(2006) 03 RAJ CK 0012

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

S.C. Sethi RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Citation : (2007) 251 ITR 351 : (2008) 168 TAXMAN 103

Hon'ble Judges : Rajesh Balia, J;R.P. Vyas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties. This appeal is directed against the order of the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur, dated 20-2-2004.

2. The substantial question of law, which according to the appellant arises in this appeal has been stated as under:

Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in upholding the deletion of Rs. 4,67,200 following its earlier order for the assessment year 1994-95 holding that no addition can be made on the basis of uncorroborated piece of evidence/document found in the course of search in third party, ignoring the fact that the records pertaining to the assessee were being kept by the person where the search was conducted and the loose papers found during the course of search clearly indicate that not only the assessee was getting additional quarterly payments and perks over and above his salary, but the assessee was also himself dealing with those payments and perks on behalf of the employer company ?

3. The factual matrix of the case is that according to the case of the revenue , a survey was conducted in pursuance of search warrant issued against the premises of J. K. Industries/J. K. Tyre Ltd. In the course of search, certain documents were seized from the residence of one of the senior managers (Accounts) Sh. A. K. Chhajer. It is on the basis of some entry in loose papers

seized from Sh. Chhajer, additions were made in the income of the respondent-assessee to the tune of Rs. 4,67,200 as income from undisclosed source by referring it to the emolumants received from the employer over and above the one which were admitted to have been received by him. The first assessment in the case of the assessee was finalized assessing the return filed on June 29, 1993. The original assessment was completed on March 28, 1996. The notice issued to Sh. A.K. Chhajer was not served on him and, therefore, he had not appeared before the Income Tax Officer so as to be available for cross-examination by the assessee.

4. The assessment order dated 28-3-1996, was subjected to appeal by 4 the respondent-assessee Sh. Swaroop Chand Sethi which was allowed by the Commissioner (Appeals) vide his order dated September 12, 1996. Apart from the aforesaid loose papers seized from Sh. A.K. Chhajer, no other incriminating material was before the assessing officer. An affidavit was filed by the corporate vice president clearly stating that the company had paid to Sh. S.C. Sethi a sum of Rs. 1,80,000 on account of salary and Rs. 56,836 on account of perquisite and duly deducted tax at source amounting to Rs. 64,213. Full particulars of such payments of salary and perquisites would appear from the salary certificate issued to Sh. S.C. Sethi. The said certificate truly and correctly records all payments of salary and perquisites made available to the assessee by the company. Save and except the amounts mentioned in the annexed certificate, no other sum of any nature whatsoever was made by the company to Sh. S.C. Sethi from any source whatsoever for his employment.

5. The corporate vice-president was not further examined by the Assessing Officer.

6. The Commissioner (Appeals) held that none of the entries in the seized documents, relied on by the assessing officer, indicates that the amount was received by the assessee and the observation of the assessing officer that page Nos. 67 and 71 indicate the receipt by the assessee is factually incorrect. Further, it was noticed by the learned Commissioner (Appeals) that since the assessee has demanded cross-examination of Sh. A. K. Chhajer before loose papers seized from his residence could be used against the assessee, but such opportunity was not offered to the assessee, therefore, the assessment suffers from procedural errors. With these findings, the assessment order was set aside and the assessing officer was directed to complete the assessment de novo.

7. This order of the Commissioner (Appeals) was not challenged by the revenue.

8. The assessing officer in pursuance of the aforesaid directions again issued notices at She same address wherefrom the notices earlier addressed to Sh. A. K. Chhajer were returned unserved and without seeking the presence of Sh. A. K. Chhajer, has fallen back on his earlier assessment reiterating the addition of Rs. 4,67,200 in the returned income of the assessee for the same reason as prevailed with the assessing officer in the earlier assessment order.

9. This order of assessment dated nil was subjected to appeal. The Commissioner (Appeals) referred to his earlier finding that none of page Nos. 67, 71 and 80 indicate that the amount was paid by the company or received by the appellant and, therefore, the observation of the assessing officer that page Nos. 67 and 71 indicate the receipts is factually incorrect. The learned Commissioner (Appeals) also relied on the fact that the assessing officer had not still obtained attendance of the said Sh. A. K. Chhajer for being cross-examined by the assessee, therefore, the assessing officer could not have reinstated his earlier assessment order on the very same material by ignoring the finding earlier recorded by the Commissioner (Appeals). This order of the Commissioner (Appeals) was affirmed in appeal by the Income Tax Appellate Tribunal which is the subject-matter of this appeal.

10. The facts stated above clearly indicate that no question of law arises in this appeal. The finding recorded by the Tribunal are findings of fact affirming the earlier finding of fact recorded by the Commissioner (Appeals). Apparently when the loose papers by itself did not indicate receipt of the alleged undisclosed income by the assessee and peripheral reliance on the document was not earlier countenanced in absence of opportunity of cross-examination of the person from whose possession the loose papers were recovered. The fact that the assessing officer has not made any efforts to serve the said Sh. A. K. Chhajer and secure his presence by invoking powers under the Income Tax Act for securing presence of any witness also goes to show that the assessing officer has not really made efforts to give effect to the directions of the Commissioner (Appeals) for making available opportunity of cross-examining Sh. A. K. Chhajer by the assessee.

11. It is also to be noticed that the affidavit of the corporate vice-president about total emoluments flowing from the employer to the assessee remains uncontroverted and could not have been ignored.

12. In that view of the matter, the findings recorded by the Tribunal being findings of fact do not give rise to the question of law.

13. Moreover, another fact which is also not in dispute that for the subsequent year 1994-95 on the very same facts, the assessment order had been set aside by the Commissioner (Appeals) and affirmed by the Tribunal and such deletion of the very same income has not been subjected to appeal and has been accepted by the department.

14. Accordingly, the present appeal fails and is hereby dismissed.

15. No order as to costs.