
(2014) 01 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : I.T.A. Nos. 99, 158 and 202 of 2006 (O&M)

Commissioner of Income Tax

APPELLANT

Vs

Narinder Kumar Sekhri

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Citation : (2014) 366 ITR 225

Hon'ble Judges : Anita Chaudhary, 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 Chaudhary, J.—We propose to dispose of all the above-referred appeals filed by the Revenue as common question of law has been raised therein. Also the assesseees are related to each other and the transactions which are in dispute pertain to the same assessment year 1996-97. In our considered view, the following question of law would emerge from the impugned orders 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 additions of Rs. 1,38,437 and Rs. 5,30,000 (In I.T.A. No. 99 of 2006), Rs. 2,65,000 (In I.T.A. No. 158 of 2006) and Rs. 4,97,400 (in I.T.A. No. 202 of 2006) allegedly received by the assesseees as foreign gifts ?

2. Let us first advert to the facts of the case.

3. In I.T.A. No. 99 of 2006 a sum of Rs. 1,38,437 and Rs. 5,30,000, respectively, received by the assessee, Narinder Kumar Sekhri from S.P. Amar and Mohinder Handa, claimed to be foreign gifts are in dispute. Though, the Assessing Officer and the Commissioner of income tax (Appeals), Jalandhar (to be referred as, "the CIT(A)") doubted the veracity of these entries and directed to add the same in the income of the assessee but the income tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, "the Tribunal"), found the same as genuine and

ordered its deletion.

4. In I.T.A. No. 158 of 2006, the assessee, Chaman Lal Sekhri, filed the return for the assessment year 1996-97 showing the income of Rs. 6,02,540. Explanation in respect of certain entries and its source, including an entry of 10,000 Canadian Dollars (equivalent to Rs. 2,65,000), in dispute in the present case, was sought from the assessee. The assessee replied and averred that he received the said amount from Mohinder Handa, his son-in-law, who was residing and working abroad. The plea did not find favour with the Assessing Officer. Vide order dated December 28, 1998, apart from certain other additions, the amount of Rs. 2,65,000 was ordered to be added in the income of the assessee. The appeal preferred by the assessee before the Commissioner of income tax (Appeals) was dismissed, vide order dated November 12, 1999. The assessee filed an appeal before the Tribunal which was partly allowed on September 5, 2005, while relying upon its order dated August 4, 2005, rendered in the case of Narinder Sekhri v. Deputy CIT, CC-II, Jalandhar pertaining to the assessment year 1996-97. Consequently, the impugned addition of Rs. 2,65,000 was ordered to be deleted.

5. In I.T.A. No. 202 of 2006, the Assessing Officer questioned the credit entry of Rs. 2,65,000 and Rs. 2,32,400 shown in the returns filed for the assessment year 1996-97 by the assessee, Subhash Sekhri, which he claimed to have received by way of foreign gifts in the shape of 10000 Canadian Dollars and 7000 US\$, respectively, from Mohinder Handa residing in Canada. Accordingly; finding the same as bogus gift re-routed as a foreign remittance, the Assessing Officer, vide order dated November 16, 1998, directed for addition in the income of the assessee. The view of the Assessing Officer was upheld by the Commissioner of income tax (Appeals), which dismissed the appeal filed by the assessee, vide order dated August 30, 2000. However, the Tribunal, vide order dated September 5, 2005, allowed the appeal of the assessee in the light of its earlier order rendered in the case of Narinder Kumar Sekhri and the impugned addition was ordered to be deleted.

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

7. The Assessing Officer and the Commissioner of income tax (Appeals) made some observations while making the impugned additions in I.T.A. No. 158 of 2006 :

"4. A perusal of SB A/c No. 46 with UBI, Nurmahal shows a credit of Rs. 2,65,000 on February 9, 1996, and February 16, 1996 (2,60,500 + 4,500) respectively. The assessee was required to explain the source of the same. The assessee, vide letter dated August 20, 1998, filed in the office submitted the same was a gift of 10000 US Dollars from Sh. Mohinder Handa, the son-in-law of the assessee.

The assessee filed confirmation of the donor which is on record. However, a

perusal of the group record shows that the donor has been working with General Motors since 1976 and his yearly salary in January, 1997, was 57524 Canadian Dollars. Further perusal of the record of the assessee and his family members reveals some very important facts which cannot be overlooked at this stage:

Sh. Mohinder Handa has sent not only 10,000 Canadian dollars to the assessee but has also allegedly remitted the following amounts to the other family members also

Thus, in the year under consideration the family as a whole has claimed that it has received gifts of 40,000 Canadian dollars and 12000 US dollars. In rupee terms the total gifts are over Rs. 15,00,000.

The yearly salary of Sh. Mohinder Handa after working for 20 long. years with a company is only 57524 dollars. Obviously, the person has gone abroad to earn money and not squander it away by gifting it to one and all without any occasion. The normal human behaviors is to gift on occasions and that too a token amount of the yearly salary.

