

(2006) 01 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 336 of 2004 & Income Tax A. No. 336 of 2004 and C. M. No. 22700/C11 of 2004 16 January 2006.

Hotel Kumar Palace

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 132, 158BB, 260A

Citation : (2006) 202 CTR 574

Hon'ble Judges : D.K. Jain, C.J.;Surya Kant, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.

CM Misc. No. 22700 of 2004

1. For the reasons stated in the application, it is allowed and the delay in filing the appeal is condoned.

IT Appeal No. 336 of 2004

This appeal, by the assessee, u/s 260A of the IT Act, 1961 (for short, "the Act"), is directed against order dt. 19th March, 2004, passed by the Income Tax Appellate Tribunal, Amritsar Bench (for short, "the Tribunal") in appeal Nos. 8 and 16/Asr/2003, in respect of the block period 1st April, 1998 to 17th Nov., 1999 [reported as Hotel Kumar Palace v. Dy. C1T (2005) 93 TTJ 629.]. According to the assessee, the order involves the following substantial question of law :

Whether, under the facts and circumstances of the case, the Tribunal was justified in upholding the addition of Rs. 50,000 on the true interpretation of the provisions of Chapter XIV-B for making an assessment of undisclosed income for the block period without being based on any evidence or material found during

the course of the search relatable to this addition of Rs. 50,000.

2. The background facts, giving rise to the appeal, in brief, are as follows :

The assessee, a partnership firm, is engaged in the business of hotelier, catering and giving on hire crockery and furniture, under the name and style of M/s Hotel Kumar Palace. On 17th Nov., 1999, a search u/s 132 of the Act was conducted at the business premises of the assessee. During the course of search, it declared an undisclosed income of Rs. 8,18,864.

In its return of income, for the aforementioned block period, the assessee declared income from catering business at Rs. 4,74,000. While completing assessment for the said period, the AO estimated the income from catering at Rs. 6 lacs, inter alia, on the basis that crockery were shown to have been issued 176 times during the period from 29th Oct., 1995 to 22nd Oct., 1999, meaning thereby that at least 100 times catering would have been done by the assessee. Estimating a gathering of approximately 300 persons at each of the functions and applying a profit rate of Rs. 20 per person, the AO worked out an undisclosed income of the assessee on this account at Rs. 1,50,000.

3. Aggrieved, the assessee preferred appeal to the CIT(A). The CIT(A), taking into consideration the statement of a partner of the assessee, namely, Shri Raj Kumar, wherein he had stated that receipts from catering business were not fully recorded in the books of account, as well as three dairies seized during the course of search, containing part of the details of the bookings made by the assessee in respect of the catering business on various dates, held that it would be just and fair to peg the addition at Rs. 50,000, instead of Rs. 1,50,000, made by the AO.

4. Not being satisfied, the assessee as well as the Revenue took the matter in further appeal to the Tribunal. By the impugned order, the Tribunal has upheld the view taken by the CIT(A). Hence, the present appeal.

5. We have heard Mr. P.C. Jain, learned Counsel appearing for the assessee. Learned Counsel has assailed the view taken by the lower appellate authorities mainly on the ground that the addition of Rs. 50,000, for the block period from 1st April, 1989 to 17th Nov., 1999, was unwarranted because the assessee had commenced its business only from 1st April, 1998. It is also urged that income u/s 158BB of the Act can be computed only on the basis of the evidence found as a result of search and there is no scope for any estimation of income. In support of the proposition, learned Counsel has placed reliance on a decision of this Court in Commissioner of Income Tax Vs. Faqir Chand Chaman Lal, and a decision of the Delhi High Court in CIT v. Ravi Kant Jain (2001) 250 ITR 141. It is pointed out that SLP against the decision in Faqir Chand's case (supra) has also been dismissed by the Supreme Court.

5.1 We are unable to persuade ourselves to agree with the learned Counsel. From a bare reading of Section 158BB of the Act, it is clear that undisclosed

income of the block period has to be computed on the basis of the evidence found as a result of the search or requisition of books or documents and such other materials as are available with the AO. Incident of search is the foundation for applicability of Chapter XIV-B of the Act. In the instant case, as noticed by the CIT(A), income from catering business was estimated by the AO, on the basis of the statement of the partner, recorded during the course of search, and the dairies seized in these proceedings. The Tribunal has also observed that in his statement, partner Raj Kumar admitted that income from catering business was not fully recorded in the books of account. This finding was never under challenge.

6. In view of the factual scenario, as emerging from concurrent findings of fact recorded by the two appellate authorities below, it cannot be said that determination of undisclosed income from catering business for the block period is based on extraneous material, as is sought to be pleaded by learned Counsel for the assessee. In this view of the matter, none of the decisions, relied upon by Mr. Jain, advances the case of the assessee. In fact, the ratio of the decision of this Court in Faqir Chand's case (supra) lends support to our view that in the absence of any infirmity in the appreciation of evidence by the Tribunal, no substantial question of law arises from its order.

7. For the foregoing reasons, we are of the considered view that no question of law, much less a substantial question of law, arises from the impugned order.

8. Accordingly, we decline to entertain the appeal. Dismissed.