

(2004) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : DB IT Appeal No. 39 of 2001 & IT Appeal No. 39 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Kailash Chand Sharma

RESPONDENT

Date of Decision : 15-07-2004

Acts Referred:

Income Tax Act, 1961 — Section 131, 132, 260A

Citation : (2005) 146 TAXMAN 376

Hon'ble Judges : Shashi Kant Sharma, J;Rajesh Balia, J

Bench : Division Bench

Advocate : J.K. Singhi and Anuroop Singhi, for the Appellant; Ashish Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R. Balia, J.—In this appeal, the following substantial questions of law have been framed at the time of admission:- 1. Whether on the facts and circumstances of the case the learned ITAT was justified in giving relief of undisclosed jewellery of 190.85 grams even though the Assessing Officer and the CIT(A) had given relief as per the CBDT Instruction No. 1916, dated 11-5-1994 though the W.T. Returns were not filed by the family members for the block assessment period?

2. Whether on the facts and circumstances of the case the learned ITAT was justified in deleting the additions of Rs. 42,27,900 even though the assessee could not explain the loose papers relating to this amount which were found during the search regarding sale of land alleged to have been made by Smt. Chandra Kanta Pandit?

We have heard the learned counsel for the parties on these questions.

2. The appeal is directed against the order of the income tax Appellate Tribunal, Jaipur dated 28-2-2001.

3. The subject-matter of the appeal relates to assessment of block years

1988-89 to 1998-99 which took place pursuant to search and seizure operations u/s 132 of the Act which were carried out on 12-11-1997 at the residential premises of the assessee at Moti Doongri, Jaipur.

4. As the dispute in this appeal relates to the additions made by the Assessing Officer in respect of jewellery weighing 1435 gms. found at the time of search and in possession of the assessee and his family members at his residential premises as well as from the bank locker of Smt. Sarita Devi, wife and Smt. Tara Devi, mother of the assessee and on account of entries in certain loose papers found from the assessee, the Assessing Officer after allowing the credit of the jewellery declared by the ladies in their respective wealth-tax returns weighing 794.15 grams, has treated the remaining jewellery weighing 640.85 grams as unexplained jewellery in the hands of the assessee and added its value amounting to Rs. 2,68,600 as value of unexplained investment in jewellery.

5. On first appeal, the CIT(A) after giving benefit of CBDT Instructions dated 11-5-1994 and in view of the decision of Hon'ble Karnataka High Court in the case of Smt. Pati Devi Vs. Income Tax Officer and Another, has held that the appellant and his family members are entitled for further exemption of gold jewellery of 450 grams. In this order, it was held that the jewellery to the extent mentioned in the Board's Instructions dated 11-5-1994 should be considered as exempted as the family members were entitled to exemption of gold jewellery of 450 grams by excluding for each male member 100 grams and unmarried lady 250 grams which was not held to be undisclosed investment and its value was reduced as in addition to income in the block assessment period. However, the remaining 190.85 grams of jewellery and ornaments were held to be undisclosed investment and addition to that extent were retained as income from undisclosed sources.

6. On appeal, the Tribunal found the explanation submitted by the assessee about the acquisition of the jewellery of gold and silver found and seized from possession of the assessee and Smt. Tara Devi and wife Smt. Sarita Devi to be acceptable and deleted the entire addition. The two ladies have been Wealth-tax assessee up to Assessment year 1985-86 only and had declared the jewellery and ornaments up to that time in their W.T. Return. Later on, they received some gold ornaments on the occasion of marriage of brother of Smt. Sarita Devi, wife of the assessee and partly acquired out of ladies own savings from rental income. It was also submitted that some petty gifts were received from in-laws at the time of engagement. It was also stated that some silver coins are generally received on customary occasions from other members of family and friends. With this explanation, it was also pleaded that in view of the circular issued on 11-5-1994, i.e., exemption of 500 grams for each married lady, 250 grams for unmarried woman and 100 grams for each male member should be granted by treating the same to be duly explained. It was also stated that in any case their family is hereditary Mahant Family and therefore, gold and silver found is not in excess of family status.

