

(2010) 08 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 593 of 2006

Brij Mohan Bhatia

APPELLANT

Vs

Income Tax Appellate Tribunal

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Evidence Act, 1872 — Section 92

Income Tax Act, 1961 — Section 132(1), 132A, 158BC, 260A

Citation : (2011) 333 ITR 580 : (2012) 202 TAXMAN 32

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Sukant Gupta, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 (in short "the Act") against order dated 25-8-2006 passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal"), in I.T. (S.S.) A. No. 29 (ASR)/2003 and Cross Objection No. 12 (ASR)/2003, for the block period 1-4-1989 to 30-3-2000, proposing to raise the following substantial questions of law:- (a) Whether Tribunal has failed to appreciate that there was no occasion with the respondents to exercise their power of search and seizure under the income tax Act and the said powers exercised by them are without jurisdiction?

(b) Whether the Tribunal has erred in not excluding the Oral Statements of the parties in the presence of the Documentary Evidence on the record in terms of section 92 of the Indian Evidence Act, 1872, while setting aside the well reasoned judgment passed by the Hon'ble Commissioner of income tax (Appeals)-I, Ludhiana?

(c) Once the Commissioner of the income tax (Appeals)-I, Ludhiana has returned the findings on the basis of the documentary evidence/the documents seized by the income tax Department, at the time of the raid, can such a finding be upset

by the income tax Appellate Tribunal on the basis of oral evidence?

(d) Whether the Hon"ble Tribunal has erred in rejecting the plea of the Petitioner that the present case is squarely covered in favour of the Petitioner in view of the follow case laws:

(i) Union of India (UOI) Vs. Ajit Jain and Another,

(ii) Commissioner of Income Tax, Allahabad and Others Vs. Vindhya Metal Corporation and Others,

(iii) AJIT JAIN Vs. UNION OF INDIA and Others,

(e) Whether the Tribunal has erred in setting aside a well reasoned detailed judgment of Commissioner of income tax (Appeals) Ludhiana dated 28-5-2003 without formulating and deciding any substantial question of law?

(f) Whether the Tribunal has failed to appreciate that the orders passed by the respondent the Assistant C.I.T., C.C.I. Amritsar in invoking the search and seizure power of the cash amount of Rs. 10,25,000 tantamount to violation of right to freedom and right to privacy from any reasonable search and seizure or not?

(g) Whether the Hon"ble Tribunal has failed to appreciate that the seized amount of Rs. 10,25,000 does not belong to the Petitioner but to the firm R.K. Enterprises and after passing of the order dated 28-5-2003 by Commissioner of income tax (Appeals) Ludhiana in favour of the Petitioner, the Petitioner had already refunded back and handed over the same amount?

(h) Whether the authorities below have erred in initiating the present proceedings without impleading the firm R.K. Enterprises whose money was seized. So all the proceedings regarding seizure are liable to be set aside on account of non-impleading of the party i.e. R.K. Enterprises?

(i) Whether the Hon"ble Tribunal has failed to appreciate that since the currency in question amounting to Rs. 10,25,000 was seized by the Central Excise Department so it was not in the possession of the Petitioner and accordingly the proceedings of search and seizure of income tax Deptt. cannot be initiated against the Petitioner in view judgment reported as Commissioner of Income Tax, Haryana, Himachal Pradesh and Delhi and Others Vs. Tarsem Kumar and Another,

Facts necessary for the disposal of the present appeal may be noticed. On 6-10-1999, a search was conducted by the Central Excise Department on the business and residential premises of the assessee and unaccounted cash amounting to Rs. 10,25,000 was found and recovered. The assessee failed to explain the source or produce any corroborative evidence on account of the aforesaid cash.

