
(2014) 11 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : I.T.A. No. 71 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Naresh Kumar Kohli

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2015) 371 ITR 201

Hon'ble Judges : Rajive Bhalla, J;B.S. Walia, J

Bench : Division Bench

Advocate : Rajesh Katoch, Advocates for the Appellant; Salil Kapoor and Vikas Jain, Advocates for the Respondent

Judgement

Rajive Bhalla, J.—The Revenue is before us challenging the order dated November 18, 1999, passed by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar (hereafter referred to as "the Tribunal") pertaining to the block assessment years 1987-88 to 1997-98 on the following substantial questions of law:

"1. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the addition of Rs. 4,92,325 made by the Assessing Officer on account of non-genuine gifts was covered by the addition of Rs. 9,75,333 confirmed on account of peak of unexplained credits in various bank accounts when both the additions were independent of each other?

2. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in allowing the benefit of past savings of Rs. 4 lakhs invested in jewellery found from locker No. 39 with Canara Bank, Pathankot, when the assessment record of the assessee does not reflect any such withdrawals for the acquisition of jewellery?

(ii) Whether/on the facts and in the circumstances of the case, the Appellate Tribunal was justified in further allowing the benefit of 400 grams of jewellery as stridhan of the assessee's wife, Smt. Surbhi Kohli, out of the aforesaid jewellery,

ignoring the fact that the benefit on this account has already been allowed by the Income-tax Appellate Tribunal while deciding the appeal of Sh. Suresh Kumar Kohli, the father of the assessee?

3. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in deleting the addition of Rs. 8,29,936 made by the Assessing Officer on account of unexplained jewellery found from locker No. 72 with State Bank of Patiala, disregarding various contradictions which existed in the version of the assessee that the jewellery belonged to other persons?"

Counsel for the Revenue submits that the Tribunal has erred in deleting addition of Rs. 4,92,325 made by the Assessing Officer on account of gifts on the ground that they are already covered in the peak of unexplained credit recorded in various bank accounts. The Tribunal, having accepted that the gifts were not genuine, should have held that the Assessing Officer was well within his jurisdiction to add Rs. 4,92,325 to the income of the assessee. As his next argument, counsel for the Revenue submits that the benefit of past savings of Rs. 4 lakhs allowed with respect to the jewellery found in locker No. 39 is contrary to the record as the assessee was unable to refer to any withdrawals for purchase of jewellery. It is further contended that the benefit of 400 grams of the jewellery, allowed to the assessee's wife is incorrect as similar benefit had already been allowed in the case of the assessee's father, Sh. Suresh Kumar Kohli. The benefit of shridhan could only have been allowed either to the assessee in the present case or to his father, who is the assessee in I.T.A. No. 136 of 2000. It is also argued that the additions of Rs. 8,29,936 made by the Assessing Officer on account of unexplained jewellery found in locker No. 72, State Bank of Patiala have been deleted disregarding contradictions in the version put forth by the assessee and failure of the assessee to prove that the jewellery belonged to other persons. It is prayed that as the impugned order is not only contrary to law but is perverse and arbitrary, the appeal may be allowed, the order passed by the Tribunal may be set aside and the additions made by the Assessing Officer may be restored.

2. Counsel for the respondent submits that the questions of law framed by the Revenue are mere questions of fact as they do not indicate infraction of any provision of the statute nor do they point out any legal flaw. Counsel for the assessee further submits that after holding that the gifts are not genuine and including them in Rs. 9,75,333, added to the income of the assessee, the Assessing Officer could not have added another sum of Rs. 4,92,325. The Tribunal has, therefore, rightly deleted this addition. As regards question No. 2, it is submitted that it is a pure question of fact. The discretion exercised by the Tribunal is neither perverse nor arbitrary. The conclusions recorded by the Tribunal should, therefore, be affirmed and even otherwise if the jewellery was held to belong to the appellant, the Tribunal was justified in granting the benefit of past savings of Rs. 4 lakhs. As regards question No. 2(ii), it is contended that as per a CBDT circular, a woman is entitled to retain 500 grams as shridhan. The

