
(2011) 01 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 160 of 2001

Gopal Singal

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Income Tax Act, 1961 — Section 143(1)(a), 145(2), 158BA(3), 158BB, 158BB(2)

Citation : (2012) 347 ITR 556

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

Bench : Division Bench

Advocate : Munisha Gandhi, for the Appellant; Yogesh Putney, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—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 June 15, 2000, passed by the income tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"), in I.T.A. No. 55/Chandi/97, for the block assessment period from April 1, 1986, to October 31, 1996, raising the following substantial questions of law : (i) Whether the income tax Appellate Tribunal, Chandigarh, did not err in law in sustaining the addition of Rs. 2,30,000 as "undisclosed income" of the block period, represented by arbitrary estimate of the expenses incurred in the marriage of the assessee's children and Rs. 2 lakhs as household expenditure where such conjectural additions clearly fell out of the definition of "undisclosed income" as adopted in Chapter XIV-B of the income tax Act ?

(ii) Whether the Tribunal did not err in law in sustaining the above mentioned additions when there was no material whatsoever found as a result of search to support such additions and additions were simply based on surmises ?

(iii) Whether the Tribunal was justified in law in partially setting aside the

assessment and directing the Assessing Officer to make re-assessment by applying the provisions of section 145(2) of the income tax Act ignoring the mandate and requirements of section 158BA(3) ?

(iv) Whether the Tribunal while so setting aside the assessment failed to consider that the provisions of section 145(2) as such could not be applied to the determination of income of the period from April 1, 1986, to October 31, 1996, on a proper interpretation of the applicability of the provisions of Chapter XIV-B of the income tax Act ?

The facts necessary for adjudication as narrated in the instant appeal are that the search and seizure operation was conducted on October 31, 1996, at the business and the residential premises of the assessee. During the search proceedings, pertain incriminating documents including units and shares were found and seized. Besides that, cash amount of Rs. 3,220 and gold jewellery weighing. 195 gms. and 350 silver coins were found. In pursuance thereof, the assessment order was passed by the Assistant Commissioner of income tax on October 29, 1997, making additions of Rs. 4,90,600 as household expenses, Rs. 6,64,000 as marriage expenses and other additions on account of alleged undisclosed income for the block period in question. Feeling aggrieved, the assessee filed an appeal before the Tribunal who, vide order dated June 16, 2000, sustained an addition of Rs. 2 lakhs on account of low household withdrawals and Rs. 2,30,000 on account of marriage expenses and set aside the additions made u/s 145(2) of the Act regarding valuation of stock and remanded the matter to the Assessing Officer. Hence, the present appeal by the assessee.

2. We have heard learned counsel for the parties and have gone through the record very carefully.

3. The aforesaid questions of law relate to the following additions made by the Assessing Officer during the course of the block assessment proceedings :

(i) the marriage expenses which has been sustained by the Tribunal to the extent of Rs. 2,30,000;

(ii) low household expenses which has been maintained at Rs. 2 lakhs; and

(iii) regarding stock valuation which has been remanded to the Assessing Officer.

4. Learned counsel for the assessee submitted that the Tribunal on the basis of conjectures and surmises without there being any definite material found during the search sustained the addition to the extent noted above. Therefore, the findings recorded by the Tribunal are perverse and raise substantial questions of law as claimed by the assessee.

5. Controverting the aforesaid submissions, learned counsel for the Revenue supported the order passed by the Tribunal. Learned counsel submitted that the books of account which were maintained by the assessee were not reliable and, therefore, certain estimates had to be made for determining the undisclosed

income. The estimates which had been upheld by the Tribunal cannot be said to be perverse as the same are based on material on record. Learned counsel for the Revenue relied upon the following observations in the judgment of this court in Ved Prakash Vs. Commissioner of Income Tax, in support of his submissions (page 643) :

Since the books of account maintained by the assessee were not reliable, the assessment had to be made in the light of the material recovered during the search. In this process, some element of estimate was unavoidable. In the appellate jurisdiction u/s 260A of the Act, this court normally does not interfere by substituting its own estimate in place of the one of the Tribunal unless it is shown that the estimate of the Tribunal could not possibly be reached.

6. Support was also drawn from the provisions of section 158BB(2) of the Act which provides that the provisions of sections 68, 69, 69A, 69B and 69C apply to such cases. According to the learned counsel, the assessee had not been able to give any convincing or reliable material to show that the addition of Rs. 2,30,000 on account of marriage expenses and Rs. 2 lakhs as low household expenses was unjustified.

7. We have given our thoughtful consideration to the respective submissions of learned counsel for the parties and do not find any merit in the submission of learned counsel for the assessee.

8. Examining, whether the expenses incurred on the marriage of the assessee's children and low household expenditure on estimate can form the basis of undisclosed income for the block period, inevitably, reference has to be made to sub-section (2) of section 158BB of the Act, which reads thus :

In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to "financial year" in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition.

