
(2011) 05 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : ITA No. 135 of 2011 (O and M)

Gopal Krishan Kwatra

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 148, 260A, 271(1)

Citation : (2011) 05 P&H CK 0139

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Delay in refiling is condoned.

2. This appeal has been filed by the Assessee u/s 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 30.4.2010 passed by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 2577/Del/08, relating to the assessment year 1999-2000, raising the following substantial question of law:

Whether, on the facts and circumstances of the case, the Tribunal was right in upholding the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961?

3. Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the Assessee filed his return on 28.6.1999 for the assessment year 1999-2000 declaring an income of Rs. 3,72,650/-. The said return was processed u/s 143(1) of the Act on 10.1.2000. Re-assessment proceedings u/s 148 of the Act were initiated against the Assessee by issuing notice dated 23.3.2006. Along with the notice, the Assessee was also issued a questionnaire to produce evidence to show the genuineness of the gifts amounting to Rs. 5 lacs. The Assessee surrendered the said amount of Rs. 5 lacs subject to no penal action. However, the Assessing Officer after considering the reply of the Assessee did not find any substance therein. The reassessment was completed on 28.12.2006 at

an amount of Rs. 8,72,650/-. The penalty proceedings u/s 271(1)(c) of the Act were also initiated against the Assessee on 28.12.2006. The Assessing Officer vide order dated 28.6.2007 levied a penalty of Rs. 1,50,000/- against which the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT (A) vide order dated 6.6.2008 dismissed the appeal. On further appeal by the Assessee, the Tribunal vide order dated 30.4.2010 upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the Assessee.

4. We have heard learned Counsel for the Assessee.

5. The issue involved in this appeal relates to the legality of penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act and upheld by the appellate authorities on the addition made by treating the alleged gifts received from Shri Sanjay Mohan Aggarwal to be not genuine and bonafide transaction.

6. The Assessing Officer had made addition of Rs. 5 lakhs in the returned income on account of bogus gifts alleged to have been received from Shri Sanjay Mohan Aggarwal. It was recorded that the gift alleged to have been received from Shri Sanjay Mohan Aggarwal was not genuine and there was no occasion for him to have given the gift to the Assessee. The explanation furnished by the Assessee in respect of receipt of gifts was not found to be acceptable. It was concluded that the Assessee had introduced his unexplained money in the garb of gifts. Accordingly, the Assessing Officer had levied penalty u/s 271(1)(c) of the Act. The levy of penalty by the Assessing Officer had been upheld by the appellate authorities. The finding recorded by the Tribunal while upholding the penalty reads thus:

In the case of Shri Gopal Krishan Kwatra the argument that reopening of assessment was not justified is concerned, we are of the opinion that Assessee has not disputed reopening of the assessment during the course of assessment proceedings. He himself surrendered the amount, additions have been confirmed, now at this second appellate stage Assessee cannot make out altogether a new case. The validity of assessment is very much intact. One of the argument by the Ld. Counsel for the Assessee is in respect of charge framed by the Assessing Officer i.e. whether they have furnished inaccurate particulars or they have concealed the particulars of income. The Ld. CIT(A) has dealt this issue and we do not find any error in his order. Apart from that we are of the opinion that there is no ambiguity in the charge which Assessee were required to explain. From the assessment stage it was very clear that Assessee have to explain why they have introduced their unexplained money in the garb of bogus gift and tried to avoid the payment of tax. There is no confusion on this aspect. We could understand arguments of Ld. Counsel for the Assessee, if on account of some confusion a prejudice has been caused to the Assessee for explaining their position. In fact they do not have any explanation. In view of the above discussion we do not find any merit in these appeals. They are dismissed.

7. No perversity or illegality could be pointed out by the learned Counsel for the Appellant in the findings recorded by the Tribunal holding the gift to be bogus.

8. In view of the above, no substantial question of law arises in this appeal. Accordingly, the appeal is dismissed.