

Jayasree Chit Funds and Services (P.) Ltd. Vs. Commissioner of Income-tax

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Court : Kerala

Decided On : Jul-10-1980

Reported in : [1981]127ITR740(Ker)

Judge : V. Balakrishna Eradi, C.J. and; G. Balagangadharan Nair, J.

Acts : [Income Tax Act, 1961](#) - Sections 139, 142(1), 143 and 288; Income Tax Rules, 1962 - Rule 12

Appeal No. : Income-tax Reference No. 22 of 1978

Appellant : Jayasree Chit Funds and Services (P.) Ltd.

Respondent : Commissioner of Income-tax

Advocate for Def. : P.K. Ravindranatha Menon, Adv.

Advocate for Pet/Ap. : P.C. Chacko, Adv.

Judgement :

Balakrishna Eradi, C.J.

1. The Income-tax Appellate Tribunal, Cochin Bench (hereinafter called 'the Tribunal') has referred to this court the following two questions of law under Section 256(2) of the I.T. Act, for short 'the Act', pursuant to the direction issued by this court in O.P. No. 2656 of 1975 :

' (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in their finding that under the specific written power given by the appellant to the chartered accountant representative the latter was legally competent to make an agreement with the Income-tax Officer so as to bind the appellant ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in their finding that the addition of Rs. 15,000 made to the appellant's income is correct and legal '

2. The assessee is a private company carrying on business in chitties. In the return filed by it for the assessment year 1970-71, the assessee had claimed a deduction in respect of a sum of Rs. 44,316 on the basis that it represented expenditure laid out wholly and exclusively for the purpose of the business by way of payment of commission to ten persons for canvassing subscribers to the chitty. On finding that a sizable portion of the aforesaid amount had been paid to persons who were close relatives of the director of the assessee-company or of the secretary of the company,

the ITO commenced a probe into the matter and examined some of the recipients of the alleged commission payments as well as some of the subscribers to the chitty. In the assessment proceedings the assessee was represented by a chartered accountant in whose favour it had executed a letter of authority, which was in the following terms :

'We, Jayasree Chit Funds & Services (P.) Ltd., hereby authorise M/s. K. U. Jacob, F.C.A. and K.M.R. Nair, B. Com. of M/s. K. U. Jacob & Co., Chartered Accountants, Market Road, Ernakulam, to represent us in connection with our income-tax assessment proceedings for the assessment year 1970-71, and to produce accounts and documents connected therewith.

Their statements and explanations shall be binding on us.

For Jayasree Chit Funds &

Services (P.) Ltd. Place : Cochin (Sd.) Date: 7-8-1970. Secretary.'

3. It would appear that in the course of the discussions between the assessee's representative and the ITO, when the former appeared before the latter in response to a notice issued under s. 142(1) of the Act, the chartered accountant-representative, apparently on his having been made aware of the evidentiary material gathered by the ITO stated before the ITO that the claim for deduction may be disallowed to the extent of Rs. 15,000. He also gave a statement in writing to the ITO in the following terms :

' Rs. 15,000 and Rs. 2,000, sitting fee, may be disallowed and no penalty. '

4. The ITO thereafter finalised the assessment and in the assessment order he stated as follows in regard to the disallowance of the claim for deduction to the extent of Rs. 15,000.

' The case was discussed with the assessee's representative and he agreed that a sum of Rs. 15,000 may be added back to the income as expenditure incurred not for the purpose of the business.

Hence addition : Rs. 15,000.'