7. While the Assessing Officer excluded only that much amount of the jewellery for the assessment year which has been declared in the wealth-tax returns submitted up to 1985-86, the CIT(A) had given benefit of the circular by excluding 450 grams additionally in the hands of the assessee, his son and unmarried daughter. The Tribunal, however reached its finding on two-fold grounds. Firstly, it accepted the explanation submitted by the assessee about acquisition of possession of gold jewellery and silver in excess of what was declared in W.T. returns of two ladies. Secondly, it also referred to the circular issued by CBDT. It was found by the Tribunal that there is no dispute that assessee and his wife also in their statement at the time of search on 12-11-1997 told that the jewellery was received in the marriage and some jewellery was also received in other ceremonies from time to time. The Tribunal also found that the benefit of CBDT Instructions dated 11-5-1994 was not allowed to two ladies namely, Smt. Sarita Devi and Smt. Tara Devi, mother of the assessee on the ground that the said instructions is not applicable in the case of a person, who is being assessed to wealth-tax and therefore, the exemption was allowed only to the extent of gold ornaments and jewellery shown in the wealth-tax return. After considering the fact that both the ladies were assessed to wealth-tax much prior to the block period and they were not assessed to wealth-tax at the time of search, in view of the status of the assessee and his family members, including mother and in view of CBDT Instruction No. 1916, dated 11-5-1994 and also in view of the judgment of Hon''ble Karnataka High Court in the case of Smt. Pati Devi (supra), we are of the opinion that the addition sustained by the CIT(A) on account of unexplained jewellery is not valid and directed to be deleted and accordingly, this ground of the assessee is allowed.

8. Learned counsel for the respondent before us contended that the circular to which reference has been made above, has nothing to do with the assessment of undisclosed investment found at the time of search. The circular only relates to exemption from seizure to some extent but does not exclude the jewellery found during the search of assessee from assessment, if otherwise the explanation about acquisition by the assessee is not found to be satisfactory. Learned counsel for the revenue relied on Part-IV of the circular dated 11-5-1994.

9. On the other hand, the petitioner in this connection contended that the basis of the circular for which exemption has been granted is accepted by the revenue as it was not aggrieved with the order of CIT(A) about the exclusion of gold jewellery in the hand of male members in the family and, therefore, to say that the circular is not applicable is not correct. It was also contended that the Tribunal was right in not excluding the married member for the purpose of applying the circular. In the present case two female members were assessed to wealth-tax only up to 1985-86 but on the date of search and seizure both the ladies were not assessed to wealth-tax. Accordingly, for the block period of assessment, for the benefit of circular, married ladies viz. Smt. Tara Devi and Smt. Sarita Devi could not be excluded.

10. The question raises two situations; where items of jewellery has been found and following the guidelines in strict compliance of clauses (1), (2) and (3) in which jewellery be seized, therefore, the exclusion of jewellery from assessment on the basis of circular dated 11-5-1994 was obviously not justified. However, having carefully gone through the orders of the Assessing Officer as well as CIT(A), and the Tribunal, which are perceiving that the exclusion has not been found merely on the basis of circular of CBDT, but it also accepted the explanation submitted by the assessee, which primarily relates to the facts of the case that two ladies were assessed for wealth-tax in 1995-96 (sic) and declaration of the wealth is only in respect of such jewellery which was in their possession which they acquired on certain ceremonies, occasion of marriage of the brother by the wife of the assessee. Looking to the status of the family, the Tribunal found explanation to be plausible for the income in the hands of the family. These jewellery have not been treated to be investment as undisclosed income of the assessee, therefore, it may not be the income received in the hands of the assessee. In the circumstances of the case, notwithstanding one of the reasons is not sustainable, the finding is not required to be disturbed.

11. Coming to the second question referred to above, the contention of the learned counsel for the Revenue is that the Tribunal has not interpreted and appreciated the evidence before it in arriving at its conclusion that the assessee has discharged his onus to explain that the amount suggested in the three loose papers even at the time of search, does not concern the assessee and it belongs to somebody else. Learned counsel for the appellant was at pains to explain that since Smt. Chandra Kanta Pandit, who is mamiji of the assessee, has not been produced to be examined before the ITO, the other evidence produced by the assessee could not have been accepted to sustain the explanation submitted by the assessee.

12. Learned counsel for the assessee on the other hand urged that the finding of fact is based on appreciation of evidence and does not give rise to a question of law at all, much less it can be said to be a substantial question of law which alone could be made subject-matter of the appeal u/s 260A of the Act. It is further stated that the consistent explanation submitted in respect of three papers has been that these papers did not belong to the assessee but they relate to the transaction made by maternal aunt Smt. Chandra Kanta Pandit in connection with some agricultural land. According to the assessee, the entry in the three loose papers were not in his hand nor it belongs to him but belongs to Smt. Chandra Kanta Pandit. She had sold her agricultural land at Kishangarh through Shri Ram Karan Joshi. The land had been received by Smt. Chandra Kanta Pandit in succession. The said Shri Ram Karan Joshi used to give money at Jaipur as per Smt. Chandra Kanta Pandit's directions. Thus, statement of account had been got prepared later on. It was also pointed out by the learned counsel for the respondent that Smt. Chandra Kanta Pandit was summoned but she could not appear before the ITO because of her illness. To that, an enquiry was got conducted by the Department through Inspector which he submitted

before the ITO and reference to this has been made in his submission before the ITO. It has been quoted in the order of assessment that no male member in the family of Chandra Kanta Pandit is alive to throw light on the transaction and assessee was clear in stating that as the papers do not belonged to him, he is not in a position to explain about the details of entries made in the papers.

