
(2014) 02 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : I.T.A. No. 90 of 2007 (O&M)

Commissioner of Income Tax

APPELLANT

Vs

Y.M. Singla

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 260A, 68

Citation : (2014) 366 ITR 242

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

Bench : Division Bench

Advocate : T.K. Joshi, Advocate for the Appellant; S.K. Mukhi, Advocate for the Respondent

Judgement

Anita Chaudhary, J.—Through the instant appeal filed u/s 260A of the income tax Act, 1961 (for short, "the Act"), the Revenue has challenged the order dated May 26, 2006, passed by the income tax Appellate Tribunal Delhi Bench "D" (for brevity, "the Tribunal"), ordering deletion of additions made by the Assessing Officer and the Commissioner of income tax (Appeals) (in short, "the CIT (A)") for the assessment year 2001-02. On April 16, 2007, the instant appeal was admitted for determining the following substantial question of law :

"Whether, on the facts and in the circumstances of the case, the hon"ble income tax Appellate Tribunal is right in holding the gifts as genuine from 26 parties who were merely passing on the accommodation entries not only for the assessee but for other persons also ?"

2. The brief facts of the case are that the wife of the respondent, namely, Smt. Madhu Singla, who died on October 31, 2003, during the assessment proceedings, filed the return on October 15, 2001, for the assessment year 2001-02 showing her income as Rs. 1,99,950. She was called upon by the Assessing Officer to explain the following gifts amounting to Rs. 26 lakhs received from ten different donors :

3. The respondent had represented the assessee in the capacity of legal representative of the deceased, Smt. Madhu Singla, and was asked to produce the donors to prove the creditworthiness of the gifts but he only produced Vishal Malhotra and Balkishan Mittal before the Assessing Officer. The Assessing Officer doubted the veracity of said the entries purportedly mentioned as gifts and came to the conclusion that the donors were neither related nor they had the capacity to make such large gifts in favour of the assessee and there was no occasion to do so. The Assessing Officer, vide order dated February 26, 2004, concluded that the assessee had utilized the services of various account holders to convert her black money and ordered addition thereof in the income of the assessee. Not only this, the Assessing Officer ordered addition of an amount equivalent to 10 per cent of the alleged gift in the income of the assessee as premium paid to the middleman for procuring bogus entries. Some other additions were also ordered but the same are not the subject matter of the instant appeal.

4. The respondent preferred an appeal before the Commissioner of income tax (Appeals), who affirmed the additions, referred to above, vide order dated March 3, 2005, but gave some relief to the respondent concerning some other addition.

5. Before the Tribunal, the respondent raised a number of issues but withdrew some of them. The Tribunal, vide order dated May 26, 2006, ordered deletion of the amount of Rs. 26 lakhs and 10 per cent thereof as premium imposed by the authorities below, besides making some other directions. But we would not be referring to them as they are not relevant for the adjudication of the issue in hand.

6. We have heard learned counsel for the parties and have also gone through the record.

7. The primary grouse of the Revenue raised in the instant appeal is regarding deletion made by the Tribunal treating the amount of Rs. 26 lakhs received by the assessee as gifts from ten different persons and waiving the premium equivalent to 10 per cent of the amount imposed by the Assessing Officer. The Tribunal, while setting aside the findings of the Assessing Officer and the Commissioner of income tax (Appeals), observed thus :

"11. We have considered the rival submissions and have gone through the order of the tax authorities below along with the facts of the case and the material available on record. We have duly considered the case law cited before us. We noted that the assessee during the year has received gift from 10 persons detailed as given in the brief facts. The gifts were received through cheques/ account payee demand draft. The assessee has filed the copy of the gift deed which consists of the complete address of the donor and the mode by which the gifts were received by the assessee. In the case of gift received from Vinod Kumar, Vinod Garg, Rajni Agrawal, Suraj Bhan Agrawal, Daya Shankar Agrawal, Shikha Agrawal, Madan Lal, Vishal Malhotra, Krishna Gupta and Bal Kishan Mittal, the assessee has filed the evidence to the fact that each of them is a regular

income tax assessee. In some cases the copy of the permanent account number, copy of the assessment order, copy of the last acknowledgment of filing the income tax return and copy of permanent account number application were duly filed by the assessee. The evidence for this was filed before the Assessing Officer and which are available in the paper book. Shri Vinod Kumar and Shri Bal Kishan Mittal appeared before the Assessing Officer and their statements were recorded. They have confirmed that they have given the gift to the assessee. In the case of Mrs. Rajni Agrawal, Shri Suraj Bhan Agrawal, Daya Shankar Agrawal, Madan Lal, Vishal Malhotra, Smt. Krishna Gupta, confirmation were directly received by the Assessing Officer stating therein that they have given the gift to the assessee. In the case of Vinod Garg and Shikha Agrawal, neither their statement was recorded nor any confirmation was received by the Assessing Officer. In the case of Smt. Shikha Agrawal it was contended that no summon was issue by the Assessing Officer. The submission made by the learned authorised representative was not controverted by the learned Departmental representative. The affidavit in respect of each of the donor was filed except in the case of Shri Vinod, Rajini Agrawal, Madan Lal and Bal Kishan Mittal. Balance-sheet for each of the donor was filed before the Assessing Officer. It is a settled law that the statement made on oath cannot be rejected until and unless the party has been cross-examined. In this case, the affidavit of the each of the donor was available on record and, therefore, the onus is on the Revenue, in our opinion, to bring the evidence on record and cross-examine the deponent before rejecting their statement as it is an admitted the fact that in two cases where the Assessing Officer has recorded the statement, the parties has accepted the factum that they had gifted the amount to the assessee."

