
(2007) 07 P&H CK 0139
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Ravi Kumar

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Income Tax Act, 1961 — Section 132, 143, 256, 69A

Citation : (2007) 294 ITR 78

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

Bench : Division Bench

Judgement

Ajay Kumar Mittal, J.—On a direction issued by this Court vide order dated May 17, 1996, u/s 256(2) of the Income Tax Act, 1961, (in short "the Act"), the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") has referred the following questions of law for the assessment year 1988-89:

1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in deleting the additions of Rs. 1,642, Rs. 36,140, Rs. 99,000 and Rs. 6,23,000 made by the Assessing Officer and upheld by the Commissioner of Income Tax (Appeals), by holding that the assessee had discharged the onus by explaining that slips contain the rough calculations and it was for the Revenue to prove that the same represent the transaction of sale of stock-in-hand?
2. Whether, on the facts and in the circumstances of the case, the findings of the Tribunal are perverse?
2. The facts are that on January 19, 1988, a search was carried out at the premises of M/s. Nanak Jewellers, Patiala, owned by the assessee and during the search, the assessee was found in possession of 1470 grams of gold ornaments and Rs. 50,750 in cash. Five slips/loose papers/chits containing some calculations written in the assessee's hand were also seized from him. The assessee surrendered a sum of Rs. 5,00,000 for tax on account of the unexplained cash and jewellery and the return declaring an income of Rs.

4,79,800 was filed by the assessee on March 31,1988, and the Assessing Officer applying the provisions of Section 69A of the Act completed the assessment on February 28, 1990, and included the following amounts on account of calculations appearing on the five slips:

(Rs.)

Slip No. (i) 1,642 Slip No. (ii) 36,140 Slip No. (iii) 99,000 Slip No. (iv) 6,23,000

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) who upheld additions made by the Assessing Officer by observing that the assessee had failed to explain the contents of the documents. The assessee took the matter before the Tribunal by filing second appeal which was allowed.

4. No one has appeared on behalf of the assessee to oppose the reference.

5. We have heard learned Counsel for the Revenue.

Section 69A of the Act at the relevant assessment year reads thus:

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

6. A Division Bench of the Calcutta High Court in Kantilal Chandulal and Co. Vs. Commissioner of Income Tax, , while interpreting the provisions of Section 69A of the Act had laid down that two conditions need to be fulfilled before the provisions of Section 69A are applied. The first condition for applying the provisions of Section 69A is that the assessee should be found to be owner of any money, bullion, jewellery or other valuable article and, secondly, the same should not be found recorded in the books of account, if any, maintained by him.

7. In the present case, the assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips could prove. In view thereof, the provisions of Section 69A of the Act had rightly not been applied by the Tribunal to the facts of the case in hand. Accordingly, question No. 1 is answered against the Revenue and in favour of the assessee.

8. Now, advertent to question No. 2, the Tribunal while allowing the appeal filed by the assessee, in paragraphs 17 and 20 had recorded as under:

17. We have perused the order and material on record particularly the contents

of the five documents which show that without any further material, it was not possible and justified to uphold the inference drawn by the Assessing Officer and by the Commissioner of Income Tax (Appeals). It has been correctly pointed out that except for slip No. 2, on which two dates are mentioned, no dates are mentioned on any other slip. It is not further clear whether these were sales or purchases or simply rough estimates of past or future planned and arranged purchases. In fact, from the nature of entries, the assessee's explanation that the same may be representing rough calculations of the proposed orders or supplies to various jewellers sounds more plausible because had these been records of sales or purchases, names of the parties would have been there. In this case, only one name on slip No.1 has been mentioned, in respect of which an addition of Rs. 1,642 has been made. The slip does not contain any date and also does not clearly show whether it is sale or purchase. In fact slip No.4 clearly contains the printed word "Estimate".

20. We also find merit in the argument on behalf of the assessee that the Revenue itself is not clear about the inference to be drawn from the said five slips as the Assessing Officer making/calculating addition u/s 132(5) of the Act had held these very slips to represent sales outside the books of account at Rs. 9,11,100 against which addition of Rs. 3,00,000 was proposed towards the profit and investment in these assets, whereas the Assessing Officer while making the assessment u/s 143(3) of the Act has drawn different inference without pointing out why the inference drawn by his predecessor was wrong. In fact the Assessing Officer framing the assessment u/s 143(3) of the Act and the Commissioner of Income Tax (Appeals) have upheld the addition on the ground that the assessee had been unable to prove the contents of the documents by invoking the provisions of Section 69A of the Act. We have already mentioned that, firstly, the provisions of Section 69A of the Act are not applicable to such documents and further that even if the assessee had failed to explain the contents of the slips, it was for the Revenue to prove on the basis of material on record that the same represented transactions of sales or stock-in-hand before making any addition on this score. The assessee had duly explained that these were rough calculations and the assessee's explanation has not been rebutted by any material evidence. Thus, for the assessee it has been correctly pointed out that even if the inference drawn in the order u/s 132(5) of the Act are held to be correct, the proposed addition on that score amounting to Rs. 3,00,000 would be covered in the amount of Rs. 5,00,000 surrendered by him as the income from such business would automatically be invested in the stock of jewellery, which was found from his possession on January 19,1988, and against which the surrender had been made. Thus, looking from any angle, we are unable to uphold the action of the Assessing Officer in making the additions of Rs. 1,642, Rs. 36,140, Rs. 99,000 and Rs. 6,23,000 on the basis of these loose slips. Same are, therefore, deleted. This disposed of ground Nos. 1 to 5.

9. Learned Counsel for the Revenue, however, could not point out any illegality on the basis of which the findings recorded by the Tribunal could be said to be

perverse. Accordingly, question No. 2 is also answered against the Revenue and in favour of the assessee.

Reference stands disposed of accordingly.