13. Brother-in-law of Smt. Chandra Kanta Pandit was examined by the ITO who had admitted the entries in these three loose papers to be of his hand and also that it concerned the receipt and payment of land deal made on behalf of Smt. Chandra Kanta Pandit.

14. Having perused the three loose papers, it appears to us that the finding recorded by the Tribunal about the non-appearance of Chandra Kanta Pandit in the case of assessee is a finding based on appreciation of evidence which does not stand vitiated by perversity nor it can be said to be partly relevant or partly irrelevant consideration or not founded on the material on record.

15. Undoubtedly, non-appearance of Smt. Chandra Kanta Pandit may be one of the factors which has also relevance and can be taken into consideration but it is not possible to hold as a matter of law that every material on record must be discarded merely because of non-appearance of Smt. Chandra Kanta Pandit before the Assessing Officer and it would render all other materials unreliable and incredible and not relevant and on that basis, finding cannot be reached. In fact, in the letter submitted by the assessee, which has been quoted by the Assessing Officer in his order, gives a complete and comprehensive picture and explain the material which is placed in support of his explanation in this regard. If the status of Gopal Sharma who admits himself to be author of the three loose sheets prepared at the instance of the seller of land Smt. Chandra Kanta Pandit, the finding reached by the Tribunal cannot be held to be vitiated so as to give rise to a substantial question of law. The Tribunal has recorded its finding as under:-

17. At the time of hearing, the Id. A.R. submits that these are all rough working papers and are not in the handwriting of the assessee or any of his family members. The assessee explained the contents of the papers and identified the owners and adduced the relevant evidences before the Assessing Officer. The assessee has also filed some of the sale deeds in support of the transactions mentioned in the said loose papers. It was also submitted by the Id. A.R. that the statement of Shri Gopal Sharma was recorded by the Assessing Officer in which he has confirmed that the transactions noted in these papers are the sale transactions of the lands sold by Smt. Chandra Kanta Pandit and are in his handwriting. The Id. A.R. further submitted that an affidavit was also filed by the assessee in this regard, supported by necessary documentary evidence and also produced Shri Gopal Sharma, who has confirmed the version of the assessee. He, therefore, submits that the addition made by the Assessing Officer and confirmed by the CIT(A) should be deleted. The Id. A.R. also cited various decisions.

18. On the other hand, the Id. D.R. strongly supported the order of the Assessing Officer and the findings of the CIT(A).

19. We have carefully considered the rival submissions of the parties and pursued the material available on record. We find that the assessee has denied the transactions mentioned in these papers as well as the handwriting. Even at the time of search, in reply to Question No. 21, the assessee has answered that the account mentioned in Page No. 66 is the account of his Mamiji, Smt. Chandra Kanta Pandit and the same belongs to her. The assessee has also filed his affidavit along with necessary documentary evidence and has also produced Shri Gopal Sharma in support of his contention. The assessee has also requested the Assessing Officer to examine Smt. Chandra Kanta Pandit u/s 131 with regard to the transactions mentioned in Annexure A/6 Pages 66, 67 and 69. The Assessing Officer, after accepting the request of the assessee, has issued summons u/s 131 to Smt. Chandra Kanta Pandit and Shri Gopal Sharma. However, Smt. Chandra Kanta Pandit has sought adjournments and could not attend office on account of her illness but Shri Gopal Sharma has confirmed the contents of the transactions that the same are with regard to the sale transactions of agricultural lands, which belonged to Smt. Chandra Kanta Pandit and also that he is the author of this document. Under such circumstances, and the facts available, the Assessing Officer still did not pursue the matter with the lady for dislodging the claim of the appellant. The Assessing Officer has failed to discharge his onus. Accordingly, we hold that the transactions mentioned in the seized annexure A-6, pages 66, 67 and 69 do not belong to the appellant and hence the addition made by the Assessing Officer at Rs. 42,27,900 is directed to be deleted.

16. In the totality of the facts and circumstances of the case, the Tribunal accepted the submissions made by the assessee that the transaction does not belong to the assessee. It cannot be said that the finding is such to which no person of ordinary prudence will reach on the basis of material on record or that is founded on irrelevant consideration. The finding does not call for any interference under the domain of section 260A of the Act, which envisages only to consider and decide substantial questions of law arising out of the Tribunal's order and not to re-appreciate the evidence and reach the finding on its own by the High Court. As a result of aforesaid discussion, the appeal fails and is hereby dismissed.

There shall be no order as to costs.