5. The assessee appealed against the aforesaid addition of Rs. 15,000, but, significantly, in the memorandum of appeal, no contention was raised that the chartered accountant, who represented it before the ITO, had acted beyond the scope of his authority in agreeing to the addition of Rs. 15,000. However, during the arguments before the AAC such a contention was put forward on behalf of the assessee. But it was rejected by the AAC and the appeal in so far as it related to the disallowance of the claim for deduction to the extent of Rs. 15,000 was dismissed by the AAC. Thereafter, the assessee carried the matter in appeal before the Tribunal. The main contention urged before the Tribunal was that a chartered accountant engaged by an assessee to represent him before the ITO has no inherent authority or competence to make any concession on behalf of the assessee unless he has been expressly instructed to do so by the assessee. The Tribunal found that the assessee had no case before it that the chartered accountant had made the representation before the ITO on any misapprehension of facts or under a mistaken belief, and that,

on the other hand, it was a statement made by the chartered accountant voluntarily that the ITO need not go into the minute details of the claim for deduction but may make a summary disallowance. The Tribunal was of the view that the chartered accountant was competent to indicate the mode of procedure that the ITO may follow in a particular case and hence when such a statement was made before the ITO by the chartered accountant representing the assessee and the ITO has acted upon it to its (assessee's) prejudice, there was no justification for the assessee to withdraw from the said position or to question the legality and binding nature of the statement made on its behalf by the chartered accountant. The Tribunal was further of opinion that the statement in question was one made by the chartered accountant in the course of the assessment proceedings and incidental to that proceeding for the purpose of facilitating the finalisation thereof by the exercise of quasi-judicial powers vested in the ITO. Finally, the Tribunal found on a construction of the letter of authority given by the assessee in favour of the chartered accountant that it specifically empowered the chartered accountant to make statements and explanations on behalf of the assessee before the ITO so as to bind the assessee. On the aforesaid reasons, the Tribunal rejected the assessee's contention that the chartered accountant had acted beyond the scope of his power in stating before the ITO that the claim for deduction may be disallowed to the extent of Rs. 15,000 and that the ITO had committed an illegality in adding back the said sum of Rs. 15,000 on the basis of the said statement made by the chartered accountant.

6. Annexure A appended to the statement of the case is a copy of the letter of authority given by the assessee to the chartered accountant. We have already extracted its text in full. By that letter, the assessee had conferred full power on the chartered accountant to represent it before the ITO in connection with the assessee's income-tax assessment proceedings for the assessment year 1970-71 and it is specifically recited that the statements and explanations given by the said representative before the ITO would be binding on the assessee. A faint attempt was made before us by the counsel for the assessee to contend that the 'statements and explanations' referred to in annex. A can be only the statement which the chartered accountant is enjoined by Rule 12(a) to furnish to the ITO. No such point was raised by the assessee either before the Tribunal or before the AAC. Rule 12(a) will get attracted only if the representative in question had prepared the return of income furnished by the assessee. There is absolutely no material before us to show that the return of the assessee for the assessment year in question had been prepared by the chartered accountant, to whom the letter of authority, annex. A, was issued. It is not, therefore, possible to relate the expression 'statements and explanations' contained in annex. A to any obligation of the chartered accountant under Rule 12(a) of the I.T. Rules, 1962--an obligation with which the assessee has little concern. Hence, it is impossible to accept the contention put forward by the assessee that the expression 'statements and explanations' occurring in annex. A should be given a restricted connotation by linking it with the obligation cast on the chartered accountant under Rule 12(a). In our opinion, the said expression is wide enough to take in all statements and explanations relating to the matters that are germane to the assessment proceedings for the year in question, which will obviously include the claim for deductions put forward by the assessee.

7. All that the chartered accountant has done in this case is to submit during the course of the hearing before the ITO that he was unable to sustain the claim for deduction (the aggregate claim amounted to Rs. 44,000 odd) to the extent of Rs. 15,000 and that in respect of the balance the claim may be allowed and the assessee

may be exempted from any liability for penalty. It was fully within the competence of the chartered accountant to make such a representation before the ITO on behalf of the assessee in the course of the assessment proceedings. We have, therefore, no hesitation to uphold as correct the conclusion recorded by the Tribunal on this question. Accordingly, both the questions referred are answered in the affirmative, i.e., against the assessee and in favour of the department. The parties will bear their respective costs. A copy of this judgement, under the seal of the court and the signature of the Registrar, will be forwarded to the Tribunal, as required by law.

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