
(2004) 11 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 101 of 2002

Harish Kumar Singal

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Income Tax Act, 1961 — Section 158BB, 260A

Citation : (2005) 193 CTR 265 : (2005) 276 ITR 355

Hon'ble Judges : G.S. Singhvi, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Munisha Gandhi, for the Appellant; Rajesh Bindal, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—In this appeal under s. 260A of the IT Act, 1961 (for short, "the Act"), the assessee has prayed for determination of the following substantial questions of law :

"(a) Whether the amount of gift of Rs. 2,01,000 drawn by the non-resident Indian donor from his bank account and deposited in the bank account of the donee could be included in the assessment made under s. 158BC of the IT Act, 1961, where the bank account of the donee already stands disclosed to the Department ?

(b) Whether the amount of Rs. 89,500 being alleged difference in the value of plot could be included in the assessment made under s. 158BC of the IT Act disregarding the registration deed and other evidence ?"

2. For deciding the aforementioned questions, we may briefly notice the facts.

As a consequence of the search and seizure operation conducted by the officers of the IT Department on 31st Oct., 1996, under s. 132(1) of the Act at the residential premises (House No. 315, Mahesh Nagar, Ambala Cantt.) jointly occupied by Shri Mahesh Kumar Singal and Shri Harish Kumar Singal, the AO,

vide order dt. 31st Oct., 1997, computed assessee's undisclosed income to the tune of Rs. 4,65,635 for the block period from 1st April, 1986 to 31st Oct., 1996, The appeal filed by the assessee was partly allowed by the Income Tax Appellate Tribunal, Chandigarh Bench "B" (for short, the Tribunal).

Feeling dissatisfied, the appellant has filed this appeal questioning the following two additions sustained by the Tribunal:

"(a) Rs. 2,01,000 on account of ingenuine gift having been received from one Shri Kala Chauhan of village Chanaru, district Patiala, a non-resident Indian;

(b) Rs. 89,500 on account of difference in the value of plot."

3. Ms. Munisha Gandhi, learned counsel for the appellant-assessee, argued that the addition of Rs. 2,01,000 made by the AO is legally unsustainable because that amount was received by the assessee in the form of gift from non-resident Indian, who had made payment by cheque from his account and whose affidavit was produced before the officer concerned. She submitted that this amount could not be treated as undisclosed income within the meaning of s. 158BC of the Act in the hands of the assessee. She further argued that the addition of Rs. 89,500 on account of difference in the value of the plot is also unsustainable because the plot was purchased for Rs. one lakh vide registered sale deed which was produced before the AO. Learned counsel argued that the finding recorded by the AO and the Tribunal in regard to the value of the plot is based on assumptions and conjectures and as such, the same should be set aside. In support of her arguments, Ms. Gandhi relied on Commissioner of Income Tax Vs. Rajendra Prasad Gupta, , Dr. Mrs. Alaka Goswami and Dr. Anil Kumar Goswami Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Vikram A. Doshi and Ms. Leena V. Doshi, , Commissioner of Income Tax Vs. Usha Tripathi, , Commissioner of Income Tax Vs. Shamlal Balram Gurbani, and CIT v. Ravi Kant Jain (2001) 250 ITR 141.

4. Shri Rajesh Bindal, learned counsel for the Revenue, argued that the finding recorded by the AO that the so-called gift given to the appellant-assessee by the non-resident Indian was not genuine is based on a correct appreciation of evidence produced by the parties and the same does not give rise to any substantial question of law more so because the Tribunal on an independent appreciation of evidence, upheld the same. Shri Bindal pointed out that the assessee had not disclosed the gift in question in the returns relating to the relevant assessment years and, therefore, the same was rightly treated as undisclosed income within the meaning of s. 158BC of the Act for the purposes of making additions while framing the block assessment. On the second issue, Shri Bindal invited our attention to the statement made by the appellant during the course of search and seizure operation on 31st Oct., 1996, wherein he candidly admitted that the plot was acquired by him for Rs. 1,65,000 and argued that in view thereof, the AO correctly made addition of Rs. 89,500 by treating the said investment out of undisclosed income of the assessee for the asst. yr. 1989-90.

