



* **IN THE HIGH COURT OF DELHI AT NEW DELHI.**

+ **ITA NO. 157/2011**

% *Judgment Reserved On: 21.4.2011*
Judgment Delivered On: 08.8.2011

RAHULJEE & COMPANY PVT. LTD. . . . APPELLANT

Through : Mr. P.L. Juneja, Advocate

VERSUS

INCOME TAX APPELLATE TRIBUNAL . . .RESPONDENT

Through : Ms. Prem Lata Bansal, Sr.
Advocate with Mr. Ruchir
Bhatia, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. This appeal pertains to the assessment year 1988-89. The Assessing Officer in the assessment year disallowed the following claims/expenses preferred by the assessee:-

- (i) Claim for damages by the customer: ₹14,04,483/-
- (ii) Payment made to Mr. Sunil Kumar : ₹2,00,000/-
- (iii) Expenses estimated to have been incurred: ₹80,000/-
- (iv) Foreign Travel of Sh. Pawan Goel : ₹17,122/-
- (v) Disallowance of ₹16,088/- u/s 40A (3)
- (vi) Interest u/s 217 be consequently reduced.



The matter went upto the Income-Tax Appellate Tribunal. The Tribunal allowed the appeal of the assessee only qua item no. (iii) above i.e. the claim of the assessee on account of expenses incurred to the tune of ₹ 80,000/-. The assessee moved rectification application which kept pending for almost 15 years and was dismissed only vide orders dated 24th February, 2006. The assessee moved second recitfication application on 10th March, 2006 which was again dismissed vide orders dated 15th September, 2006. At this stage, the assessee preferred Civil Writ challenging the original order of the Tribunal passed on 17th September, 1990 as well as orders dated 24th February, 2006 and 15th September, 2006 dismissing the rectification applications preferred by the assessee. Vide orders dated 14th January, 2011, this writ was allowed to be converted into appeal.

2. We may mention at the outset that at the time of arguments, the learned counsel for the assessee confined the assessee's grievance only to disallowance of payment of ₹ 2 lacs made to one Mr. Sunil Kumar and consequential reduction of interest thereupon under Section 217 of the Act. The appeal



was admitted on the following question of law and detailed arguments were heard on this question before reserving the judgment:-

Whether the order of the Tribunal that the assessee has not been able to prove the expense of Rs. 2 lakh paid for getting the cassettes assemble/ manufactures, perverse and illegal?

However, we find that inadvertently, in the order sheet, admission on this question of law is no specifically recorded. We, therefore, reiterate that appeal was admitted on the aforesaid question of law.

3. Insofar as the aforesaid claim of ₹ 2 lacs is concerned, the assessee had shown the same as manufacturing expenses. The assessee is in the business of manufacturing of cassettes. As per the assessee, it had paid ₹ 2 lacs for manufacturing of 40,000 pieces of cassettes. This amount was paid by the assessee to one Mr. Sunil Kumar and the amount was paid by cheque to him. However, the Assessing Officer disallowed the amount on the ground that the entire amount was paid on the same day and there was no periodic payment from time to time. On this basis, this finding of the Assessing Officer was confirmed by the CIT (A)



as well as the Tribunal. The Tribunal while rejecting the claim observed as under:-

“The entire payment was made on one day and almost the entire amount was withdrawn on one day. The situation is against normal human conduct. If Shri Sunil Kumar had actually rendered his services through his labourers he would have needed the money day to day to make the payment to the labourers. This is not so in this case. The entire set of circumstances cast a shadow of doubt about the genuineness of payment of ₹ 2 lakhs to Shri Sunil Kumar. This claim of expenditure of ₹ 2 lakhs is not compatible with the statement made before the Excise authorities that the work was done by the assessee company at its premises for which regular excise register was maintained by the assessee company. For the reasons given by the ITO in the assessment order, for the reasons discussed by the Commissioner of Appeals in the appellate order and for the reasons given herein before we agree with the authorities below that the claim of ₹ 2 lakhs said to have been paid to Shri Sunil Kumar was not deductible. No taxes were deducted from the payment of ₹ 2 lakhs to Shri Sunil Kumar although it was obligatory on the part of the prayer to have done so. This underlines the suspicion about the genuineness of the payment”.

4. Challenging the aforesaid finding as perverse, Mr. Juneja, learned counsel for the assessee contended that merely because payment was made on one day could not be a reason to



disbelieve the assessee or to disallow the expenditure. He submitted that the serious mistake was committed by the authorities below in disallowing the entire manufacturing expenses on the aforesaid ground as there could not have been the manufacturing of 40,000 cassettes without some expenses. His further submission was that this has resulted into the taxing the gross-income instead of net income after allowing the expenditure incurred on the manufacturing of the goods. He submitted that the manufacturing expenses were disallowed merely on doubt and suspicion ignoring the records including the salary record which was produced evidencing the payment. He also pointed out that even Mr. Sunil Kumar was produced before the Assessing Officer who had deposed on oath having received the payment.

