
(2010) 12 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : ITA No. 373 of 2006

CIT

APPELLANT

Vs

Jagtar Singh

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Income Tax Act, 1961 — Section 260A, 68

Citation : (2012) 204 TAXMAN 14

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

Bench : Division Bench

Advocate : Urvashi Dhugga, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—This order will dispose of Income Tax Appeal Nos. 373 to 375 of 2006 as common question of law is involved in these appeals. The facts have, however, been taken from Income Tax Appeal No. 373 of 2006. This appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act") has been filed by the Revenue against the order dt. 16-11-2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench A, Chandigarh (in short "the Tribunal") in ITA No. 507/Chandi/2002, relating to the assessment year 2000-01.

2. The appeal was admitted on 10-11-2006 for determination of the following substantial question of law by this Court:

Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the order of the Commissioner (Appeals), as the assessee has failed to discharge his onus in proving the source of funds with documentary evidence?

3. The facts, in brief, necessary for adjudication and as narrated in the appeal, are that the assessee had deposited Rs. 22,80,000 on 23.6.1999, in his account with the State Bank of India, and Rs. 19,00,000 on 22-7-1999 and Rs. 17,00,00 on 2-8-1999 with the Punjab and Sind Bank at Rupnagar. The assessing officer

asked him to explain the source of these deposits. The assessee claimed that the said amounts were received by him on account of sale of land and deposited in his accounts. The failure on the part of the assessee to explain the deposits amounting to Rs. 36,80,000 satisfactorily led to considering his income from undisclosed sources and accordingly assessment was completed on the said amount as well, by the assessing officer vide order dt. 26-3-2001. The assessee filed appeal. The Commissioner (Appeals) [in short "Commissioner (Appeals)"] accepted the appeal by order dt. 27-3-2002 and deleted the addition made by the assessing officer. The Department feeling not satisfied with the order of the Commissioner (Appeals) preferred appeal before the Tribunal. The Tribunal concurred with the view of the Commissioner (Appeals) and accordingly dismissed the appeal of the Department vide the order under appeal. The Revenue is in appeal assailing the orders of the Commissioner (Appeals) and the Tribunal.

4. We have heard learned counsel for the Revenue and have perused the record.

5. Learned counsel for the Revenue submitted that the Commissioner (Appeals) and the Tribunal erred in placing initial onus upon the Revenue to establish that the deposits made by the assessee were the undisclosed income of the assessee. According to the learned counsel, the total deposits made by the assessee were of Rs. 60,80,000, out of which only Rs. 24,00,000 on account of six registered sale deeds of Rs. 4,00,000 each, had been satisfactorily explained. The balance amount of Rs. 36,80,000 (i.e. Rs. 60,80,000 less Rs. 24,00,000) was an undisclosed income as the assessee had failed to satisfactorily explain the source of the said amount. It was further argued that the assessee had failed to produce any documentary evidence in support of his claim that the amounts had been received on account of sale of land and the assessing officer was, thus, justified in assessing the same as unexplained income and the Commissioner (Appeals) and the Tribunal had erred in reversing the said finding.

6. The point for consideration in this appeal is, whether cash deposits which were found in the bank accounts of the assessee had been duly explained by him, or not, and the Commissioner (Appeals) and the Tribunal were justified in deleting the said addition?

7. It is well settled that wherever a receipt is sought to be taxed as income, the Department is required to prove that the same falls within the taxing provision, and where the receipt is in the nature of an income, the burden lies on the assessee to show that it is not taxable as it falls within the purview of exemption provided by the Act. However, u/s 68 of the Act, where any amount is found credited in the accounts of the assessee relating to any previous year, the same can be charged to income tax as the income of the assessee of that year where the explanation offered by the assessee about the nature and its source is not satisfactory in the opinion of the assessing officer. In such a case, there is a prima facie evidence against the assessee, viz. the receipt of money and, if he fails to rebut the said evidence, it can be used against him by holding that it was

the receipt of income nature.

8. The assessing officer, after noticing that the initial onus which stood on the assessee was not discharged, made addition of Rs. 36,80,000 u/s 68 of the Act. It was noticed by the assessing officer that two receipts of Rs. 17,00,000 each, on 21-7-1999 and 2-8-1999, had been the result of an after-thought inasmuch as the assessee could not offer any explanation to justify the said amounts, more particularly, when it was not the part of the sale consideration in the registered sale deeds. Reference was also made to the statement of Shri Navraj, the vendee where he was asked to explain the facts relating to an amount of Rs. 17,00,000 handed over to the assessee on 21-7-1999, but he failed to give any satisfactory reply and details in that regard. Similarly, as regards receipt of Rs. 17,00,000 on 2-8-1999, he had stated that he did not recognise his signature on the receipt in question as the same differed and he would confirm only after seeing the receipt taken from Shri Jagtar Singh, the assessee. He was unable to explain the source of this payment as well. Further, the sale deeds did not specify that there was something more than the land that was alienated and there was no mention of any other thing like crops, popular trees, tube-wells and buildings etc. Still further, it was recorded that the agricultural land, at the time of sale, was vacant and the agricultural produce was sold out in 1996-97 and 1997-98 and the agricultural income was shown in the return. The amount deposited on the basis of these alleged receipts, thus, could not be held to be substantiated by the assessee as relating to the sale of the land. However, the Commissioner (Appeals) and the Tribunal wrongly placed the initial onus on the Revenue and had allowed the appeal of the assessee. The approach of the Commissioner (Appeals) and the Tribunal cannot be accepted as the deposits which were credited in the accounts of the assessee had not been explained satisfactorily by the assessee, and, thus, it could not be held that the assessee had discharged the onus placed on him to show that it was his income from the sale of land.

9. Once it is held that the onus was wrongly placed on the Department and the assessee had failed to produce any cogent and convincing material to establish that the deposits were on account of sale of land, the addition made by the assessing officer could not have been deleted and the finding as recorded by him could not be held to be perverse. The Commissioner (Appeals) and the Tribunal were, thus, not justified in reversing the finding of the assessing officer and thereby deleting the addition. In view of the above, the substantial question of law is, therefore, answered in favour of the Revenue and against the assessee. Accordingly, the appeals stand allowed.