5. We have given serious thought to the respective arguments and perused the record. Paras 57 to 62 of the Tribunal's order, which contain detailed discussion on the issue of addition of Rs. 2,01,000 made by the AO, read as under:

"57. We have considered the rival submissions as also the material on record to which our attention was invited during the course of the hearing. The decisions cited at the Bar have also been taken into account. In the present appeal, we do not propose to go into the question whether gifts can be exchanged between strangers or there has to be an occasion for giving the gifts, inasmuch as we propose to decide the matter on merits based primarily on the test of human probabilities. As regards the legal aspect of the matter, there are decisions of the Tribunals and the Courts both ways but each of these have been delivered on its own facts.

58. In the present case, the assessee has rested his entire case on the filing of affidavit by the learned donor and the amount having come out of his NRE account in India and there being no possibility of producing the person for examination by the AO. These three facts may be relevant in a given case and may even lead to the acceptance of the assessee's arguments but in the present case these have to be correlated with various other facts. Leaving apart the affidavit for the time being, it is a finding of fact by the AO that the NRE account with the State Bank of India, Sector 17, Chandigarh, was opened on 5th Sept., 1994 and the last major transaction took place merely two months later, i.e., on 17th Nov., 1994. It is also noted as a fact that there were four major withdrawals from the said account, which were offset by corresponding deposits on the same dates. The purported gift to the assessee was given in November, 1994. It is apparent that the NRE account had been opened just a few days prior to the alleged gift to the assessee and the various withdrawals are squared up by corresponding deposits on the same dates. The aforesaid facts do cast some doubt and suspicion although in quite a few cases the assessee's plea had been accepted on the basis of NRE accounts which had been in existence for years and entries reflected therein did not cast any doubt and suspicion. Then again the assessee expressed his inability to produce the donor contending that he had settled abroad and was not likely to come to India in the near future. This was submitted before the AO some time in August/September, 1997, whereas it is noticed from the assessee's statement recorded on 4th Dec, 1996, i.e., a month after the search that the assessee deposed that he had sent messages to the village of Sh. Kala Chauhan and he should be able to produce him by 6th Dec, 1996. This clearly shows that at the point of time when the statement was made, the alleged donor or his relatives were in touch with the assessee; otherwise an undertaking could not be given to the effect that he would be produced by 6th Dec, 1996.

59. It is also a matter of record that the assessee had not received any gift at any point of time either from his family members or near relatives and it appears rather strange that Sh. Kala Chauhan who is stated to be a friend of the

assessee's brother's brother-in-law, should give a gift to the assessee rather than his brother's brother-in-law or for that matter the assessee's brother.

60. The statement recorded as also the further queries raised, revealed that the gift of Rs. 2,01,000 was given by Sh. Kala Chauhan on learning that the assessee's brother was constructing a house. In other words, there is a purpose and reason stated for the alleged gift whereas a gift is normally given out of love and affection.

61. It is also noted from the assessment order that prior to going to Austria, Sh. Kala Chauhan worked at a brick kiln in his village and not only was he a man of modest means prior to going abroad but even thereafter.

62. Much has been argued before us that the relevant provisions of the IT Act under which the addition has been made, have not been spelt out and Sections 68 to 69 A are not applicable, but in our opinion s. 69 without being specifically mentioned stands attracted as the amount obviously has found its way to the bank account of the assessee from where it has been advanced to Sh. Mahesh Singal, the assessee's brother, purportedly for the construction of his house. The non-mentioning of the relevant section, in our opinion is not fatal. It is also noted from the statement of assessee, total income for asst. yr. 1995-96, being the year in which the alleged gift was received, nothing has been mentioned by way of a note and, in fact, it cannot be the assessee's argument that the factum of the gift having been received is disclosed in the return. The absence of any note, in our opinion, would clearly lead to the conclusions that the fact of receiving a gift came out during the course of proceedings pertaining to the block assessment. It is also a matter of record although it may not strictly apply in a given case that the assessee at no point of time had received any gift either from his family members or near relatives and it was also not known whether Sh. Kala Chauhan had made any gifts to his relatives or to Sh. Vipin Singal, his good friend, who happened to be a brother-in-law of assessee's brother, Sh. Mahesh Singal. During the course of the present hearing, not a single word has been said about the financial status of the alleged donor whether in India or outside and inasmuch as we are deciding the matter on test of human probabilities, we do not find it necessary to put on the Department the burden of proving that any money went outside India to buy the gifts from Sh. Kala Chauhan. There are cases when money does not go outside but it changes hands in India itself."

