

Gurbax Singh
2017.02.07 10:25

**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

ITA No.343 of 2007

Date of decision: January 30, 2017

Commissioner of Income Tax, Hisar

.....Appellant

Vs.

M/s Kapil Roller Flour Mills Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Yogesh Putney, Advocate for the appellant.

None for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 15.9.2006 passed by the Income Tax Appellate Tribunal Delhi Bench 'C', New Delhi (in short, "the Tribunal") in IT(SS) A.No.193/DEL/2001 for the block assessment period 1988-89 to 1997-98. On October 11, 2007, the appeal was admitted to consider following substantial questions of law:-

"i) Whether under the given facts and circumstances, the learned members of the ITAT have erred in law in deleting the addition of ₹ 45,70,000/- made by the A.O. on account of peak of deposits in the bank account?

ii) Whether on the facts and in the circumstances of the case, the ITAT was right in law in directing to treat the amount of loan to Directors by Shri Jagdish Lal as deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961, and also in deleting the addition of ₹ 45,70,000/- without appreciating the fact that the assessee has failed to establish with documentary evidence that the amount in question was advanced by it to the lender Shri Jagdish Lal against purchase of wheat?"

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. The respondent-assessee company is engaged in the manufacture of wheat products like suji, maida, flour and bran etc. A new factory was also started at Ahmedabad. During the course of search proceedings in the factory premises of the assessee at Hisar and registered office of the assessee at Hisar, several valuable articles were found. The assessee was asked to explain the source of the acquisition of the same alongwith the necessary evidence. Assessment was completed under sections 158BC/144 of the Act on 12.1.2000 at an income of ₹ 7,89,55,400/-. The Assessing Officer after investigation vide order dated 12.1.2000 made addition to the income of the assessee at ₹ 2,00,000/-on this account as the company had not explained the source of investment in these articles. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 2.3.2001, the CIT(A) deleted the addition holding that these household goods belonged to the directors and not the assessee company. The department filed appeal before the Tribunal against the order dated 2.3.2001 passed by the CIT(A). Vide order dated 15.9.2006, the Tribunal deleted the addition with the observation that there being no mistake in the order of the

CIT(A) and dismissed the revenue's appeal on this point. Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. A perusal of the assessment order passed by the Assessing Officer shows that vide questionnaire dated 5.1.1999, the assessee was intimated that blank cheque book of the proprietary concern of M/s Jagdish Lal Karan Singh, Prop. Jagdish Lal was found from the factory premises of the assessee company at Hisar. The directors of the assessee company had raised loans from Shri Jagdish Lal. On enquiry from Shri Jagdish Lal, it was found that he was not a man of means. He was residing in a rented house. His income was below taxable limit. His statement was recorded under section 131 of the Act. He deposed that he was not assessed to income tax. He further stated that current account No.6337 in Punjab National Bank was opened by him on behalf of Shri P.R.Gupta and he had not deposited any money of his own in this account. When he was asked to give the source of various advances given by him through cheques, he replied that he suffered heavy losses and had not given any loan or advances to any person. After considering the entire evidence on record, it has been categorically recorded by the Assessing officer that the assessee company had not filed any evidence that the amounts in questions were advanced for purchase of wheat. Further, no evidence had been filed that the wheat was not available and the amounts in question were taken as loans by the directors. No evidence was led as to how the loans taken by the directors from the accounts of M/s Jagdish Lal Karan Singh were utilized. Further Shri Jagdish Lal, proprietor of M/s Jagdish Lal was not produced by the assessee. Thus, the amount was treated as undisclosed income of the assessee company for

the block period falling in the block assessment. The relevant findings recorded by the Assessing officer read thus:-

“9. Vide questionnaire dated 5.1.99 supra as per para 3(v) the assessee was intimated that blank cheque book of the proprietary concern of M/s Jagdish Lal Karan Singh, Prop. Jagdish Lal was found from the factory premises of the assessee company at Hisar being seized document No.D-21. The directors of the assessee company have raised loans from Shri Jagdish Lal as per details given in para 3(v) of the questionnaire, the details of the same are given as under:-

<u>Date</u>	<u>In the name of</u>	<u>Amount</u>
6.6.96	Smt. Santosh Gupta	10,02,500
6.6.96	Sh.Prahalad Rai	15,46,000
6.6.96	-do-	20,21,500
13.6.96	Kapil	2,50,000
6.7.96	Smt.Santosh Gupta	10,02,500
13.6.96	M/s Kapil Roller Flour Mills Pvt. Limited	4,41,000
6.7.96	Shri P.R.Gupta	15,46,000
6.7.96	Kapil	2,50,000
10.6.96	Yourself	4,41,221