5. Learned Counsel for the respondent, on the other hand, relied upon the reasoning given by the authorities below and submitted that these were findings of the facts and, therefore, should not be interfered with. It was additionally submitted that Mr. Sunil Kumar was an employee of the assessee and Mr. Sunil Kumar in his statement has categorically deposed that the assessee had opened the bank account in his name and he was



made to sign the blank cheque book under the threat that he would not be paid the salary unless he signs the blank cheque and papers. It was further revealed that a cheque of ₹ 2 lacs was deposited on 19.11.1987 in the said bank account and on the same day two cheques were issued withdrawing ₹ 1 lakh and ₹ 90,000/- and balance amount of ₹ 10,000/- was withdrawn on 17th and 19th June, 1988. The reliance was also placed on the statement of Mr. S.P. Garg, Director of the assessee company which was recorded by the Department of Customs and Central Excise on 1986 when the premises of the assessee were searched by the said department. In that statement Mr. Garg stated that they had full-fledged factory to assemble the cassettes for which regular excise register have been maintained.

6. After considering the respective submissions and going through the records, we are of the opinion that the authorities below have taken a myopic and harsh view in the matter. In the process, the irrelevant consideration and extraneous material has been considered. At the same time, the relevant evidence on record has been discarded. This has led to the perversity in the findings. In the first place, it may be mentioned that the statement of Mr. S.P. Garg, Director of the assessee company



could not be relied upon. This statement was made in the year 1986. Whereas, the assessment year in question is 1988-89. It was clearly of no relevance in this year. Moreover, this alleged admission was even not confronted with the assessee which was used at its back and thus violates the principle of natural justice. It could not be presumed that the position which existed in the year 1986 would remain valid in future as well.

7. The main issue before the authorities below was as to whether the expenditure of ₹ 2 lacs was in fact incurred and the assessee was able to prove the same or not. It should have been examined. This was the only issue which should have been exclusively focused. In order to prove this expenditure, the assessee had relied upon the following material/documents:-

(i) The payment was made to Mr. Sunil Kumar by account payee cheque. This cheque was encashed by Mr. Sunil Kumar and the amount was credited in his bank account.

(ii) Copies of all the relevant cheques were collected by the authorities from the Bank showing that those cheques were presented and encashed personally by Mr. Sunil Kumar. These aspects were totally ignored and glossed over and not even adverted to by the authorities below.



(iii) The assessee had produced six affidavits of persons who had stated that they had worked for Mr. Sunil Kumar. These affidavits are discarded only on the ground that five out of six persons have signed on the request of Mr. S.P. Garg, Director of the company. Naturally when the assessee had to prove the payment as genuine and he had approached these persons who had worked for Mr. Sunil Kumar to demonstrate that Mr. Sunil Kumar had undertaken the work and manufacturing of 40,000 cassettes for which he was made the payment. These persons never stated that they did not work for Mr. Sunil Kumar or what was stated in the affidavit was wrong.

(iv) In addition, the assessee had also furnished documents in the shape of copies of purchase order from Aartie Foreign Trade Corporation, copy of letter dated 21st March, 1988 and 27th May, 1988 from Czechoslovakian Embassy, copy of application to RBI for grant of permission for remittance dated 29th December, 1988, copy of RBI permission for release of foreign exchange, copy of revised profit-and-loss account for the year ending 31st March, 1988, copy of certificate of M/s Oregon Electronics & components, copy of certificate of M/s Kollahpur Road Association. All these documents read cumulatively show that the work of manufacturing of these cassettes was undertaken by the assessee for which it earned money and offered to tax. In such a situation it is not possible to comprehend that no expenses were incurred in getting those cassettes manufactured. The assessee kept on emphasizing this fact and repeatedly pleaded that there cannot be manufacturing without expenses and, therefore, some expenses should be allowed. However, this plea was not



accepted. This forceful plea was rejected without any basis.

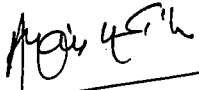
8. In this scenario, the assessee may be justified in explaining the statement of Mr. Sunil Kumar who had alleged that his signatures were taken on blank papers. The explanation given by the assessee was that since Mr. Sunil Kumar had not paid taxes on the amount received, he was trying to riggle out. If we weigh the circumstances and material placed on record by the assessee and the material possessed by the AO then scale would tilt in favour of the assessee. Whenever an explanation or defence of an assessee based on number of facts supported by evidence and circumstances, required considered, whether the explanation is sound or not must be determined not by considering the weight to be attached to each single fact in isolation but by assessing the cumulative effect of all the facts in their setting as a whole.

9. We are, thus, of the opinion that there was sufficient evidence to prove the expenditure of ₹ 2 lacs by the assessee.

10. The question is, thus, answered in favour of the assessee and against the Revenue and this appeal is partly allowed holding



that the assessee will be entitled to claim the deduction of ₹ 2 lacs as expenses, as a consequence, the assessee shall also be entitled to the reduction of interest under Section 217 of the Act.


(A.K. SIKRI)
JUDGE


(M.L. MEHTA)
JUDGE

AUGUST 8, 2011

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- Review pet - 668/11 - for review of order dt + 8-8-11.
- C.M. no. - 20372/11 - for condonation of delay of 23 days in filing