9. According to the plain reading of this sub-section, the deeming provisions in sections 68 to 69C stand attracted for the purpose of ascertaining the undisclosed income and determination under this section shall be block-wise computation. Further, it cannot be ignored that "in search cases, the assessment of the undisclosed income is not possible without having some element of estimates because the true facts concealed from the Department are within the personal knowledge of the assessee." However, caution is to be exercised if such estimate is shown to be arbitrary and contrary to the material on record.

10. It would now be apt to refer to the findings of the Tribunal relating to these additions. The Tribunal, while sustaining the addition with regard to marriage expenses, had in paragraphs 28 to 35 held as under :

28. We have examined the rival submissions and also perused the material on

record to which our attention was invited during the course of hearing. The following facts are in favour of the assessee :

(1) Some of the marriages were performed during the period when terrorism was at its peak in Punjab, Chandigarh and adjoining areas and such marriages could not have been performed on a lavish and ostentatious scale but in a low key manner.

(2) The assessee's daughter, Anjana, was married twice having lost her first husband at the hands of terrorists and this was likely to result in the second marriage being performed on a lesser scale more so when she became a widow within one year of her first marriage.

(3) The marriage of Asmita, the other daughter of the assessee, was also performed in the background of the fact that her fiancée died a week before the marriage and the same had to be performed with a different person in hurried circumstances.

(4) The aggregate addition made by the Assessing Officer is purely on estimate and considering normal circumstances as also assuming and presuming the status and background of the assessee as also taking into account the community to which he belonged. A reference has been made to "Aggarwal community" in the assessment order to which the learned counsel objected but, in our opinion, any such reference whether inadvertent or motivated does not come in the way of our deciding the issue on the merits.

(5) No incriminating evidence or documents were found during the course of raid.

29. As against the aforesaid the main facts which favour the Revenue's case are :

(1) The break-up of the actual marriage expenses was not furnished to the Assessing Officer although specifically asked for.

(2) For some of the marriages the assessee had not contributed a single pie and withdrawals were made from the accounts of the persons concerned and which were found to be inadequate.

(3) It is unbelievable that for the marriage of his son, Mahesh Kumar, the assessee's stand was that no expenditure was incurred in view of terrorist activities in Punjab. Whatever may be the situation, some expenditure is definitely called for.

30. Taking note of the aforesaid facts, some favouring the assessee and some favouring the Revenue, we, in the ultimate analysis, hold that some addition is called for but not of the magnitude as made by the Assessing Officer. For instance, in the first marriage of Anjana the amount stated to have been spent is Rs. 56,000 whereas the Assessing Officer has arrived at an estimate of Rs. 1,50,000. In the second marriage a sum of Rs. 80,000 is shown to have been spent whereas the Assessing Officer has estimated the same at Rs. 2 lakhs. In other words, the total addition on the two marriages of Anjana comes to Rs.

2,14,000. In our opinion, considering the various facts and circumstances, an addition of Rs. 1 lakh in respect of both the marriages would be fair and reasonable.

31. As regards the marriage of Shri Mahesh Kumar, the assessee's son, the Assessing Officer estimated the expenditure at Rs. 2 lakhs as against the stand of the assessee that nothing was spent. In our opinion, an addition of Rs. 80,000 would be fair and reasonable taking into account the point of time at which the marriage was performed as also the further fact that the husband of Kumari Anjana had been killed in terrorist violence in Punjab. The Assessing Officer has made much of the fact that during the course of the search jewellery valued at Rs. 2.20 lakhs was found at the residence of Shri Mahesh Kumar and he has attributed Rs. 1 lakh out of this to the assessee and Rs. 1,20,000 as having been given by the in-laws of Shri Mahesh Kumar. There is no dispute about the quantum of jewellery found. What can be attributed to both the sides is after all an estimate and there is nothing on record to show that the Assessing Officer confronted the in-laws of Shri Mahesh Kumar to ascertain the expenditure on the jewellery, marriage, etc.

32. As regards Asmita, the assessee's other daughter, the Assessing Officer has estimated the expenditure at Rs. 2,50,000 as against Rs. 50,000 shown but considering her peculiar circumstances as already highlighted earlier, we are of the view that an addition of Rs. 50,000 would be fair and reasonable as against Rs. 2 lakhs on the part of the Assessing Officer. The Assessing Officer has compared in arriving at the estimate of Rs. 25,000 the expenditure on the marriage of the assessee's second son, Mr. Harish Singal. In his own case a separate addition of Rs. 50,000 has been made over and above the addition made in the assessee's own case. We would once again stress on the peculiar facts and circumstances in the case of Asmita as also taking into account the point of time at which the marriage was performed. Further, Shri Harish Kumar was married in 1996 when terrorism had disappeared in Punjab as compared to Asmita's marriage in 1992 and, therefore, the expenses of the two marriages cannot be compared.

