
(2004) 11 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 103 of 2002

Maresh 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 271

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 gifts of Rs. 3,50,000 drawn by the non-resident Indian donors from their bank accounts 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. 65,000 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.

3. 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 the assessee's undisclosed income to the tune of Rs. 21,43,720 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 :

"(a) Rs. 3,50,000 on account of ingenuine gifts having been received from non-resident Indian :

(b) Rs. 65,000 on account of difference in the value of plot."

4. Ms. Munisha Gandhi, learned counsel for the appellant-assessee, argued that the addition of Rs. 3,50,000 made by the AO is legally unsustainable because that amount was received by the assessee in the form of gifts from non-resident Indians, who had made payment by cheques from their accounts and whose affidavits were 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. 65,000, 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.

5. Shri Rajesh Bindal, learned counsel for the Revenue, argued that the finding recorded by the AO that the so-called gifts given to the appellant-assessee by the non-resident Indians were 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 gifts 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. 65,000 by treating the said investment out of undisclosed income of the assessee for the asst. yr. 1989-90.

6. We have given serious thought to the respective arguments and perused the record. The relevant extracts of para 16 of the Tribunal's order, which contains detailed discussion on the issue of addition of Rs. 3,50,000 made by the AO, read as under:

"16. It is noticed from the assessment order that two gifts aggregating Rs. 3,50,000 are purported to have been received from two residents of district Ropar, Punjab, one is Shri Harjit Singh and other is Shri Kamal Singh. As in the case of Harish Kumar Singal, the assessee has relied on affidavits of the alleged donors and the copies of their bank accounts and insofar as the other facts are concerned, they are identical to those considered in the case of Harish Kumar Singal, such as, the relationship of the donor and donee and there being no occasion for making the gifts. The AO made enquiries and found both the persons to be of no means and the NRE bank accounts which were incidentally with the State Bank of India, the same as in the case of Harish Kumar Singal, were opened just prior to the date of the gifts and there were a few entries of withdrawals with corresponding deposits. As in the case of Harish Kumar Singal, the purported gifts were meant to be utilised for construction of his residential house by the assessee. A significant fact, however, is that in the bank account of one of the donors Kamal Singh, there was a gift of Rs. 3,09,850 to one Shri Harish Singal. On further enquiries conducted by the Department, it transpired that in the statement recorded of the said person, he admitted that the so-called gift by Kamal Singh was in fact purchased by him in lieu of cash payment of Rs. 3,09,850 besides commission to the tune of Rs. 30,985. On the aforesaid facts, the AO concluded that the alleged donor Shri Kamal Singh was giving hawala entries and misusing his status as NRI. According to him, the gift given by him to the assessee also represented one such entry/gift. We may mention that during the course of the hearing of the present appeal, the learned senior counsel who had argued the case of Shri Harish Singal on the aspect of foreign gifts, did not say anything and even the regular counsel in the case, did not rebut the aforesaid factual aspect referred to by the AO. In other words, the case of the present assessee is on a weaker footing than that of Shri Harish Kumar Singal and on the same line of reasoning as in that case, we uphold the action of the AO in bringing to tax the sum of Rs. 3,50,000 on account of alleged gifts..."

7. 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 gifts made by the non-resident Indians in favour of the assessee were 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 gifts from non-resident Indians 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.

8. On the issue of addition of Rs. 65,000 towards the value of the plot, the Tribunal, in para 17 of its order, observed as under:

"17. Ground No. 9 in the appeal pertains to the addition on account of investment in the purchase of plot No. 315-A, Mahesh Nagar, Ambala Cantt. The facts are absolutely identical to those considered in the case of Shri Harish Kumar Singal who purchased the adjoining plot. The arguments of the parties before us were absolutely identical to those tendered in the case of Harish Kumar Singal and on the same line of reasoning as in the aforesaid case . The addition of Rs. 80,000 is confirmed which represents Rs. 65,000 paid over and above the registered sum of Rs. 1 lakh and Rs. 15,000 which the assessee stated formed part of the investment of Rs. 1 lakh and coming out of his past savings from salary income, eta The latter item remain" unsubstantiated by relevant evidence."

9. 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.

10. 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.