The Excise authorities informed the income tax Department vide letter dated 16-3-2000 regarding unaccounted cash amounting to Rs. 10,25,000 seized from

the assessee. The said amount was considered as sale proceeds of excisable goods as the assessee had not produced any evidence about the rightful possession of the cash. The Director of income tax (Inv.) New Delhi authorized the team consisting of two income tax Officers, one Deputy Director of Investigation and one Additional Director of Investigation, New Delhi on 30-3-2000 for requisitioning the cash amount of Rs. 10,25,000 from the Central Excise Authorities, New Delhi. Proceedings u/s 132A of the Act were initiated against the assessee and notice dated 25-4-2001 u/s 158BC was served upon him. Return of income for block assessment was filed by the assessee on 25-5-2001 declaring total undisclosed income as nil. The case of the assessee was transferred to the office of Assistant Commissioner income tax, Central Circle-I, Amritsar on 28-1-2002 and the records were checked. The assessee was asked to show cause why the amount of Rs. 10,25,000 be not added to his income of the block period. The assessee explained before the Assessing Officer that the sum of Rs. 10,25,000 was on account of sales realization collected by Shri Rajnish Bhatia, consignee agent of M/s R.K. Enterprises, New Delhi against sale bill Nos. 46 to 56 who used to deposit them in its bank account after incorporating them in the books of account. The Assessing Officer held that the cash of Rs. 10,25,000 seized by the Central Excise Authorities from the residential premises of the assessee on 6-10-1999 represented his income from undisclosed sources and, therefore, assessed the undisclosed income of the block period at Rs. 10,25,000. Upon appeal, the Commissioner of income tax (Appeals) [in short "the CIT(A)"] deleted the addition made by the Assessing Officer holding that the same was not based on any cogent reason. Feeling aggrieved, the revenue approached the Tribunal, who vide order 25-8-2006 allowed the appeal and dismissed the cross objection filed by the assessee. Hence, the present appeal by the assessee.

2. We have heard learned counsel for the parties.

3. The Tribunal while allowing the appeal of the department and rejecting the cross objection of the assessee had adjudicated the matter against the assessee on two counts; (a) The assessee was not entitled to challenge before the appellate authorities the validity of the search and seizure and the satisfaction note recorded by the department for initiating search and seizure operation at the premises of the assessee; and (b) there was no valid explanation in respect of cash of Rs. 10,25,000 which was found from the possession of the assessee and was seized after intimation having been received from the Central Excise Authorities.

4. Learned counsel for the assessee very fairly submitted that the issue regarding challenging of validity or otherwise of search and seizure u/s 132(1) of the Act is no longer in dispute as a Division Bench of this Court in CIT v. Paras Rice Mills [2010] 323 ITR 182 has decided the issue against the assessee and in favour of the revenue. It has been held therein as under:--

We are of the view that the Tribunal when hearing an appeal against the order of

assessment could not go into the question of validity or otherwise of any administrative decision for conducting the search and seizure. The same may be the subject-matter of challenge in independent proceedings where the question of validity or otherwise of administrative order could be gone into. The appellate authority was concerned with the correctness or otherwise of the assessment.

5. Following the aforesaid judgment, it is held that the Tribunal had rightly held that the validity of search and seizure operation could not be gone into by the Tribunal in the appeal proceedings.

6. Adverting to the second submission, learned counsel for the assessee submitted that the CIT(A) while adjudicating the matter on merits had recorded in para 2.1 as under:--

2-1- I have considered the matter carefully, and I find force in the contentions of the Learned Counsel for the following reasons:

(i) That the Central Excise authorities vide their letter C. No. IV (HQRS.PREV) 15/65/99/882 dated 28-3-2000, had informed Sh. Brij Mohan Bhatia that, "I have been directed to convey that the Commissioner, Central Excise Delhi-I, New Delhi has vacated the seizure of Currency amounting to Rs-10-25 lacs seized on 6-10-1999 from your residential premises at F-8/15, Krishna Nagar, Delhi. You are advised to collect the said currency from this office on any working day between 11.00 A.M. to 1.00 P.M. You are also requested to give prior intimation of date and time of your visit to this office so that necessary arrangements may be made to withdrawal of the amount from the bank well in advance." This goes to validate the Ld. Counsel's plea that the Central Excise authorities were satisfied with the explanations of the appellant.

(ii) That the Deputy Commissioner in the office of the Commissioner of Central Excise, Delhi had released goods amounting to Rs. 2,51,045 vide a letter C. No. IV (Hqrs. Prev.)/15/65/99/4018, dated 14/15/12/1999.

(iii) That vide another letter C. No. CE13/Preve/MOD-IV/21/99/269, dated 27-1-2000, the office of the Assistant Commissioner Central Excise Delhi further released goods amounting to Rs. 7,59,900. This vindicates the Ld. Counsel's averments that the Excise authorities were satisfied with the appellant's submissions.

