
(2013) 11 P&H CK 0271
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 72 of 1999

Hanuman Dass

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 264 CTR 211 : (2014) 365 ITR 131 : (2014) 221 TAXMAN 137

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Aalok Mittal, for the Appellant; Vivek Sethi, for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—This income tax appeal under s. 260A of the IT Act, 1961 (hereinafter mentioned as, the Act), against order dt. 18th Dec., 1998 (Annex. P-3) passed by Tribunal, Amritsar in ITA No. 526/Asr/1992, was admitted for hearing on the following substantial question of law:

Whether a gift made by a stranger is valid in law when the capacity to give the gift is not disputed and even if the gift is treated as invalid could the amount be taken as income in the hands of the assessee?

For the asst. yr. 1990-91, foreign gifts had been received by the assessee from the donors (mentioned against each) from United Kingdom. The details are as under:

Claim of the assessee that even though the donors were not related to the assessee by blood yet they were family friends and had capacity to pay, was not accepted by the AO on the ground that there was no specific occasion disclosed by the assessee on which the alleged gifts were received by him.

2. In addition to the assessee, even his brother, brother's wife and the mother had also received gifts from two out of three foreign donors, details whereof, are as under:

3. It may also be noteworthy that even father of the assessee had received

similar gifts.

4. Finding the claim of the assessee to be not genuine by the AO, an addition of Rs. 1,50,000 which represented amount of gifts, was made to his total income, taking it to be a case of concealment of income and of furnishing of inaccurate particulars. CIT(A), Jalandhar disagreeing with the AO deleted the addition of Rs. 1,50,000 made by the AO. When the matter came up in appeal by the Revenue before the Tribunal, reversing the order of CIT(A), the order of AO regarding addition of Rs. 1,50,000 made to the total income of the assessee which the assessee claimed on account of foreign gifts from donors of United Kingdom, was restored. It is in these circumstances that the present appeal has been filed by the assessee.

5. Stand of the appellant-assessee is that when there is no dispute regarding capacity of the donors qua payment made by way of gifts to the assessee and the assessee has also confirmed acceptance of such gifts, addition of such amount of gifts to income of the assessee, reversing order of CIT(A) while upholding order of AO by the Tribunal is neither justified nor legal.

6. Per contra, claim of the Revenue is that there was neither any occasion nor there was any relationship of blood or otherwise justifying such gifts by donors to the assessee. It is vehemently claimed that capacity of donors to pay is irrelevant in the facts and circumstances of this case.

7. When rival contentions raised by the parties are evaluated, it becomes evident that the questioned foreign gifts had been made by the donors who were neither related to the assessee nor there was any specific occasion qua the donees on which occasion the alleged gifts could have been given and were to be received by them. These are not small gifts, particularly keeping in view the contemporaneous times when these were given in the year 1989.

8. No one would part with such big amounts as gifts even if donors are having capacity to pay. Neither donors nor donees have shown that such gifts of huge amounts had ever been given by the donors to any of their relatives or had been received by the donees from their relatives or from such donors. Relevant extract from the order of AO, Annex. A-1, is reproduced as below:

4....Had the alleged donors such surplus funds available with them and been kind to humanity, they would have made such huge gifts in the shape of donations to some charitable organization/institute including of national importance for a charitable and noble cause where the very purpose for the upliftment of the suffering/humanity/mankind is served. Even had the alleged donors advanced the said amounts as loans, may be interest-free, then the position would have been different, and there could be said to be a fraction of element of truth in such a situation. In these circumstances, the assessee's contention that he received the above amounts as foreign gifts and that too from the distant family friends is absolutely not found to be reliable as true and correct.

....To me, it appears that the assessee has arranged the said transactions from the above alleged donors in the garb of gifts by suitably making to them the payments against the said foreign remittances, outside his books of account and as such, it appears to be a case of compensatory payments made for acquiring the alleged foreign remittances by way of gifts, by the assessee out of his income earned from undisclosed sources, for which circumstantial evidence exists. The assessee's case is also hit by the case of Loll Chand Kalra vs. CIT (1981) 22 CTR (P&H) 135. Therefore, to my mind, the assessee has also failed to prove the genuineness of the credits appearing in his bank account as also capital account to the above extent. Under these circumstances, an addition of Rs. 1,50,000 is hereby made to his total income for which he is also treated to have concealed as also furnished inaccurate particulars.