33. As regards Shri Harish Kumar, the separate addition of Rs. 50,000 made in his case will be taken care of while deciding his appeal but in so far as the addition of Rs. 40,000 in the assessee's case is concerned, as against Rs. 50,000 (erroneously mentioned in the ground of appeal), there are two limbs--the first on the basis of his statement that Rs. 1 lakh had been spent at the time of marriage whereas in the course of the assessment proceedings he came out with a figure of Rs. 75,000. The learned counsel for the assessee had argued that the figure of Rs. 1 lakh had been given off hand at the time of recording the statement without reference to record and rather than take this figure the amount of Rs. 75,000 actually withdrawn be accepted. The learned Departmental representative, however, stuck to the figure of Rs. 1 lakh but after considering the rival submissions we are of the view that the addition of Rs. 25,000 is not

justified on the facts and circumstances of the case as the assessee did not refer to any record at the time of recording of the statement and the sum of Rs. 1 lakh had been mentioned in an off the cuff manner. This addition is accordingly deleted.

34. As regards the sum of Rs. 35,000 received as Shagans and thereafter spent towards marriage expenses, the Assessing Officer has accepted Rs. 20,000 adding back the rest but this once again an estimate and surmises and conjectures. Nothing prevents the assessee from giving a figure higher than Rs. 35,000. On the one hand, the Assessing Officer is harping on the community to which the assessee belongs as also his high social status and if that be so, we really wonder whether the sum of Rs. 35,000 as Shagans can be treated to be an abnormal figure. The addition of Rs. 50,000 (correct amount Rs. 40,000) accordingly stands deleted.

35. To sum up, the following additions are sustained :

(1) Anjana : Rs. 1 lakh is sustained on both the marriages as against Rs. 2,14,000 on the part of the Assessing Officer.

(2) Shri Mahesh Kumar : Rs. 80,000 is sustained as against Rs. 2 lakhs on the part of the Assessing Officer.

(3) Asmita : Rs. 50,000 is sustained as against Rs. 4,60,000.

(4) Shri Harish Kumar : Addition of Rs. 50,000 stands deleted (wrongly mentioned as Rs. 50,000) (correct amount should be Rs. 40,000).

Before we part with this ground we would like to reiterate that the additions have been sustained with reference to the statements made during the course of the search and this is connected with the other fact that quite a few of the regular assessments were completed u/s 143(1)(a) and these were not scrutiny assessments. This takes care of the argument that there is a review of earlier completed assessments. These observations of ours would also apply to all other grounds in the appeal where such a stand has been taken.

11. While dealing with low household withdrawals, the Tribunal had recorded as under :

After examining the rival contentions, we are of the view that there is some merit in the arguments advanced by the learned counsel for the appellant. As rightly contended the element of estimate has crept in along with various assumptions and presumptions such as expenses towards social functions on the part of the family, their high standard of living by reference to household goods and foreign tours but we must stress that separate additions have been made on these two items and with which we have already dealt with. Household expenses would take care of food, clothing and certain other connected expenditure since telephone expenses would have been taken care of in the books of account of one or the other of the businesses run by the family members. The question of

servants, membership of clubs and kitties as also medical expenses is once again on the basis of estimate. The Assessing Officer asked the assessee to file relevant details item-wise but, in our opinion, such details could not have been furnished the way required by the Assessing Officer since the search and seizure took place in October, 1996, whereas the household expenses asked for pertained to much earlier years beginning the assessment year 1997-98. Nobody is expected to keep details or for that matter remember the break-up. In our opinion, it would be fair and reasonable in case an ad hoc addition is sustained considering the facts and circumstances stated aforesaid and on which the learned counsel has strongly relied. The chart in the assessment order pertaining to the addition itself shows that in assessment year 1987-88 the Assessing Officer has estimated the monthly expenditure at Rs. 5,500 which has gradually shot up to a figure of Rs. 15,000 per month in the assessment year 1997-98. The total family members in the assessment year 1987-88 were 8 and this figure increased to 10 in the assessment year 1997-98. Taking into account the facts as also the decisions cited at the Bar, we are of the view that an addition of Rs. 2 lakhs as against Rs. 4,90,600 would be a very reasonable figure towards the household expenses and we, therefore, allow relief for the balance amounting to Rs. 2,90,600.

12. No perversity could be pointed out by the learned counsel for the assessee in the findings recorded by the Tribunal which may warrant interference by this court.

13. Regarding the issue relating to stock valuation, it was noticed by the Tribunal that the matter required to be looked into afresh by the Assessing Officer since the books of account had been rejected in terms of section 145(2) of the Act.

14. Learned counsel for the Revenue has pointed out that after the remand, the Assessing Officer had allowed certain benefits to the assessee and to the extent of additions made, the assessee had already filed an appeal. In view of the aforesaid, questions Nos. (iii) and (iv) regarding stock valuation does not arise for consideration. Accordingly, the substantial questions Nos. (i) and (ii) as claimed are 16 answered against the assessee and in favour of the Revenue. The appeal stands dismissed.