Tribunal has allowed 400 grams on account of shridhan in the case of the assessee's wife, i.e., Smt. Surbhi Kohli, and it is incorrect that this benefit has been ordered in the case of the assessee's father (Suresh Kumar Kohli). The benefit to Suresh Kumar Kohli has been granted with respect to the tatter's wife and pertains to ancestral jewellery. As regards question No. 3, it is argued that as the owner of the jewellery appeared before the Assessing Officer and claimed the jewellery as his own. The Assessing Officer was, therefore, not justified in adding the cost of the jewellery to the income of the appellant. The Tribunal has, after recording clear and cogent reasons, deleted the addition by holding that the jewellery belongs to one Harbans Lal who had filed an affidavit and appeared before the Assessing Officer.

3. We have heard learned counsel for the parties, perused the impugned order as well as the order passed by the Assessing Officer.

4. A search of the assessee's business premises, his house and various banks is the foundation of block assessments for the years 1987-88 to 1997-98. The Assessing Officer, after considering various transactions, jewellery and other documents added substantial amounts to the income of the assessee. The assessee filed an appeal. The Tribunal by way of the impugned order confirmed a major part of the assessment order but with respect to the addition of Rs. 4,92,325 on account of non-genuine gifts, deleted this addition. The Tribunal also granted the benefit of Rs. 4 lakhs as past savings and allowed the value of 400 grams of jewellery as shridhan of the assessee's wife, Smt. Surbhi Kohli. The Tribunal also deleted Rs. 8,29,936 added by the Assessing Officer on account of unexplained jewellery by holding that the jewellery belongs to one Harbans Lal.

5. A due consideration of the arguments advanced by the counsel for the Revenue, does not enable us to hold that the Tribunal has violated any provisions of the Income-tax Act, 1961, much less does it indicate a perversity of reasoning or an arbitrary exercise of discretion. An appeal, under the Income-tax Act, 1961, is maintainable only if it raises a substantial question of law and, therefore, inheres an infraction of law, a misreading of evidence, disregard of statutory provisions, a consideration that is perverse and arbitrary or if it raises a question of law that has not been answered. A perusal of the impugned order reveals that it does not suffer from any of these infractions and the Tribunal has while recording its opinion considered the matter in its entirety and only thereafter recorded findings against the Revenue.

6. Admittedly, Rs. 4,92,325 on account of non-genuine gifts was already included in the addition of Rs. 9,75,333 made by the Assessing Officer. The Tribunal, therefore, rightly deleted this addition. As regards the benefit of past savings of Rs. 4 lakhs granted to the appellant, the Assessing Officer himself held that jewellery belongs to the appellant and was, therefore, required to apportion some amount towards investment or savings. The Tribunal, therefore, rightly granted the benefit of Rs. 4 lakhs as past savings. The plea with respect to shridhan is similarly unfounded as the benefit has been granted on account of

shridhan of the assessee's wife, Smt. Surbhi Kohli. The benefit granted to Suresh Kumar Kohli, father of the assessee, pertains to the tatter's wife, i.e., mother of the appellant and then also in the assessment pertaining to Suresh Kumar Kohli.

7. The question relating to the unexplained jewellery found in locker No. 72 has been considered in detail by the Tribunal. After appraisal of the evidence adduced before the Assessing Officer, namely, an affidavit by Harbans Lal and his statement recorded before the Assessing Officer, it was held as a matter of fact that the jewellery does not belong to the assessee. We are not inclined and nor can we while exercising the jurisdiction as a second appellate court reappraise evidence much less the statement made by Harbans Lal, etc., till such time as consideration of this evidence is perverse or arbitrary. The Tribunal has, after appraising the affidavit and the statements, recorded a plausible finding. Counsel for the Revenue is unable to point out any misreading of evidence or perversity in the process of reasoning as would enable us to interfere with the findings of fact recorded by the Tribunal. In view of what is recorded hereinabove, finding no merit, the substantial questions of law are answered against the Revenue and the appeal is dismissed.