(2014) 01 P&H CK 0298

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Appeal No. 640 of 2005 (O and M)

Commissioner of Income Tax APPELLANT

Vs

Kailash Kumar RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 260A, 271(1)(c)

Citation : (2014) 369 ITR 656

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Vivek Sethi, Advocate for the Appellant; Rajiv Sharma and S.K. Mukhi, Advocate for the Respondent

Judgement

Anita Chaudhry, J.—The Revenue has approached this court by filing the present appeal under section 260A of the Income-tax Act, 1961 (for short, "the Act") laying challenge to the order dated July 6, 2005, passed by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, "the Tribunal") in I.T.A. No. 509(ASR)/2004 in respect of the assessment year 1989-90. In our considered view, the following question of law would emerge from the order of the Tribunal for determination by this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting the addition of Rs. 3,16,570 allegedly received by the assessee as foreign gift?"

2. The facts leading to the filing of instant appeal are being noticed. For the assessment year 1989-90, the respondent-assessee filed the return on November 15, 1989, showing his income to be Rs. 21,330. However, the Assessing Officer called upon the assessee to render explanation in respect of 12,000 pounds shown by the assessee as foreign gift and about the investment of Rs. 20,000 made by him in M/s. Mohan Lal and Co. During the course of assessment proceedings, the assessee replied to the questionnaire and furnished explanation that he had received the said amount equivalent to Rs. 3,16,570

from Y.P. Wadhera who is residing in the U.K. The Assessing Officer doubted the explanation put forth by the assessee. The Assessing Officer took notice of the fact that the donor and the donee had no relationship with each other. The Assessing Officer, vide order dated November 7, 1990, directed that the said amount be added to be income of the assessee on account of his income from undisclosed sources, as it was bogus gift re-routed as a foreign remittance. The Assessing Officer also gave directions for initiating penalty proceedings as prescribed under section 271(1)(c) of the Income-tax Act.

It is relevant to mention here that earlier the matter was taken to the Commissioner of Income-tax (Appeals), Jalandhar (to be referred as, "the CIT(A)") by the assessee, which, vide order dated February 19, 1991, deleted the addition of Rs. 3,16,570 but confirmed the addition of Rs. 20,000. Thereafter, the Revenue as well as the assessee went in appeal before the Tribunal where the appeal of the Revenue was allowed and that of the assessee was dismissed, vide order dated February 20, 1998, and the amount of Rs. 3,16,570 and Rs. 20,000 was ordered to be added to the income of the assessee. However, on an application filed by the assessee before the Tribunal, the order dated February 20, 1998, was recalled and the matter was remanded back to the Assessing Officer for decision afresh in the light of some documents which the assessee produced before the appellate authorities. Consequently, the matter was re-heard. The Assessing Officer, vide order dated February 8, 2002, again ordered the addition of the aforesaid amounts, besides some other additions, in the income of the assessee. The appeal preferred by the assessee before the Commissioner of Income-tax (Appeals) also came to be dismissed, vide order dated June 2, 2004. However, on an appeal preferred by the assessee before the Tribunal, the addition of Rs. 3,16,570 was ordered to be deleted, vide order dated July 6, 2005, but the addition of an amount of Rs. 20,000 was maintained.

3. Dissatisfied with the same, the Revenue has filed the instant appeal.

4. The Tribunal with regard to the gift of 12,000 pounds equivalent to Rs. 3,16,570 received from Y.P. Wadhera, held that it was through proper banking channel and the Assessing Officer had made the addition without rebutting the assessee''s explanation and evidence produced on record. Hence, it was concluded that the assessee had not only proved the identity of the donor but also its capacity to make the gift. Consequently, it was held that the gift was genuine.

5. We have heard the learned counsel for the appellant-Revenue as well as for the respondent and have perused the paper-book carefully.

6. In the instant case, cash entries by way of two different foreign cheques amounting to Rs. 3,16,570 made by one Y.P. Wadhera in favour of the assessee is in dispute. The veracity of the said entry was doubted by the Assessing Officer on the ground that there was no relationship between the donor and the donee. It has come on record that both of them were having no blood relations between

them. It is a NRI gift from a stranger and it cannot be said to be genuine or valid nor out of love and affection.

7. The issue raised here is no longer res integra. In I.T.A. No. 12 of 2000, titled as The Commissioner of Income Tax, Jalandhar Vs. M/s. Udham Singh and Sons, Goraya, , this court, while dealing with a situation where a gift was received by the assessee from a non-resident Indian with whom the assessee had no relationship, while relying upon various decisions rendered on the issue, held as under (page 141):

"The matter of receipt of foreign gifts even earlier had engaged attention of the courts. This court in Lall Chand Kalra v. CIT [1981] 22 CTR 135 (P & H) had held that non-resident Indian gift from a stranger was neither genuine nor valid. This judgment was followed in Jaspal Singh Vs. Commissioner of Income Tax, , by this court as also the judgment in Sajan Dass and Sons Vs. Commissioner of Income Tax, by the hon''ble Delhi High Court. Recently, this court in I.T.A. No. 498 of 2005 decided on February 7, 2011 titled CIT v. Puneet Chugh had taken the same view holding as under:

''We are of the view that the Assessing Officer and the Commissioner of Income-tax (Appeals) were justified in holding that the gift in question was bogus and the Tribunal committed patent error in accepting the gift as genuine. Admittedly, the donor had no relationship with the assessee. He had no occasion to give the gift. He was not produced. His financial capacity was not established. His bank statement was not produced. The Tribunal failed to appreciate these facts. It, thus, committed patent error of law in holding that the assessee discharged onus on him to prove the genuineness of the gift. Its order is, thus, perverse. In identical situation, this court held that non-resident Indian gift could not be accepted as genuine unless the assessee was able to prove natural love and affection and financial capacity of the donor. The observations of this court in Jaspal Singh are (page 309 of 290 ITR):

"It is well-settled that mere identification of donor and showing the movement of gift amount through banking channel is not enough to prove genuineness of the gift. The assessee was required to establish that the donor had the means and the gift was genuine, for natural love and affection. Reference in this regard may be made to the judgment of this court in Lall Chand Kalra v. CTT [1981] 22 CTR 135 (P & H), the judgment of the Delhi High Court in Sajan Dass and Sons Vs. Commissioner of Income Tax, , Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, and Sumati Dayal Vs. Commissioner of Income Tax Bangalore, ".''

Even this Bench in I.T.A. No. 72 of 1999 titled Hanuman Dass Vs. Commissioner of Income Tax and Another, , held as under (page 137):

''Taking up the case in hand, even when the donor had the means to make the gifts, there being neither any relationship nor there being any circumstance to show natural love and affection of the donor for the donee nor there being any occasion to make such gifts to the assessee and the authority of jurisdictional High Court being against the assessee, the authority cited by the assessee as Commissioner of Income Tax Vs. R.S. Sibal, does not support the case of the appellant. Thus, there is no perversity or impropriety in the impugned order and sequelly the same is upheld.''"

8. Adverting to the facts of present case, here a person residing abroad had sent a gift to a stranger. It has come on record that the donor made contradictory versions about his relationship with the donee. But the sum and substance of his version leads to the fact that there existed no blood relationship between them. It has also been admitted by the donor that he had not gifted any amount to any other person. In this scenario, there was no occasion for him to make the gift and this amount could not have been deleted. In view of the discussion made above, the findings of the Tribunal deleting an amount of Rs. 3,16,570 are not sustainable. We, accordingly, answer the question in favour of the Revenue. The appeal is allowed.