
(2006) 10 P&H CK 0049
In the Punjab And Haryana At Chandigarh

Jai Kumar Jain

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 132, 143, 158B, 158BA, 158BC

Citation : (2007) 207 CTR 356 : (2009) 311 ITR 339

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The assessee has preferred this appeal against order dt. 31st July, 2003 in IT(SS)A No. 2/Chd/1996 passed by the Tribunal, Chandigarh Bench "B", in respect of block period commencing 1986-87 to 1996-97, proposing following substantial questions of law :

(i) Whether, on the facts and circumstances of the case the learned Tribunal was right in upholding the addition of Rs. 53,609 against the declared income of Rs. 16,000 which was recorded income in the books of accounts and the date of filing of return of income was due after 31st March, 1996 ?

(ii) Whether, the amounts of gifts received by the minor sons duly accounted for in the books amounting to Rs. 88,840 and where interest earned on the same was duly disclosed and assessed in asst. yrs. 1994-95 and 1995-96 in the hands of the applicant u/s 64(1A) of IT Act, 1961 could still remain undisclosed as per the provisions of Section 158B(b), if no then whether the addition, if any, could be made u/s 143(3) under such circumstances and not under the provision of Chapter XIV-B ?

(iii) Whether, in the facts and circumstances of the case the learned Tribunal was right in upholding the addition of Rs. 70,000 as undisclosed income despite the fact that it was received as a gift from a known and genuine source and further this amount was duly recorded in the account books of the firm of the appellant

and if any such addition was to be made the same should have been made u/s 68 of the IT Act whereas it has been made u/s 69 of IT Act which are not interchangeable ?

(iv) Whether, in the facts and circumstances of the case the learned Tribunal was right in upholding the addition of Rs. 2,00,000 as unexplained household expenses despite the fact that this addition was made without any material or evidence in hand ?

(v) Whether, in the facts and circumstances of the case, the learned Tribunal was right in upholding the cash to the tune of Rs. 13,845 as unexplained cash found during the search operations despite the fact that it was properly explained by the appellant terming the same to be savings of his wife and children ?

2. At the time of hearing, learned Counsel for the assessee made submissions only with reference to proposed questions (i) to (iii). We will, therefore, deal with the said submissions only.

3. Search was conducted at the residential premises of the assessee on 23rd Nov., 1995 u/s 132(1) of the IT Act, 1961 (for short, "the Act"). Certain documents were seized. Notice dt. 1st Feb., 1996 u/s 158BC of the Act was given to the assessee, requiring filing of return. The assessee filed return on 23rd April, 1996. The assessment was made which was challenged by the assessee.

4. Re : Q. No. (i)

The finding of the Tribunal on this question is as under :

6. Now reverting to the facts of the instant case, we find that in this case a search was conducted on 23rd Nov., 1995. From the expression "block period" and "the previous years" appearing in Section 158B(a) the period mentioned in the word "block period" means the period of 10 previous years relevant to 10 assessment years preceding the previous year in which the search was conducted. The "previous year" further includes the period in which the search was conducted upto the date of commencement of such search i.e. 23rd Nov., 1995 in the instant case of the assessee. It further means that in the instant case of the assessee, the assessment year ending upto 23rd Nov., 1995 is thus included in the block period of the instant case of the assessee, as per Section 158BA(2), the total undisclosed income relating to the block period ending upto 23rd Nov., 1995 is to be charged to tax at the specified rate of 60 per cent as income of the block period, irrespective of the fact whether regular assessment for anyone or more of the relevant assessment years is pending or not. In the light of these provisions, as discussed hereinabove, the argument of the assessee's counsel, that the AO was not justified in taking the undisclosed income of the assessee for the period 1st April, 1995 till the date of search because the date of filing of the return of the income was due after 31st March, 1996, as well as, the alternate argument that even if this income was estimated for the said period it should be clubbed in the return to be filed for asst. yr.

1996-97 and the normal rate of tax should have been charged instead of 60 per cent have no force and accordingly these arguments of the learned Counsel for the assessee, having no force, are rejected and as a consequence of the same, the assessee having failed to explain with the documentary evidence as to why he declared the income at Rs. 16,000 for asst. yr. 1996-97 upto the date of search i.e. 23rd Nov., 1995, when M/s Gian Agro in their P&L a/c has shown the net profit at Rs. 53,609 we hold that the assessing authority was fully justified in taking the undisclosed income at Rs. 53,609 instead of Rs. 16,000, as disclosed by the assessee, for the current asst. yr. 1996-97 as on 23rd Nov., 1995. The order of AO, in this regard, is upheld and ground No. 6 of the appeal of the assessee is rejected.