9. Vide order dt. 17th Feb., 1992 (Annex. A-2), CIT(A) had considered only identity and capacity of the donors as also the effect of acceptance of such gifts while coming to the following conclusion:

4....In the circumstances I hold that the AO's conclusions are contradictory and addition made treating it as a case of compensatory payments without bringing any material on record and also on the basis of not proving the genuineness of the credit was not warranted. The addition of Rs. 1,50,000, thus made is hereby deleted.

10. When we go through the order of Tribunal, not only the facts but even law on the point has been discussed threadbare. Relevant findings, after such discussion, returned by the Tribunal with approval are as below:

7.....We are of the considered opinion that CIT(A) was not justified in holding the gifts to be genuine merely because the AO has held in his order that the creditworthiness/paying capacity of the alleged foreign donors does not appear to be doubtful. She has failed to appreciate the observations of the AO, wherein he stated that these foreign gifts by the donors does not appear to be genuine because the donors were neither related to the assessee nor there was any specific occasion for the donors for making such huge amount of gifts to the assessee. In our opinion, in the present circumstances, when the foreign donors are not closely related to the assessee there was no specific occasion with the donors for making gifts to the assessee and his family members and so we do not find any justifiable reasons with the donor for making such huge amount of gifts of Rs. 1,50,000 to the assessee and more so when in addition to these very donor have made foreign gifts of Rs. 2,50,000 to the brother, mother and sister-in-law of the assessee. We are further of the opinion that the AO was justified in rejecting the amount of gifts as non-genuine and accordingly he was also justified in adding this amount as an income of the assessee earned from his undisclosed sources and consequently the order of the CIT(A) deleting the addition of Rs. 1,50,000 made on account of foreign gifts of Rs. 50,000, each by S/Shri Puran Chand Sharma, Vijay Kumar and Kiran Kumar in the income of the assessee as his income earned from undisclosed sources is set aside and the

order of the AO making the addition of the same is hereby sustained.

11. This aspect has been considered at length by a Bench of coordinate jurisdiction of this Court in IT Appeal No. 498 of 2005, decided on 7th Feb., 2011 (CIT vs. Puneet Singh). In the interface of facts of the said case, relevant observations and findings thereof in the said authority, are as under:

The aforesaid issue is no longer *res integra*. This Court in a recent judgment passed in IT Appeal No. 392 of 2005 (CIT vs. Kamal Gupta) decided on 20th Jan., 2011, had laid down as under:

The assessee failed to produce the donor as also his bank statement to prove that gift was actually given by the assessee. Financial capacity of the donor was also not established. The assessee, thus, failed to discharge onus which was on him. Reliance has been placed on judgment of this Court dt. 15th Sept., 2006 in IT Appeal No. 256 of 2006, Jaspal Singh vs. CIT, wherein in similar circumstances, NRI gift from a stranger was held to be bogus relying upon earlier judgment of this Court in Loll Chand Kalra, vs. CIT (1981) 22 CTR (P&H) 135 and judgment of Delhi High Court in Sajan Dass and Sons Vs. Commissioner of Income Tax,

We are of the view that the AO and the CIT(A) 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. Observations of this Court in Jaspal Singh (*supra*) are:

"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 Loll Chand Kalra vs. CIT (1981) 22 CTR (P&H) 135, judgment of 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,

6. Applying the aforesaid parameters to this case, learned counsel for the assessee was unable to show that there was either any occasion or any relationship or there existed any natural love and affection with the donor to have gifted the amount as claimed by the assessee. Further, the assessee was also required to substantiate that the donor had the means and the gift was

genuine which he had failed to establish.

12. 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. Consequently, there being no merit in the appeal, the same is dismissed.