(2004) 01 RAJ CK 0051

In the Rajasthan High Court

Case No : ITA No. 169/Jp of 1996 A.Y. 1993-94 18 January 2004

Narayan Dass Singhi APPELLANT

Vs

ITO RESPONDENT

Date of Decision : 18-01-2004

Acts Referred:
Income Tax Act, 1961 — Section 133A, 69C

Citation : (2004) 87 TTJ 615

Hon'ble Judges : B.M. Kothazi, A.M.

Bench : Division Bench

Judgement

B.M. Kotharj, A.M.

This appeal by the assessee is directed against the order passed by the learned

Commissioner (Appeals) on 12-12-1995.

2. The assessee has raised seven grounds in this appeal, but all those grounds relate to confirmation of addition of Rs. 33,333 made by the assessing officer in respect of undisclosed income as surrendered at the time of survey.

3. The learned counsel for the assessee has submitted that the assessee''s brother Shri Daulal Singhi allegedly surrendered an amount of Rs. 1 lakh during the survey on behalf of himself, his wife and his brother Shri Narayan Dass Singhi (appellant). The assessing officer also got the said statement of Shri Daulal Singhi recorded in survey signed by the assessee at the concluding part of the said statement. He submitted that the statement of Shri Daulal was recorded by coercion. Shri Daulal had made a representation before the learned CCIT and also DC (Admn.) after the survey. Moreover, the assessing officer has brought no material on record to prove that the assessee derived any undisclosed income from other business or from dealings in share, etc., as recorded in the said statement of Shri Daulal. He pointed out that 1/3rd of the amount of Rs. 1 lakh surrendered by Shri Daulal was also added as income in the case of Smt. Pushpa Devi which has been deleted by the learned Commissioner (Appeals) vide his

order dated 30-1-1996.

4. The DC(A) in the said order has observed that the amount of Rs. 1 lakh surrendered by her husband cannot be made the basis of addition of Rs. 33,333 in the hands of his wife. The surrender of income made by any person other than the appellant is not binding on the assessee. He also submitted that to the best of his information, no further appeal has been preferred by the revenue in the case of Smt. Pushpa Devi. The learned counsel also placed reliance on the judgment reported in 92 STC 629 and 160 Taxation 9 to support his contention that no reliance can be validly placed on the statement of Shri Daulal for sustaining the addition of Rs. 33,333 in the case of the assessee. The learned counsel thus strongly urged that addition of Rs. 33,333 made in the case of the assessee should be deleted.

5. The learned departmental Representative relied upon the reasons mentioned in the orders of the learned Commissioner (Appeals) and the assessment order, He submitted that Shri Narayan Dass Singhi (appellant) has himself accepted the facts stated by Shri Daulal Singhi by putting his signature in the same statement after stating that this statement of Shri Daulal was recorded in his presence and he agrees with the facts stated by him.

6. I have carefully considered the submissions made by the learned representatives and have also gone through the orders of the learned departmental authorities as well as various other documents, submitted in the compilation, to which my attention was drawn during the course of the hearing.

7. The proceedings of survey were conducted on 20-11-1992. The statement of Shri Daulal was recorded on that day. He, inter alia stated in his statement that he, his wife Smt. Pushpa Devi and his younger brother Shri Narayan Dass sometimes carried on the business as brokers, dealing in shares and offered to disclose income of Rs. 1 lakh between all three of them. On the same day, this statement of Shri Daulal Singhi was also got signed by Shri Narayan Dass Singhi (appellant). It would be pertinent to mention that the statement of Shri Narayan Dass Singhi was also recorded on the same day by the officers who conducted survey u/s 133A on 20-11-1992. The officers who recorded the said statement of Shri Narayan Dass did not interrogate the appellant in relation to the aforesaid surrender of income and in relation to the alleged undisclosed income admitted by Shri Daulal on his behalf. Not a single question was put by the officers during the interrogation of Shri Narayan Dass Singhi. Shri Narayan Dass Singhi retracted from the said statement given by Shri Daulal sometime after the survey. A letter dt, 28-12-1992 was also submitted to the DC(A) in which it was inter alia stated that the said admission was fetched under force and coercion. The statement of Shri Narayan Dass Singhi was also recorded but nothing about the alleged surrender of income was got admitted from him nor any such question was put to him.

8. It is a well known experience that confessional statements made during

survey or search are often vulnerable on the ground that they are sometimes enforced by extortion or such statements are given without the assistance -of relevant account or availability of relevant information at the time of recording of such statements. There is a possibility of undue pressure being exerted at the time of survey while fetching confessions/admission about the existence of unaccounted income. In the present case, the assessee represented before the learned CCIT as well as before the learned DC(A) that such statement was recorded under coercion. It was, therefore, necessary on the part of the assessing officer to gather corroborative evidence to support such confession recorded in the statements during survey. The principles of natural justice require that the assessing officer ought to have given a specific opportunity to the assessee to cross-examine Shri Daulal before placing reliance on his statements recorded during survey. The assessing officer also ought to have brought some material on record to prove that the assessee carried out unaccounted activities of dealings in shares or as brokers, as allegedly admitted by Shri Daulal in the said statement. The burden lies on the revenue u/s 69C before making an addition in respect of undisclosed income. Such a burden has to be discharged by bringing on record some positive material or evidence in accordance with the provisions of law. No such corroborative evidence has been brought on record in this case.

9. It may also be relevant here to mention that the general impression regarding forced confession was recognised by the Finance Minister in his last Budget speech which was followed up by Board''s Circular No. G-280/2/2003-IT (Inv) dated 10-3-2003. The statement of a third person and, that too, where it has been retracted, cannot by itself form the basis of an addition as was found by the Tribunal by a majority view in the case of (2002) 82 ITD 137

10. On a careful consideration of the entire relevant facts, I am of the considered opinion that the addition of Rs. 33,333 made in the case of assessee is patently wrong and unjustified. The assessing officer is directed to delete the same.

11. In the result-, the appeal of the assessee is allowed.