5. For above conclusion, the Tribunal relied upon judgment of the Gujarat High Court in N.R. Paper and Board Limited and Others Vs. Deputy Commissioner of Income Tax, and judgment of the Kerala High Court in N.T. John Vs. Commissioner of Income Tax and Another, .

6. Learned Counsel for the assessee relied upon judgment; of the Bombay High Court in Commissioner of Income Tax Vs. Vikram A. Doshi and Ms. Leena V. Doshi, . In the said judgment, it was observed that transactions in question could not be held to be undisclosed transactions as the same were duly disclosed in the returns. In the present case, finding of the Tribunal reproduced above shows that though, in the P&L a/c, net profit of Rs. 53,609 was shown, in the return income was shown only at Rs. 16,000. Remaining amount was, therefore, rightly taken to be as undisclosed income.

Admittedly, no contrary assessment had taken place in regular assessment proceedings. There was, thus, no bar to take into account the said undisclosed income.

7. In view of the above, while endorsing the findings of the Tribunal on this issue, we do not find this to be a substantial question of law.

8. Re : O. Nos. (ii) & (iii)

Finding of the Tribunal on these questions is as under :

7.9. We have gone through the decision (supra) and find that the facts of that case (supra) were not applicable because in that case even the dispute regarding the ownership of the gift amount was involved which is not in the instant case of the assessee. Further, in that case the interchangeability of and applicability of Sections 69 and 69A was involved whereas in the instant case only the applicability of Sections 68 and 69, as well as, interchangeability of both these sections is involved. We are of the opinion that since the AO found this amount credited as having been received as gift in the bank pass book of the assessee which could not be termed as account books of the assessee. So, for the genuine gift, this amount could be added u/s 69 of the IT Act and has been rightly done so by the AO because in the account books of M/s Gian Agro, this

amount has been simply credited as capital of the firm and not credited as having been received as gift amount nor any enquiry has been conducted in the assessment year by the AO during the course of regular assessment as to how this amount has been credited and from which source it has been credited by the assessee in the capital account of M/s Gian Agro. Otherwise too, we are of the opinion that even assuming that this amount was found credited in the account books of M/s Gian Agro of which the assessee was the proprietor, from that alleged gift amount received by the assessee, the same is also to be added as undisclosed income of the assessee u/s 68 on account of non-genuine gift which means that in the existing facts and circumstances, the impugned amount could be considered for addition either u/s 68 or u/s 69 because the only difference between Sections 68 and 69 is that in Section 68 there should be a credit entry in the books of account of the assessee whereas in Section 69 there should not be an entry in the books of account. In case of Section 69, only where the investments have been made but have not been satisfactorily explained, the income should be taken as the income of the assessee. So, in the existing facts and circumstances, the addition could have been made but have not been satisfactorily explained, the income should be taken as the income of the assessee. So in the existing facts and circumstances, the addition could have been made under either of the Sections 68 or 69 of the IT Act. In the light of above discussion, it would be futile and academic to discuss the alternate argument of learned Departmental Representative for the Revenue, based on the citation (supra) that the wrong mentioning or non-mentioning of the sections in which the addition is made would not vitiate the liability of the assessee to pay the tax under Income Tax proceedings.

9. Question of genuineness of a gift has been gone into by this Court, inter alia, in *Jaspal Singh v. CIT* IT Appeal No. 256 of 2006, decided on 15th Sept., 2006 [reported at (2006) 205 CTR (P&H) 624-Ed]. It was observed :

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 judgments of this Court in *Lall Chand Kalra v. CIT* (1981) 22 CTR (P&H) 135, judgment of Delhi High Court in *Sajan Dass & Sons v. CIT* (2003) 181 CTR (DelHI) 581, *Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More*, and *Sumati Dayal Vs. Commissioner of Income Tax Bangalore*, .

The judgments relied upon by learned Counsel for the assessee are distinguishable. In the said judgments, the Tribunal recorded a finding that the gifts were genuine which was held to be a pure finding of fact.

We have dealt with this aspect of the matter at length in our judgment dt. 31st July, 2006 in *Subhash Chander Sekhri v. Dy. CIT* IT Appeal No. 265 of 2006 reported at (2006) 205 CTR (P&H) 620-Ed..

We are of the view that concurrent findings of fact recorded by the authorities that the gifts in question were not genuine, is pure finding of fact and no substantial question of law arises.

10. In view of the above, while endorsing the findings of the Tribunal on these issues, we do not find these to be substantial questions of law.

11. In view of the above, the appeal filed by the assessee is dismissed.