(2006) 09 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 256 of 2006

Jaspal Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Citation : (2006) 205 CTR 624 : (2007) 290 ITR 306

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

Bench : Division Bench

Advocate : S.K. Mukhi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee against the order of Tribunal, Chandigarh, dt. 7th Oct., 2005 for the asst. yr. 1998-99,

proposing Mowing substantial questions of law:

(a) whether, on the facts and circumstances of the case, the Tribunal was justified in confirming the action of authorities below by upholding the

addition made on account of impugned gifts of Rs. 2 lakhs, 1.70 lakhs and 0.30 lakhs ?

(b) whether, on the facts and circumstances of the case, the findings of Tribunal are perverse and against the evidences on record thus

unsustainable in law?

(c) whether the Tribunal has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue of

genuineness of the impugned gifts?

2. Facts noticed in the order of the Tribunal are that the assessee had constructed house property. He had claimed to have received various gifts

aggregating to Rs. 15,69,000 for asst. yrs. 1997-98 to 2001-02 from various nonresidents. In the year under appeal, the assessee had claimed to

have received a sum of Rs. 4,70,000 from non-residents and Rs. 1,20,000 from four persons at Rs. 30,000 each. The assessee was asked to

establish the identity of the donors, their creditworthiness and genuineness of the gifts. In the case of Smt. Surinder Kaur, the assessee filed an

affidavit along with copy of the bank draft No. FRA 163292 dt. 10th Dec., 1997 of State Bank of India, Frankfurt/Main Germany Branch. The

AO had recorded the statement of the assessee. Some of the relevant questions have been quoted by the AO in the assessment order along with

replies given by the assessee. On the basis of the statement of the assessee and the relevant evidence on record, the AO came to the conclusion

that even the identity of the donor was in doubt. The genuineness of the gifts was not established and that she was not related to the assessee and

there was no occasion for making the gift.

3. Reasons given by the AOs with regard to the gift made by Smt. Surinder Kaur are:

The perusal of the above statement clearly establishes the following facts:

(A) The donor is not in any way related or closely connected to the assessee family. Apparently, she is a professional donor.

(B) Donor''s family never received similar gifts from the assessee family on any occasion.

(C) The only intimacy with the assessee family was that she happened to be sister of the neighbour of the assessee living in 14, Bank Colony,

Patiala and the assessee was living in 13, Bank Colony, Patiala, that too on rent, otherwise the assessee even does not know the name of the

husband of the donor or his address and telephone number, etc.

(D) The donor shifted to Germany 15-20 years back.

(E) The donor never made similar gifts to her real brothers living in 14, Bank Colony where she is stated to be the regular visitor. Her brothers

have not even renovated their old house for the last 20-25 years. Had she been generous enough to donate to the assessee living next door to her

brothers, she would have first preferred to help renovate the house of her brothers and would have helped her brothers to expand their petty dairy

business.

(F) The assessee family has not much close relationship even with the brothers of the donor living next door.

(G) It is totally unbelievable that the donor will run from pillar to post to entire exclusion of the donee, to buy papers for affidavit, get the same

typed and attested after making gift of such huge amount and then hand over demand drafts and affidavits personally at the shop of the assessee

and it is also unbelievable that the donee did not know the advocate attesting the affidavit at Patiala. All this appears to be a concocted story.

(H) The perusal of copy of bank draft No. FRA 163292 dt. 10th Dec., 1997 of State Bank of India, Frankfurt/Main Germany Branch relevant

that donor had given her name as Sukhwinder Kaur giving her account No. K-5405 and had signed as S. Kaur. However, the affidavit was filed in

the name of Surinder Kaur Chawla and the signatures on Jaspal Singh, the assessce, stated that actual name of the donor is Smt. Surinder Kaur. In

view of these facts even the identity of the donor is not confirmed either from the name or from the signatures on affidavit and bank draft.

(I) In view of the above facts genuineness of the gifts has not been conclusively proved that the amount was needed by the assessee for

construction of house and for this purpose he has manipulated the affairs in this fashion. Accordingly, the alleged receipt of gift from Smt. Surinder

Kaur is not proved, as Smt. Surinder Kaur has no relationship or consideration to make such gifts nor there was any such occasion for making

such gifts.

For similar reasons, the gifts alleged to have been made by Shri Jagdev Singh and Shri D.S. Chahal were not found to be genuine.

As regards the gift made by Berjinder Pal Singh, who was nephew of the assessee, the matter was remanded to the AO.

4. Learned Counsel for the assessee submitted that the findings recorded by the Tribunal are perverse and the gift should have been held to be

genuine.

5. Reliance has been placed on judgments of Delhi High Court in Commissioner of Income Tax, Delhi (Central-2) Vs. Mrs. Sunita Vachani, and

CIT v. R.S. Sibal (2004) 187 CTR (Del) 291, wherein gifts from strangers were held to be valid.

6. We are unable to accept the submissions made.

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 Lall Chand Kalia v. CTT (1981) 22 CTR (P&H) 135, judgment of Delhi

High Court in Sajan Dass & Sons v. CIT (2003) 181 CTR (Del) 581 : (2003) 264 ITR 435 , Commissioner of Income Tax, West Bengal II Vs.

Durga Prasad More, and Sumati Dayal v. CIT (1995) 125 CTR (SC) 124.

7. 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.

8. 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) 620ï¿½Ed.]

9. We are of the view that concurrent finding 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.

Appeal is accordingly dismissed