6. Learned counsel for the appellant could not point out any patent error in the appreciation of evidence made by the AO or the Tribunal. However, she made valiant effort to persuade us to re-evaluate the entire evidence and disturb the concurrent finding of fact recorded by the AO and the Tribunal that the so-called gift made by the non-resident Indian in favour of the assessee was not genuine. We are afraid, that is not the scope of appeal under s. 260A of the Act. This Court, while adjudicating an appeal under s. 260A of the Act, is required to decide only substantial questions of law and shall interfere if it is shown that finding of Tribunal is either perverse, arbitrary or is based on no material or is

contrary to any statutory provision. This Court cannot interfere with the order only on the ground that on a reappraisal of evidence, as an appellate forum, different view can be taken. Learned counsel for the appellant, has not been able to show by referring to any material on record that the factum of gift from non-resident Indian was ever disclosed in the returns filed by the assessee. Thus, we do not find any valid ground to interfere with the finding recorded by the Tribunal. None of the cases relied by the learned counsel for the appellant has got any parallel with the case before us. Therefore, the same cannot be made basis for deleting the addition made by the AO which, as mentioned above, was upheld by the Tribunal.

7. On the issue of addition of Rs. 89,500 towards the value of the plot, the Tribunal, in para 39 of its order, observed as under:

"39. After examining the rival submissions, we are of the view that there is no merit in the submissions made by the learned senior counsel on behalf of the appellant. Much has been argued about the state of mind of the assessee at the time of search but we have perused the statement recorded, wherein the assessee has categorically mentioned the amount of Rs. 1.65 lakhs as also the year, i.e., 1987. Nothing emerges from the record about any confusion in the mind of the assessee or for that matter any coercion or pressure on the part of the tax authorities. Even while arguing the other grounds in the appeal, the learned senior counsel has not referred to the disturbed state of mind and each of the additions made have been contested on merits by the parties. The clinching fact, however, is that in the case of assessee's brother, i.e., Sh. Mahesh Singal, a similar addition has been made and he, in fact, has purchased the adjoining plot and it is not a disputed fact that both the plots were owned by the same set of people, i.e., husband and wife. Even if we were to accept the argument, of the present assessee, one can attribute the disturbed state of mind to one individual but not to two at the same time and in respect of purchase of adjoining plots with the same area, i.e., 500 sq. yds. It is clearly a case of retraction from the statement made giving a figure of Rs. 1.65 lakhs and trying to support the investment of Rs. 1 lakh with the registered deed. In our opinion, the Department on the aforesaid facts can make an addition on the basis of the statement ignoring the registered deed since it is well-known fact that immovable properties are sometimes purchased with some portion of the funds changing hands outside the books of account and over and above the amount mentioned in the registered document. In rejecting the arguments advanced on behalf of the assessee, the addition of Rs. 89,500 stands confirmed and which would also mean a rejection of the assessee's arguments with reference to the amount spent on registration charges as also the further sum of Rs. 10,000 attributed to past savings since even before us, no evidence was referred to which would show that the aforesaid two amounts aggregating Rs. 24,500 came out of the assessee's disclosed funds."

8. Learned counsel for the appellant has not been able to show that the aforesaid

finding suffers from any error. Rather, she had to concede that during the course of search and seizure operation, the assessee had made a statement that he had purchased a plot for a sum of Rs. 1,65,000. Therefore, we do not see any ground to disturb the concurrent finding recorded by the AO and the Tribunal.

9. In the result, we hold that the questions of which determination has been sought by the appellant cannot be treated as substantial questions of law within the meaning of s. 260A of the Act. Consequently, the appeal is dismissed.