9.1. The ADIT(Inv.) Hisar had conducted enquiries from Shri Jagdish Lal and found that he was not a man of means. He was residing in a rented house. His income was below taxable limit. His statement was also recorded by the ADIT on 25.6.97 under section 131 and he deposed that he deals in cakes, sugar and salt etc. and was not assessed to income tax. He further stated that current account No.6337 in PNB was opened by him on behalf of Shri P.R.Gutpa and he has not deposited any money of his own in this account. When asked to give the source of various advances given by him, through cheques he replied that he suffered heavy losses and had not given any loan or advances to any person. He further stated that he was running his business in rented shop and was not in a position to advance

any loan and the seized cheques account was being operated by Shri P.R.Gupta from the factory premises. Copy of account of M/s Jagdish Lal Karan Singh has since been obtained from PNB and the details of deposits and withdrawals from this account are as under:-

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9.3. The assessee was also requested to explain the source of deposits as well as the amounts withdrawn from the said bank account. The submissions of the assessee in this regard are as under:-

‘Loan raised by directors of the company and their minor son from M/s Jagdish Lal Karan Singh, Ratia amounting to ₹ 76,18,500/-. The said firm is a commission agent situated at Ratia and is supplying us the wheat from time to time. We have advanced the said sum to him for purchase of wheat and to supply the same to us. The amount appears in our balance sheet also as on 31.3.1997 in his name. The wheat was not immediately available as the amount was taken as loan by the directors and their family members for investment in shares of the company. This is not a concealed income. However, the certified copies of statement of Shri Jagdish Lal have not been given to us nor he has been offered for verification. So the proposed addition is totally unjustified. The assessee has not filed any evidence.’

9.3. I have considered the facts of the case and contention of the assessee company. The assessee company has not filed any evidence that the amounts in question were advanced for purchase of wheat. Further, no evidence has been filed that the wheat was not available and the amounts in question were taken as loans by the directors. No evidence has been led as to how the loans taken by the directors from the accounts of M/s Jagdish Lal Karan Singh were utilized. In these circumstances, the contention of the assessee company cannot be accepted. The assessee was also requested to produce Shri Jagdish Lal Proprietor of M/s Jagdish Lal Karan Singh Ratia but he has not

been produced. In these circumstances, adverse view is to be taken. As already stated enquiries made by the ADIT has revealed that Shri Jagdish Lal is not a man of means. He is running a very small business in a rented shop. Thus peak of deposits in this account which has been appropriated by the directors of the assessee company has to be treated as concealed income of the assessee company. The peak of deposits in this account works out to ₹ 455,70 lacs. The peak deposit of ₹ 45,70,000/- is treated as undisclosed income of the assessee company of the block period falling in the block assessment. Action has already been taken by ITO, Ward 4 Hisar in the case of M/s Jagdish Lal Karan Singh Prop. Shri Jagdish Lal of Ratia. He will have to make necessary addition on protective basis.”

5. The respondent assessee filed appeal before the CIT(A). Vide order dated 2.3.2001, the CIT(A) deleted the addition without giving any reason as would be evident from the following observations recorded by the CIT(A) which read thus:-

“9. Regarding addition of ₹ 45.70 lacs made on account of deposit in the bank account of Jagdish Kaan Singh, it is found that the cheque has been issued to him by the company and amount returned to the directors. It is in the nature of direct amount deposited in the accounts of the directors which can be taken as deemed dividend in their hands under section 2(22)(e), the addition made from company’s hands is deleted – Relief ₹ 45.70 lacs.”

6. On appeal by the revenue, the above observations recorded by the CIT(A) were upheld by the Tribunal without giving any sufficient and cogent reasons. The relevant findings recorded by the Tribunal read thus:-

“8. We have considered the submission of the learned DR and have perused the orders of the Assessing Officer and CIT(A). We find that the cheques were issued by the assessee company from disclosed bank account and therefore, there is nothing undisclosed about the same and it cannot be said that the source

of advances is not proved. The assessee company has given amount to the bank account from its disclosed account and therefore, the source is proved and no case of addition is made out by the department. The CIT(A) has given a finding that the cheques had been issued to M/s Jagdish Lal Karan Singh by the assessee company and the amount was returned to the directors. It is in the nature of direct amount deposited in the accounts of the directors, which can be taken as deemed dividend in their hands under section 2(22)(e) of the Act. There being no mistake in the order of the CIT(A) on this issue, the same is confirmed and the ground of appeal No.3 of the revenue is dismissed.”

7. On a perusal of the findings recorded by the authorities, we find that sufficient reasons have been given by the Assessing Officer for the addition to the income of the assessee. The finding has been recorded after considering the evidence and the material on record. The CIT(A) has reversed the said finding without giving any cogent and convincing reasons. The Tribunal has upheld the said finding as it is.

8. In view of the above, it would be appropriate that the orders dated 2.3.2001 and 15.9.2006 passed by the CIT(A) and the Tribunal respectively are set aside and the matter is remanded to the CIT(A) for considering it afresh after hearing learned counsel for the parties in accordance with law. Ordered accordingly. Consequently, the appeal stands disposed of.

(Ajay Kumar Mittal)
Judge

January 30, 2017
‘gs’

(Ramendra Jain)
Judge