
(2009) 03 P&H CK 0106
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Ashok Arora

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 148, 271, 271B

Citation : (2010) 329 ITR 578

Hon'ble Judges : J.S. Khehar, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—The assumption that the respondent-assessee had evaded his tax liability was made by the assessing officer (in the assessment order dated 24-3-2005) on the basis of material depicting that the assessee had invested in fixed deposits in banks i.e., the bank of Maharashtra and the Punjab National Bank. The explanation tendered by the respondent-assessee was that the aforesaid deposits were made out of money received from the sale of lottery tickets. Insofar as the assessment under reference is concerned, i.e., for the assessment year 1997-98, the respondent-assessee had not filed any return of income. The assessing officer was of the view that income from the sale of lottery tickets invested as fixed deposits in different banks, as well as interest derived by the respondent-assessee on the aforesaid fixed deposits had escaped assessment.

2. A notice u/s 148 of the Income Tax Act, 1961, was issued to the respondent-assessee on 22-3-2004, after getting appropriate approval. The aforesaid notice was served on the respondent-assessee on 24-3-2004. In response to the aforesaid notice, the respondent-assessee filed a return (for the assessment year 1997-98) declaring his income at Rs. 1,64,614.

3. Statutory notices under Sections 142 and 143 of the Income Tax Act, 1961, were issued to the respondent-assessee. His response was sought through a

detailed questionnaire furnished to him. Summons were also issued to the bankers with whom the respondent-assessee had maintained his fixed deposits. Summons were also issued to the Rajasthan State Lotteries, Jaipur, for gathering further information on the issue. In response to the questionnaire furnished to the respondent-assessee, he submitted his reply. He also produced his books of account. On the basis of the aforesaid exercise carried out by the assessing officer, the assessing officer arrived at the conclusion that the respondent-assessee had deposited Rs. 63,23,642 by way of fixed deposits with different banks, without satisfactorily explaining the source of the aforesaid investment. Since the assessing officer was not satisfied with the explanation tendered by the respondent-assessee, the same was treated as unexplained investment u/s 69 of the Income Tax Act, 1961. As such, an addition of Rs. 1,25,76,000 was made by the assessing officer to the income of the respondent-assessee.

4. Besides the aforesaid addition, penalty proceedings were initiated against the respondent-assessee u/s 271(1)(c) of the Income Tax Act, 1961, on the ground that the respondent-assessee had failed to file his return of income within the postulated time. Additionally, penalty proceedings were also initiated against the respondent-assessee u/s 271B of the Income Tax Act, 1961, as he had failed to get his accounts audited.

5. Dissatisfied with the determination rendered by the assessing officer, as also penalty proceedings initiated against him, the respondent-assessee preferred an appeal before the Commissioner (Appeals), Faridabad. Before the aforesaid appellate authority, the respondent-assessee asserted that investments in the nature of fixed deposits were made by him in different banks out of cash received from vendors (of the lottery tickets). To substantiate his aforesaid claim, the respondent-assessee relied on confirmation of all the vendors on plain paper, along with affidavits of as many as 20 such vendors. In his effort to repudiate an inference being drawn against him for not producing the vendor, the contention of the respondent-assessee was that he had closed the said lottery business about ten years before the receipt of any notice by him, and as such it was impossible for him to trace the vendor. The respondent-assessee also produced confirmation from the vendors before the Commissioner (Appeals), Faridabad, with a request that the same be taken on record as additional evidence Under Rule 46A of the IT Rules, 1962. Besides pointedly relying on the aforesaid evidence, the respondent-assessee also asserted that in identical circumstances similar pleas raised by the respondent-assessee for the assessment year 1996-97 had been accepted, whereupon the addition made for the aforesaid assessment year was deleted.

6. Having taken into consideration the factual position depicted by the assessee, as has been noticed in the foregoing paras, as well as the fact that the assessing officer who appeared before the Commissioner (Appeals), Faridabad, acknowledged that no new facts had been brought on the record for the assessment year 1997-98 (besides the material which had been taken into

consideration in respect of an identical controversy pertaining to the preceding assessment year 1996-97) as also the fact that the assessing officer had also verified the genuineness of some of the vendors by deputing Inspectors, and had arrived at the conclusion that the same were genuine. As also the fact that the present controversy in respect of the assessment year 1997-98 was identical to the controversy which was earlier adjudicated upon for the assessment year 1996-97, the Commissioner (Appeals), Faridabad, arrived at the conclusion that it could not be held that the FDR deposits made in the name of the respondent-assessee valuing Rs. 49,76,000 in the Bank of Maharashtra and Rs. 76,00,000 in the Punjab National Bank had been made from out of unexplained funds. The Commissioner (Appeals), Faridabad, accordingly, deleted the aforesaid addition made in the income of the respondent-assessee based thereon.

7. Dissatisfied with the order passed by the Commissioner (Appeals), Faridabad, dated 11-5-2006, the revenue preferred an appeal before the Tribunal. For the same reasons as were recorded by the Commissioner (Appeals), the Tribunal dismissed the appeal preferred by the revenue vide an order dated 3-7-2008.

8. The order passed by the Commissioner (Appeals), Faridabad and the Tribunal are subject-matter of challenge through the instant appeal.

9. We have considered the submissions advanced by the appellant. In fact in their entirety, the submissions advanced on behalf of the revenue are based on the order passed by the assessing officer dated 24-3-2005.

10. We have considered the aforesaid submissions advanced by the learned Counsel for the appellant. We however, find no merit therein. Firstly, it is not a matter of dispute that an identical controversy as against the same assessee pertaining to the assessment year 1996-97 was allowed in favour of the respondent-assessee on the same facts and circumstances, as in the present appeal. Secondly, the respondent-assessee had produced confirmations from all vendors on plain paper, along with affidavits of as many as 20 such vendors affirming the transfer of funds by them to the respondent-assessee on account of sale/purchase of lottery tickets. Thirdly, his excuse for not producing the vendors for verification was that he had closed the instant business about a decade before the issue was raised, and as such, it was not possible for him to trace all the vendors. Fourthly, out of the confirmations/affidavits produced by the respondent-assessee verification was carried out by the assessing officer. Same verification was also sought to be conducted through an Inspector of the department. All confirmations/affidavits which were sought to be verified were found to be genuine. Filthily, it was acknowledged by the assessing officer before the Commissioner (Appeals) that no new facts had been brought on the record of the controversy pertaining to the assessment year 1997-98 besides those which were taken into consideration for the assessment year 1996-97.

11. In view of the above, there is absolutely no scope for interference with the orders passed by the Commissioner (Appeals) dated 11-5-2006, and the Tribunal

dt.3-7-2008.

12. For the reasons recorded hereinabove, we find no merit in this appeal, the same is accordingly dismissed.