(2014) 02 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Appeal No. 15 of 2004 (OandM)

Commissioner of Income Tax	APPELLANT
Vs	
Sandeep Goyal	RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 369 ITR 471

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

Bench : Division Bench

Advocate : Vivek Sethi, Advocate for the Appellant; Pankaj Jain, Senior Advocate and Mukesh Singla, Divya Suri and Rishi Chanan, Advocate for the Respondent

Judgement

Anita Chaudhry, J.—The Revenue is in appeal impugning the order dated July 30, 2003, passed by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, "the Tribunal"), in I.T.A. No. 112(ASR)/2002 and 193(ASR)/2002 relating to the assessment year 1998-99. The Revenue had raised two substantial questions of law, pertaining to the order of the Tribunal regarding foreign gifts of Rs. 5,00,000 and Rs. 9,58,759. It has been pointed that the question regarding the transaction of Rs. 5,00,000 made by Pritam Singh in favour of the assessee was remanded by the Tribunal to the Assessing Officer and is pending before the Commissioner of Income-tax (Appeals) and it does not survive in the present appeal.

2. On May 12, 2006, the instant appeal was admitted only to consider the second question of law, which reads as under:

"Whether, on the facts and in the circumstances of case, the hon''ble Income-tax Appellate Tribunal was justified in law in accepting the genuineness of gifts at Rs. 9,58,759 especially when there was no occasion to receive huge gifts from unrelated persons?"

3. In order to appreciate the controversy in its right perspective, the facts of the

case are noticed.

4. The respondent-assessee filed a return declaring an income of Rs. 30,49,90. The assessee was called upon to explain about the following foreign remittances:

5. The stand of the assessee was that all the donors were family friends and had come forward to help him to put a MRI Scan unit in India proposed to be run under the name and style of M/s. Apollo Imaging and Diagnostics Centre P. Ltd. The explanation rendered by the assessee was not accepted by the Assessing Officer. The Assessing Officer found that there was no occasion for the donors, who had no relations with the assessee, to part with such a hefty amount. Consequently, it was held that it was the money of the assessee and ordered it to be added to the income of the assessee.

6. The assessee filed an appeal before the Commissioner of Income-tax (Appeals), Jalandhar (to be referred hereinafter as, "the CIT(A)"). Certain additional facts, as provided under rule 46A of the Income-tax Rules, 1962 (for short, "the Rules") were pleaded before the Commissioner of Income-tax (Appeals) by the assessee to show the genuineness of the amounts received from the donors, on which the comments of the Assessing Officer were called.

7. Relating to the sum of Rs. 1,82,835 received from Jagdish Vijh, the Assessing Officer gave his report dated March 13, 2002, that the donor did have good family relations with the donee and he was financially well and the amount was not big for the donor and the gift was through the banking channel. Consequently, the Commissioner of Income-tax (Appeals), relying upon the report of the Assessing Officer held this amount as genuine and ordered its deletion from the income of the assessee.

8. Likewise, in respect of gift of Rs. 1,91,000 and Rs. 1,91,000 received from Gurpreet Kaur and Manpreet K. Sahdev, the Assessing Officer in his report submitted that the factum of gift by both the donors stood proved but doubted their capacity to gift. However, the Commissioner of Income-tax (Appeals) taking into account that the amounts were received through proper banking channel coupled with the affidavits of the donors, relied upon the bank statements and held these gifts as genuine and ordered their deletion from the income of the assessee.

9. Similarly, qua the gift received from Parmod Tandon of Rs. 3,93,924, the Assessing Officer in his report found the financial capacity of the donor but noted that there was no relationship between the donor and the donee. The Commissioner of Income-tax (Appeals) taking into account the fact that Parmod Tandon was a friend of Jagdish Vijh and on the asking of the later had gifted the amount to the assessee, he held that this gift was also genuine and the amount was ordered to be deleted.

10. Relating to the gift made by Pritam Singh, it was held that he was leading a retired life in India and had no close relationship with the assessee and the

assessee himself was not aware about the antecedents of Pritam Singh. Consequently, the addition made by, the Assessing Officer of Rs. 5,00,000 received by the assessee was confirmed by the Commissioner of Income-tax (Appeals), vide order dated March 28, 2002.

11. Dissatisfied with the affirmation of the addition of Rs. 5,00,000 and the deletion of Rs. 9,58,759 (1,91,000 + Rs. 1,91,000 + Rs. 3,93,924 + 1,82,835), the assessee and the Revenue filed separate appeals before the Tribunal. The Tribunal dismissed the appeal of the Revenue and confirmed the deletion of the amount of Rs. 9,58,759 while partly allowing the appeal of the assessee and remanded the matter to the Assessing Officer to decide afresh about the capacity and creditworthiness of transaction of Rs. 5,00,000 made by Pritam Singh in favour of the assessee. The Tribunal also directed the assessee to produce Pritam Singh before the Assessing Officer. This appeal is by the Revenue.

12. As noticed above, the issue regarding the genuineness of transaction of Rs. 5,00,000 is pending before the Commissioner of Income-tax (Appeals), therefore, the same is not being taken here for adjudication.

13. The only dispute remains is with regard to the deletion of Rs. 9,58,759 (1,91,000 + Rs. 1,91,000 + Rs. 3,93,924 + 1,82,835) received by the assessee from Gurpreet Kaur, Manpreet K. Sahdev, Parmod Tandon and Jagdish Vijh respectively.

14. Undisputedly, from the record, it is clearly evident that the assessee was not having blood relations with any of the donors. The plea taken by the assessee was that they were his family friends and had come forward to help him to set up a MRI Scan Centre. It was found that there was no occasion to make the gifts either by close relations or strangers. Dr. Jagjit Singh, father of the donors, Gurpreet Kaur and Manpreet K. Sahdev, admitted that he had received cash gift from his daughters. It was found unbelievable that instead of giving any gift or monetary help to some charitable organisation, a large number of strangers had chosen the assessee to make alleged cash gift running in lakhs of rupees. Though, in the report of Assessing Officer submitted on the basis of additional facts and evidence produced by the assessee, the transactions in dispute were not doubted, but the fact remains that the donee was not having blood relations with the donors.

15. The issue regarding the receipt of amount by the assessee purported to be foreign gift from a person residing abroad where there is no relationship had invited the attention of this court on numerous occasions and this issue is no longer res integra.

16. 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 had relied upon various decisions rendered on the issue and had 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 lull Chand Kalra v. CIT [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.''"

17. It has been contended by the learned counsel for the respondent that the judgment rendered in the case of Puneet Chugh''s case (supra), relying upon which Udham Singh''s case (supra), has been decided, has been impugned

before the hon''ble apex court by way of special leave petition and notice of motion has been issued but that by itself is no ground on the basis of which issue can be decided in his favour. In view of the discussion above, we find that the alleged foreign gifts in favour of the assessee by persons are not genuine. We, therefore, answer the question in favour of the Revenue and against the assessee. The appeal is accordingly allowed.