(iv) That the goods seized by the Excise department came to be released except the cash amount of Rs. 10,25,000 which was handed over to the income tax Department, despite a letter dated 28-3-2000 from the Central Excise authorities conveying the vacation of the seizure of the currency of Rs. 10,25,000 as per the directions of the Commissioner Central Excise, Delhi-I. This amount of Rs. 10-25 lacs was the only addition made vide the above assessment order. No other infirmity or discrepancy was found.

(v) That vide letter F. No. Asstt. CIT/CC-I/Astr/41, dated 12-4-2002 the Assistant Commissioner, Central Circle-I, Amritsar has clearly written that, "The challan

book and three challans on the letter head were kept in this office by you on your own account and were not impounded by this office. You may take the challan book and three challans on letter heads at any time during office hours." This clearly proves that no infirmity or specific defect was noticed in the books of account and it validates further the Learned Counsel's averments that Shri Raj Kumar Bhatia had been pointed as a consignee agent for the electronic components and he is an existing assessee. In the balance sheet of M/s R.K. Enterprises for the assessment year 2000-01 a sum of Rs. 10,25,000 appearing in the name of Rajnish Bhatia clearly proves that he was a sundry debtor. The details of the amounts received from the consignee agent as well as the date of deposit in their bank have also been made available. A copy of the bank account has also been furnished before the undersigned.

(vi) That the partnership firm, M/s R.K. Enterprises, is also an existing assessee, and they had appointed Sh. Rajnish Bhatia as a consignee agent w.e.f. 15-5-1999 vide an agreement of even date (a copy of the said agreement lying in the house was also seized by the Excise authorities). This goes to prove that the agreement was not an afterthought. The appellant has given bill wise details of the consignment sales effected by Sh. Rajnish Bhatia on behalf of the consignor and Sh. Rajnish Bhatia reimbursed the sale proceeds collected on behalf of M/s R.K. Enterprises periodically to his principals who in-turn deposited the same in their bank account (a copy of the bank account has been furnished in support of the above contention). It is pertinent to point out that all these facts were confirmed by the concerned parties including M/s. R.K. Enterprises and Sh. Rajnish Bhatia before the Central Excise authorities also.

(vii) That from the copies of the returns, and the profit and loss account and balance sheet of M/s R.K. Enterprises, it becomes clear that a sum of Rs. 10-25 lacs was due from Sh. Rajnish Bhatia. Letter C. No. IV (HQRS. PREV) 15/65/99/882, dated 28-3-2000 issued by the Central Excise Authorities, Delhi also confirms the position that the Excise Authorities were satisfied with the explanations of the appellant with regard to the said amount.

(viii) That Sh. Rajnish Bhatia, Sh. Brij Mohan Bhatia and Sh. Rishi Bhatia had all confirmed the above position vide their statements and depositions made before the Central Excise and income tax Authorities.

7. Learned counsel for the assessee drew the attention of this Court to the order of the CIT(A) wherein the assessee had given details of sale bills No. 46 to 56 which explained and justified the stand of the assessee that cash found amounting to Rs. 10,25,000 was on account of the cash sales made by the son of the assessee. He, however, submitted that the Tribunal while reversing the finding and holding that Rs. 10,25,000 was a cock and bull story and was not explained by the assessee has not dealt with any of the grounds referred to by the CIT(A) while deleting the addition and also the material produced in the form of sale bills.

8. Learned counsel for the revenue, on the other hand, supported the order passed by the Tribunal.

9. We have given our thoughtful consideration to the rival submissions of learned counsel for the parties and find that the Tribunal while arriving at the conclusion that Rs. 10,25,000 cash seized was on account of concealed income of the assessee has merely relied upon the order of the Assessing Officer and has not given any basis or reasons for reversing the finding recorded by the CIT (A). Further, the plausibility of the explanation submitted by the assessee on the basis of sales bill No. 46 to 56 produced by him also requires to be considered by the Tribunal. Accordingly, we are of the view that the matter requires to be remanded to the Tribunal for re-adjudication.

10. In view of the above, the case is remanded to the Tribunal for fresh decision in accordance with law. The parties may appear before the Tribunal on 20-12-2010 for further proceedings in accordance with law.