Also it is not as if this is the first year and only occasion when this donor has allegedly gifted money to this family. A perusal of record shows a similar trend in the preceding years also. It is difficult to accept that a person would gift away his hard earned money. It is also not as if the family is need of drastic funds.

This is nothing but a part of the hawala racket going on in this Doaba region wherein compensatory money is paid to get these foreign remittances. Also income tax proceedings being of the nature of civil proceedings, evidence has to be judged by preponderance of probability. It is highly improbable to accept the submissions of the assessee. Accordingly, this gift is treated as a bogus gift rerouted as a foreign remittances. Accordingly, the source of the same is unexplained and is added back to the income of the assessee. Penalty proceedings u/s 271(1)(c) have been initiated separately."

8. The Commissioner of income tax (Appeals) upheld the order of the Assessing Officer and held :

"2.1 During the appellate proceedings, the learned counsel gave similar arguments as in the case of Sh. Narinder Sekhri (supra). It was also stated that in addition to the income of Sh. Mohinder Handa, his wife and son were also earning 40,000 and 45,000 dollars respectively per annum.

However, no evidence to this effect was filed before the Assessing Officer. Nor any such arguments were taken before the Assessing Officer. No evidence regarding the earning of wife and son of Sh. Mohinder Handa were produced even during the appellate proceedings.

Further, it is difficult to accept that a Hindu person belonging to old generation would accept a genuine gift out of the income of his daughter, son-in-law and his grand-son. In these circumstances and following the order in the case of Sh.

Narinder Sekhri (*supra*), the addition of Rs. 2,65,000 made by the Assessing Officer is upheld."

9. Similar observations were made by the Assessing Officer and the Commissioner of income tax (Appeals) while ordering additions in respect of amounts involved in I.T.A. Nos. 99 and 202 of 2006.

10. The Assessing Officer as well as the Commissioner of income tax (Appeals) doubted the frequent transfer of money by the donors as substantial portion of the income was being passed on to the assessee, without any occasion. These findings were brushed aside by the Tribunal and it relied on the decision rendered in the case of Narinder Kumar Sekhri, which is a subject matter of I.T.A. No. 99 of 2006. In that case, what impressed the Tribunal was that on account of the search and seizure conducted upon the assessee, an occasion arose for the relatives residing abroad and since they had the capacity, they had extended the financial help to save them from the financial crunch. The Tribunal found the explanation valid. Further, the Tribunal took notice of the fact that the Assessing Officer had not adversely commented upon the evidence and material filed by the assessee proving the genuineness of the gift and paying capacity of the donor. It was held that the foreign gifts received by the assessee were genuine.

11. In the case of Narinder Kumar Sekhri, he had received foreign gifts from one S.P. Amar with whom he had no relation while the other donor Mohinder Handa was his brother's brother-in-law. Likewise, the donee, Chaman Lal Sekhri, received foreign remittance from Mohinder Handa who is his son-in-law while Subhash Chander Sekhri (donee in I.T.A. No. 202 of 2006) is brother-in-law of Mohinder Handa. The donors had parted away with substantial amount of their income in favour of these persons without there being any occasion. No doubt, it is a matter of record that search and seizure operation was conducted on the firms of the assessee, but at the same time the Assessing Officer took into account the fact that the assessee still kept on investing in land year after year. A perusal of order passed by the Commissioner of income tax (Appeals) in the case of Subhash Chander Sekhri, the plea of the assessee of financial crunch was found to be misleading. It had been noticed that the assessee and his family members made voluntary disclosure of income under the income tax Scheme, 1997, and more than Rs. 50,00,000 out of which Rs. 48,00,000 was made in cash in December, 1998. In view of the totality of facts and circumstances that this family had adopted a modus operandi of creation of capital by the NRI gifts without there being any occasion, the alleged gifts cannot be held to be genuine transaction. In the light of these facts the findings of the Tribunal that the distant relatives had come to his aid at the time of need, was not sustainable. Not only this, these are not small gifts, particularly keeping in view the contemporaneous times when these were given in the year 1996.

12. In I.T.A. No. 12 of 2000, titled as the 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 (P&H) 135 had held that NRI gift from a stranger was neither genuine nor valid. This judgment was followed in *Jaspal Singh v. CIT* (I.T.A. No. 256 of 2006) decided on September 15, 2006 [2007] 290 ITR 306 (P&H) by this court as also 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 NRI gift could not be accepted as genuine unless the assessee was able to prove natural love and affection and financial capacity of the donor. 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 *hall Chand Kalra v. CIT* [1981] 22 CTR (P&H) 135, 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 sequently the same is upheld."

In view of the discussion made above, the findings of the Tribunal as well as

Commissioner of income tax (Appeals) making the aforesaid deletion are not sustainable. We accordingly answer the question in favour of the Revenue. The appeals are allowed.