(2007) 10 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Manoj Kumar Sekhri — RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:
Income Tax Act, 1961 — Section 132, 143, 148, 260A, 271

Citation : (2008) 214 CTR 141

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The Revenue has approached this Court by filing the instant appeal u/s 260A of the IT Act, 1961 (for brevity, ''the Act''), challenging order dt. 5th Sept., 2005 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, the Tribunal''), in ITA No. 601/Asr/1999, in respect of asst. yr. 1993-94. It is claimed that following question of law would emerge from the order of the Tribunal for determination of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs. 1,13,033 made by the AO and upheld by the CIT(A), on account of ingenuine gift received by the assessee disregarding the fact that genuineness and financial capacity of the donor was not proved and there was no occasion for making the gifts?

2. Brief facts of the case are that in the year 1994 a search u/s 132 of the Act was conducted on the residential premises of the assessee and during the course of assessment proceedings in respect of asst. yr. 1994-95 it was observed that the assessee had made certain investments in the year under consideration. Consequently, after recording reasons, notice u/s 148 of the Act was issued to the assessee and in response thereto the assessee filed his return on 25th April, 1997 for the asst. yr. 1993-1994 declaring his income as Rs. 1,27,610, which was processed u/s 143(l)(a) of the Act.

3. During the course of assessments proceedings, the assessee was required to explain source of credit of 4,000 US$ in his saving bank account No. 11912 with State Bank of India, Nurmahal, which were allegedly received as gift from Shri Mohinder Handa. The assessee filed confirmation of gift from Shri Mohinder Handa. Thereafter, it was observed by the Department that Shri Mohinder Handa had been making gift year after year to the members of the group and in the asst. yr. 1996-97 the total gifts received by the group were in excess of 50,000 US$. The assessee was required to file detail of relationship and occasion for sending the gift, vide order sheet entry dt. 24th Aug., 1998. However, no evidence is stated to have been filed by the assessee. With regard to evidence of paying capacity of the donor, the assessee filed a copy of certificate from M/s General Motors, Canada, certifying that the donor had been working with the said company since 1976 and his yearly salary as in January, 1997 was 57,524 Canadian dollars. On 13th Nov., 1998/7th Dec., 1998, the AO passed an order treating the amount as a bogus gift re-routed as a foreign remittance and added Rs. 1,13,033 to the income of the assessee and total taxable income of the assessee has been assessed at Rs. 2,45,643. Consequently, penalty proceedings u/s 271(1)(c) of the Act were also initiated (P-1).

4. The assessee then filed an appeal before the CIT(A), who upheld the "addition of Rs. 1,13,033, vide order dt. 15th Oct., 1999 (P-2).

5. Against the order of the CIT(A), the assessee preferred further appeal before the Tribunal. The Tribunal accepted the gift as genuine and allowed the appeal of the assessee, vide order dt. 5th Sept., 2005. A bare perusal of the order passed by the Tribunal shows that the gift amount claimed by the assessee came to him through banking channel. The amount was credited to the assessee by the donor Shri Mohinder Handa, who is his real brother-in-law and not a stranger. It is also an admitted fact that he was residing in foreign country for the last 20 years and used to send gift to the assessee on earlier occasions also. He has the capacity to make the gift. The Tribunal has also referred to the earlier order dt. 18th July, 2003, passed in ITA Nos. 553 and 682/Asr/1997 [reported as (2003) 81 TTJ 1036 , in respect of asst. yr. 1994-95, accepting the gift made to the assessee by the same donor. Following the rule of consistency as laid down by Hon''ble the Supreme Court in the case of Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta, , the Tribunal found the gifts to be genuine and set aside the orders of the CIT(A) as well as AO deleting the additions.

6. After hearing learned Counsel, we are of the considered view that no question of law, much less a substantive question of law warranting admission of the appeal would arise. There are findings of fact recorded by the Tribunal by citing the earlier detailed order where the gifts made by the donor have been accepted as genuine. The income has been received by the assessee through banking channel and identity of the donor is also established, who is real brother-in-law of the assessee. The gift could not be considered bogus. The principle of consistency laid down in Berger Paints (supra) has been rightly applied.

Therefore, we do not find any ground to interfere in the view taken by the Tribunal. The appeal is wholly without merit.

Dismissed.

