view of Tribunal is correct and reference is required to be answered in favour of the Revenue.

11. We have considered the rival submissions advanced by Id. counsel for the parties and in our view, arguments of Id. counsel for the assessee have force that the items purchased by the assessee were on short interval from M/s. Suraj Medical Stores and upon perusing the chart given in the assessment order it transpires that so called purchases or unaccounted purchases which the Assessing Officer has held are shown to be purchased on 01/04/1983, 08/04/1983, 18/04/1983, 20/04/1983 & 30/04/1983 and so on and so forth and these are at short intervals therefore, in our view, funds rotated and benefit of peak credit theory can be invoked and entire addition cannot be made. The Hon'ble Apex Court in the case of *Anantharam Veerasinghaiah & Co.* (supra) observed that secret profit or undisclosed income of an assessee earned in

an earlier assessment year may constitute a fund, even though concealed from which the assessee may draw subsequently and it has been held as under:

“Now it can hardly be denied that when an "intangible" addition is made to the book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee. That income, although commonly described as "intangible", is as much a part of his real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be. In *Lagadapati Subha Ramaiah v. CIT*, [1956] 30ITR593, the Andhra Pradesh High Court adverted to this aspect of secret profits and their actual availability for application by the assessee. That view was affirmed by the Madras High Court in *S. Kuppuswami Mudaliar v. CIT*, [1964] 51 I.T.R. 757.

There can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. But it is quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure incurred or of cash credits regarded during a subsequent assessment year. The mere availability of such a fund cannot, in all cases, imply that the assessee has not earned further secret profits during the relevant assessment year. Neither law nor human experiences guarantees that an assessee who has been dishonest in one assessment year is bound to be honest in a subsequent assessment year. It is a matter for consideration by the taxing authority in each case whether the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or they are reasonably explained by reference to concealed income earned in that very year. In each case the true nature of the cash deficit and the cash credit must be ascertained from an overall consideration of the particular facts and circumstances of the

case. Evidence may exist to show that reliance cannot be placed completely on the availability of a previously earned undisclosed income. A number of circumstances of vital significance may point to the conclusion that the cash deficit or cash credit cannot reasonably be related to the amount covered by the intangible addition but must be regarded as pointing to the receipt of undisclosed income earned during the assessment year under consideration. “

12. This court in the case of **Commissioner of Income Tax Vs. Tyaryamal Balchand** (supra), after relying on several judgments, also upheld the finding about peak credit theory. This Court in CIT Vs. Ishwardas Mutha (2004) 270 ITR 597 (Raj.) also accepted the contention to take into account, the peak credit. When any amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the Revenue. We hold the assessee was entitled to the benefit of peak credit which ought to have been allowed instead of making separate addition of entire amount. However, we may observe that the Assessing Officer has to come to a definite finding that the amount withdrawn was used by the assessee in any other expenditure or investment. If the Assessing Officer comes to a finding that withdrawn amount was used or spent by the assessee for any other investment or expenditure than the benefit of peak of such credit, in such circumstances, may not be available.

13. Accordingly, the question of law No.1 is answered in

affirmative in favour of the assessee with the above said observations. So far as question No.2 is concerned, it being not pressed by the assessee, is decided in favour of revenue. We answer accordingly. No order as to costs.

[J.K. RANKA],J.

[AJAY RASTOGI],J.

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Certificate:All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.

Om Prakash PA