

**BASIR AHMED SISODIYA v. THE INCOME TAX OFFICER**

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**Abstract**

I had researched whether all the amount will be taxable or not and whether credit purchase comes under cash credit or not and that to understand the tax implications when credit purchases are being done by a trader and whether such purchases made on credit would come under taxable income for that assessment year. Hence, I chose this case because the officer had treated the credit purchase as declared income of the Assessee for that assessment year. This judgment is important for all businessmen carrying on any type of business. So, I choose this case since this case seemed to be more challenging as it was initially decided against the Assessee by the Commissioner of Income Tax but was later allowed by the Supreme Court. The Assessee then approached the Hon'ble High court, where the Hon'ble High Court dismissed the appeal and pronounced the order based on the report of the concerned authority. The aggrieved Assessee appealed to the Hon'ble Supreme Court for justice and the Hon'ble Supreme Court had rendered a favourable judgment in favour of the Assessee/Appellant after reversing all the before said orders upon scrutinizing the records and calling for necessary documents in support of the Assessee's contentions. In this case, I have researched about the cash credit purchase, whether it comes under the definition of cash credit and this paper clearly states that what are all comes under cash purchase and what does not...

**Facts of the case**

The Assessee in the present case was served with a notice under Section 143(2) of the Income Tax Act, 1961 by the Assessing Officer. Accordingly, an order was passed. The officer depending solely on the balance sheet and other books of accounts had taken note of the credit purchases from 13 unregistered dealers. The officer had treated the credit purchases under Section 68 of the Income Tax Act 1961 and thereby added the same to the declared income of the Assessee. The officer then took steps to compute the income of the Assessee for that particular financial year. Hence, the aggrieved Assessee escalated the matter to the concerned authority i.e., The Commissioner. The Commissioner upheld the addition made by the assessing officer with regards to accounts submitted. Then the Assessee approached the tribunal for an appeal. The tribunal also upheld the order passed by the Commissioner. Then the Assessee further appealed to the Honourable High Court. The High Court dismissed the appeal based on the impugned order by the tribunal stating that it was devoid of merits. The Hon'ble High Court had

opined that the amount shown as credits were not bonafide entries but were false and was just merely included in the records of the Assessee.

### **Critical review of the judgment**

#### **Proceedings under the Assessing Officer, Income Tax**

In this case, the assessing officer while relying on the balance sheet and the books of the accounts took note of the cash credits amounting to Rs. 2,26,000 the officer treated that amount as cash credit under section 68 of Income Tax Act 1961 and he added the amount to the declared income of the Assessee and taxed them. Accordingly, the computation of income of the assessee for the assessment year 1998-99 is as follows:

Income is shown in the Returns Rs. 87500/-

1.	Disallowed deduction U/s.24(1) as per discussion	7200/-	
2.	Additions in gross profit	10000/-	
3.	Additions on the basis of less Household expenses withdrawals	18000/-	
4.	Unexplained credits as per discussions	226000/-	261200
	Total taxable income tax		348700

#### **Section 68 of the Income Tax Act, 1961**

Where any sum is found credited in the books of an Assessee maintained for any previous year, and the Assessee offers no explanation about nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to taxable income as the income of the Assessee of that previous year. Aggrieved by the penalty the Assessee/Appellant approached the Income Tax Commissioner. The Commissioner relied upon the report of the assessing officer and upheld the same.

#### **Proceedings under the Income Tax Appellate Tribunal**

Thereafter the Assessee/Appellant preferred an appeal to the ITAT and in the appeal, the ITAT held the Commissioner's order as final and dismissed the same.

**An appeal preferred with the High Court**

Then the Assessee/Appellant filed an appeal before the Hon'ble High Court under section 260A of the 1961 Act. The Hon'ble High Court upheld the same as being devoid of truth and held that the amount shown as credit was nothing but a bogus entry and was hence justly added to the income of the Assessee by the Hon'ble High Court.