8. The findings of the Tribunal mainly rested on the fact that the transactions were made through banking channels and the identity and financial capacity had been duly established.

9. Section 68 of the Act provides that where any sum is found credited in the books of the assessee for any previous year it may be charged to income tax as the income of the assessee of the previous year if the explanation offered by the assessee about the nature and source of such sums found credited in the books of the assessee is, in the opinion of the Assessing Officer, not satisfactory. Such opinion formed itself constitutes a prima facie evidence against the assessee relating to the receipt of money, and if the assessee fails to rebut the evidence it can be used against the assessee by holding that it was a receipt of an income.

10. It is settled that to prove the genuineness of the transaction, the burden lies on the assessee and to discharge the onus, the assessee must prove (i) the identity of the creditor, (ii) the capacity of the creditor to advance money and (iii) the genuineness of the transaction.

11. A perusal of order passed by the Assessing Officer reveals that an enquiry into the matter was got conducted and it was found that the alleged donors were not financially capable to make the gifts of such huge amounts in favour of the

assessee and they had no relations nor was there any occasion to make the gift. The Assessing Officer noticed that in some cases, some days prior to making the transaction, the amount was deposited in the account of the donors and simultaneously they made the gift in favour of the assessee. In the case of Vinod Kumar donor, it was found that he used to deposit crores of rupees in his account and immediately after making the deposit, he would withdraw the amount by way of demand draft or issued cheques in the name of other persons. Similarly, in the case of the assessee, on March 22, 2001, he was in receipt of an amount of Rs. 17,03,000 and on the same day he got issued two different bank drafts, one in favour of the assessee for a sum of Rs. 5 lakhs and other for a sum of Rs. 12 lakhs favouring another beneficiary. Similar modus operandi was found in the case of Vinod Garg. It was found that the gift of Rs. 3.5 lakhs was made by Vinod Garg from the account of one Ashok Kumar. In the case of Rajni Aggarwal, it was found that she did not have the financial capability to make a gift of Rs. 2.5 lakhs, especially when she had filed her income tax return for the assessment year 2000-01 declaring salary income of Rs. 48,000. It was found that, firstly, Uma Aggarwal, Madan Lal Aggarwal and others had transferred an amount in the account of Rajni Aggarwal and, thereafter, she made the gift by way of demand draft in favour of the assessee. It was also noticed that donors Brijesh Kumar Aggarwal, Shikha Aggarwal, Daya Shankar Aggarwal and Rajni Aggarwal belonged to the same family, while donors Madan Lal Aggarwal and Suraj Bhan had given their addresses as H-113, Ashok Vihar, Phase-I, Delhi which was the address of above mentioned four donors. The donor, Vishal Malhotra, appeared before the Assessing Officer and admitted that he had no relations with Madhu Singla but he made the gift on the advice of his mother. It was found that his earning capacity was just Rs. 4,000 per month and he could not have made the gift of Rs. 2,50,000 to a stranger and without any occasion. The financial capacity of Smt. Krishna Gupta, the other donor and mother of donor Vishal Malhotra was doubted. None of them were found to have made gift in favour of their own family member or relatives, but had preferred to make gifts in favour of a well to do person.

12. From the above, it is noticed that unaccounted cash of the assessee was first deposited in different accounts in an organized manner, from where transfer entries were given to the so called donors, who at the same time made entries in favour of the assessee by way of bank drafts. In such a situation, it is very clear that the cash was paid by the assessee for depositing the same in the respective accounts of the donors and the cheques/demand drafts were obtained for the amounts claimed as gifts. The alleged gifts were found to have been made without any occasion or out of love and affection and, thus, the same were rightly considered by the Assessing Officer as not genuine. The capacity of the donors had not been established because they were found to be persons of small means as compared to the assessee.

13. All these important factors were ignored by the Tribunal while ordering deletion. The assessee is not required to explain the "source of the source" but it

has to satisfy the other sine qua non, viz., identity and capacity of the creditor and the genuineness of the transaction. No doubt, the assessee established the identity of the donors but the other ingredients to prove the genuineness of the transactions are conspicuously missing. A simple identification of the donor and showing the movement of the gift amount through banking channels is not enough to prove the genuineness of the gift. Since the claim of gift is made by the assessee, the onus lies on him not only to establish the identity of the person making the gift but also his capacity to make a gift and that it has actually been received as a gift. The fact finding enquiry conducted by the Assessing Officer in the matter had been overlooked by the Tribunal. The Tribunal overlooked the fact that the donors were not related to the assessee nor was there any occasion for them to part with such a big sum of Rs. 26 lakhs.

14. In the case of Tirath Ram Gupta Vs. Commissioner of Income Tax, it was held that a gift cannot be accepted as such to be genuine, merely because the amount has come by cheque or draft through banking channels, unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion are proved. Unless the recipient has proved the genuineness thereof, the gift can very well be treated to be an accommodation entry of the assessee's own money, which is not disclosed for the purpose of taxation.

15. The issue regarding receipt of money by way of gift from strangers had attracted the attention of this court on many occasions and, in our opinion, this issue is no more 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, 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 135 (P&H) had held that NRI 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 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. 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 Lall Chand Kalra v. CIT [1981] 22 CTR 135 (P&H), 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.""

17. When the same principles are applied to the instant case, we have no hesitation to conclude that the Tribunal has fallen into error while ordering the deletion. Consequently, we allow the appeal and answer the questions framed above in favour of the Revenue and against the assessee and maintain the addition of the gift amount, but disallow the assumed addition of 10 per cent on premium paid to middlemen.