**Proceedings under the Commissioner of Income Tax (Appeal)**

It was held during the penalty proceedings, that out of the total 13 unregistered dealers, 12 unregistered dealers were examined by the Income Tax Officer. The said officer had neither doubted the identity of those 12 unregistered dealers out of 13 unregistered dealers nor did he offer any adverse comments regarding the sale of marble slabs to the Assessee/Appellant by the 12 unregistered dealers out of the 13 unregistered dealers. Moreover, it was clear that the 12 unregistered dealers had sold the marble slabs on credit for which the payment was due during the next 2 to 3 years thus, the appellate authority concluded that without the Appellant/Assessee purchasing marbles he could not sell marbles and that he had disclosed such marbles slabs purchase on credit in the closing stock of the trading account. The above said observation was made by the appellate authority being the competent forum during the penalty proceedings under section 271 of the Income Tax Act 1961 in favour of the Assessee/Appellant. However, the Appellant/assessee did not produce any evidence or explanation supporting his credit purchase made from his 12 unregistered dealers. The said 12 unregistered dealers confirmed having sold marble slabs on a credit basis to the Assessee/Appellant and the same statement given by the 12 unregistered dealers was accepted in toto by the appellate authority. The Income Tax Appellate Authority has now accepted the Assessee/Appellant's explanation after duly recording his findings that there was no room for concealment of income or any inaccurate particulars of income furnished by the Assessee/Appellant. This being the undisputed fact the additional amount assessed by the income tax authority could not be justified nor maintained. Finally, with the fond hope, the Assessee/Appellant filed an appeal in the Hon'ble Supreme Court and then the Top Court accepted his appeal and rendered justice.

**Legal Provisions****Section 68 of the Income Tax Act, 1961**

Where any sum is found credited in the books of an Assessee maintained for any previous year, and the Assessee offers no explanation about nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the Assessee of that previous year.

**Section 143 of income tax act, 1961**

143. (1) (a) Where a return has been made Under Section 139, or in response to a notice Under Sub-section (1) of Section 142,-

(i) if any tax or interest is found due based on such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of Sub-section (2), an intimation shall be sent to the Assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued Under Section 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due based on such return, it shall be granted to the Assessee: Provided that in computing the tax or interest payable by, or refundable to, the Assessee, the following adjustments shall be made in the income or loss declared in the return, namely:

1. any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;
2. any loss carried forward, deduction, allowance or relief, which, based on the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed;
3. any loss carried forward, deduction, allowance or relief claimed in the return, which, based on the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed:

Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the Assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments: Provided also that an intimation for any tax or interest due under this Clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.

**Section 144 of income tax act, 1961**

144. (1) If any person-- (a) fails to make the return required Under Sub-section (1) of Section 139 and has not made a return or a revised return Under Sub-section (4) or Sub-section (5) of that section, or (b) fails to comply with all the terms of a notice issued Under Subsection (1) of Section 142 or fails to comply with a direction issued Under Sub-section (2A) of that section, or

(c) having made a return fails to comply with all the terms of a notice issued Under Sub-section (2) of Section 143, the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the Assessee based on such assessment.

Method of accounting: 145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of Sub-section (2), be computed by either cash or mercantile system of accounting regularly employed by the Assessee. (2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesses or in respect of any class of income. ( 3 ) Where the Assessing Officer is not satisfied with the correctness or completeness of the accounts of the Assessee, or where the method of accounting provided in Sub-section (1) or accounting standards as notified Under Sub-section (2), have not been regularly followed by the Assessee, the Assessing Officer may assess in the manner provided in Section 14.

### **Definition of section 260A of income tax act, 1961**

**260A.** (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal if the High Court is satisfied that the case involves a substantial question of law.

### **Substantial question of law**

Whether claim to purchase of goods on credit by the Assessee could be dealt with under section 68 of the Income Tax Act, 1961 (43 of 1961) as a cash credit by placing the burden of proof upon the Assessee to explain that the purchase price does not represent his income for the given assessment year.

### **Assessee/ Appellant's arguments**

The Appellant states that he was served with a notice under section 143(2) of the Income Tax Act 1961. in continuation to which the assessment order was passed. The question that arose was that the challenge regarding certain entries that were made in the books of the accounts to be specific regarding credit amounts totalling to Rs 2,26,000 the Income Tax Officer had added these credits to the Assessee/Appellant's declared income under section 68 of the Income Tax Act 1961. and the proceeded calculating the income for the assessment year. The Appellant then preferred an Appeal with the income Tax Appellate Tribunal which was allowed in part and then he filed an Appeal before the Hon'ble High Court under section 260A of The Income Tax Act 1961. The Appeal after get admitted and framed the following substantial question of law

Whether claim to purchase of goods on credit by the Assessee could be dealt with under section 68 of the Income Tax Act, 1961 (43 of 1961) as a cash credit by placing the burden of proof upon the Assessee to explain that the purchase price does not represent his income for the given assessment year

and then the Hon'ble High Court hearing the arguments both the sides dismissed the Appeal vide its impugned order with the reasoning that the contention raised by the appellant was a benefit of facts. The ratio decedent pronounced by the Hon'ble High Court order was that there had been no purchase whatsoever that was not made by the assessee and the figure shown were all contrary to the truth it further affirmed that the alleged transaction was failed to be proved by me and that the department though tried to call out the truth in the said transaction ended in vein.

Having failed in the appeal the assessee escalated his appeal to the Hon'ble Supreme Court stating that the entry made by the Assessee is true and not a bogus entry and he further states that he will prove all the dealers from whom he had purchased the marble and further stated that the penalty which was imposed to him should be struck down and necessary order should be passed.

### **Respondent's arguments**

The respondent contended that the Assessee had forged the accounts about the tax payment and that the officer had relied upon the books of accounts of the Assessee. The officer then on good faith treated the cash credit of the Assessee and also had entered the same in the declared income of the Assessee. Only then was the total income computed by the officer.

The same was accepted by the Income Tax Officer. Then also the Assessee approached the Hon'ble High Court the Hon'ble High Court gave several chances to the assessee to prove that the entries made by him in his books of record are true to his knowledge and not a bogus statement. But the Assessee failed to prove the accounts entered by him that is the accounts of the dealers from whom the Assessee bought the marble. So from this, we can come to know that the Assessee has forged the accounts to escape from the tax payment if not he can prove it.

The amount mentioned under Credits in the balance sheet of the Assessee is not proper and it qualifies as cash credit which comes under section 68 of the Income Tax Act. Hence the petition for appeal by the Appellant should be dismissed as there is no proper evidence for his purchases and the ingenuity was established since there was no proper evidence for the existence of the said 13 unregistered dealers.

### **Observation made by the court**

The court observed that in the first instance the assessing officer had recorded all the cash credits of the Assessee as declared income of him and told him to pay the tax accordingly and a penalty proceeding

was also initiated against him. For that, he had approached the Income Tax Commissioner and the Commissioner also held that the Assessee had forged the documents and held to be liable to pay the penalty.

The Assessee then approached the Hon'ble High Court under section 260A as there is a substantial question of law and the Hon'ble High Court also accepted his contention and gave several opportunities to prove that the accounts enter by him is true and not a forged one but the Appellant could not prove the statements within the stipulated time as to where the purchases were made and the appellant did not give any proof of the unregistered dealers so the Hon'ble High Court dismissed the appeal filed by the Assessee.

Then the Assessee filed an appeal in The Hon'ble Supreme Court. The top court accepted the appeal of the Appellant and directed the Commissioner of Income Tax for Appeal to examine all the affidavits submitted by the Appellant. the Appellant submitted all the details of the unregistered dealers and the officer also examined all the particulars and the unregistered dealers too accepted that they supplied goods on credit to the Appellant. Hence, the officer examined 12 unregistered dealers out of 13. and held that the appellate not forged the accounts and believed that all the accounts are true and even criminal proceedings initiated against him were quashed.

### **Judgment**

The Hon'ble Supreme Court set aside the penalty amount and ordered to refund the said penalty amount together with interest to the Assessee/Appellant and that the said amount of Rs.2,26,000/- not to be included as declared income of the Assessee, that the judgment in favour of the Assessee that the addition of 2,26,000 by the officer under Section 68 of The Income Tax Act 1961 against the credit purchases made from the 13 unregistered dealers. The Court also disposed of the pending interlocutory applications.