
(2006) 08 DEL CK 0284
In the Delhi High Court
Case No : ITA No. 250 of 2006

Rakesh Kalia

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 254, 260A, 68

Citation : (2006) 5 CTC 627 : (2006) 205 CTR 627 : (2006) 286 ITR 357 :
(2006) 156 TAXMAN 494

Hon'ble Judges : Vipin Sanghi, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R. Santhanam and Sanjay Sharma, for the Appellant; R.D. Jolly and Vishnu Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This is an assessed's appeal u/s 260A of the Income Tax Act (for short `the Act') against the order dated September 16, 2005 passed by the Income Tax Appellate Tribunal ( for short `The Tribunal') in ITA No. 901 / Del/2003 pertaining to assessment year 1992-1993.

2. The relevant facts in brief are that the Assessing Officer upon scrutiny of the documents filed by the assessed along with his return found that there was a credit entry of Rs. 2,55,000/- made on 1.2.1992 in the Savings Bank Account of the assessed. The assessed was asked to explain the nature and the source of the receipt. In response, he filed a declaration under the Remittance in Foreign Exchange (Immunities) Scheme, 1991 to claim that this amount was received by debit to an NRE Account. It was not clear from the certificate issued by the bank as to whom the account belonged. To verify the genuineness of the declaration, a reference was made to the State Bank of India, Race Course Road, Bangalore, (for short `SBI'). From the response of SBI, it transpired that the declaration was not correct since the amount did not come from any NRE account but it came from a Savings Bank Account of one Arun. L with SBI. The assessed was

called upon to produce Arun L but he failed to do so. The Assessing Officer accordingly added the amount as assessed's income. The Commissioner of Income Tax (Appeals) (for short 'CIT Appeals') upheld the addition in the appeal filed by the assessed. It was held that the assessed could not prove the identity of the donor Arun L. The assessed preferred a further appeal to the Tribunal.

3. In second appeal to the Tribunal by the assessed, the Tribunal while noticing the good investigation carried out by the Assessing Officer, observed that it was necessary to give full opportunity to the assessed to rebut the evidence which had been collected behind the assessed's back. Since the Tribunal felt that the Assessee had not been given full opportunity to furnish the details and rebut the findings given by the Assessing Officer, the order of the CIT (Appeals) was set aside and the matter restored to the file of the Assessing Officer with a direction to re-decide the issue in accordance with law after giving a full opportunity to the assessed.

4. The Assessing Officer accordingly took up fresh assessment proceedings u/s 254 read with Section 143(3) of the Act. He gave fresh opportunity to the Assessee to substantiate the claim regarding the deposit of Rs. 2,55,000/-. The assessed was provided with a copy of the letter of the Chief Manager, SBI in which he stated that the funds deposited into the account of Arun L came from a resident depositor's account and not from any NRE account. In compliance with the earlier order of the Tribunal, the Assessing officer required the Assessee to explain the nature, source and genuineness of the deposit and also to substantiate the same by proving the identity of Arun L. He was also asked to provide the present address of Arun L. In response thereto the assessed raised several contentions and stated that the onus to prove that the deposit was a genuine NRE gift was not on the assessed, and that it was for the Assessing Officer to prove that the said deposit came from a resident's account. Since the Assessing Officer did not find the Explanations furnished by the assessed to be satisfactory, he added the amount of Rs. 2,55,000/- as income from undisclosed sources. In appeal before the CIT (Appeals) preferred by the assessed, the order of the Assessing Officer was maintained. Against the order of the CIT (Appeals) the assessed again preferred an appeal before the Tribunal which has been dismissed by the impugned order.

5. The Tribunal considered the matter and noticed that till date the Assessee had not been able to establish the identity of Arun L from whom the amount was found to have been received by the assessed. It was also noticed that the assessed had failed to avail of the opportunity which had been granted by the Tribunal on an earlier occasion. It was also noticed that when the assessed was confronted with the fact that the amount did not come from any NRE account, but that it came from a resident depositor's account, the assessed demanded evidence for the same. Accordingly he was given a copy of the letter issued by the Chief Manager, SBI. The Tribunal also noticed that the Assessing Officer had found that the said account was opened on 27.1.1992 by depositing 5 lakhs in

cash. The other deposits in cash amounting to Rs. 20,20,000/- were deposited within 4 days from the opening of the account. The account was finally closed on 15.2.1992 on which date the drafts were issued in various names including the one in the name of the assessed. The Tribunal also noticed that upon verification the Assessing officer had found the particulars of the address of Arun L to be incorrect. Despite yet another opportunity the assessed had failed to produce Arun L and to explain the credit worthiness of Arun L and the genuineness of the transaction. He was also asked to provide the present address of Arun L, which too he could not provide. The Tribunal also noted that the assessed had conceded before the Settlement Commission that the immunity declaration given by him was false. The Tribunal also found that the assessed was prolonging the assessment proceedings by taking untenable pleas without discharging the burden placed upon him. The assessed had, on the basis of one or the other specious plea been successful in dragging the proceedings for nearly 14 years without establishing the identity and creditworthiness of Arun L and the genuineness of the transaction.

6. We have heard the counsel for the appellant and we find that the Tribunal has dealt with the matter in great detail. It is clear that the appellant has not availed of the repeated opportunities granted to him and has miserably failed to establish the identity and the credit worthiness of the said Arun L as also the genuineness of the transaction. The conduct of the appellant through out has been to deflect all queries raised on him by claiming that the entire responsibility to prove that the amount of Rs. 2,55,000/- added by the Assessing Officer constituted undisclosed income lay on the Taxing Authorities and that there was no corresponding responsibility on the assessed to explain the evident falsity of his claim that the amount of Rs. 2,55,000/- was received by him by debit to an NRE account.

7. u/s 68 of the Act when a sum is found credited in the books of the assessed, and the assessed offers no Explanation about the nature and source thereof, or the Explanation offered by him is not found to be satisfactory, the sum so credited can be charged to income tax as income of the assessed.

8. Section 68 of the Act has been considered and interpreted on various occasions by this Court. In Commissioner of Income Tax Vs. Sophia Finance Ltd., , the Full Bench observed as follows:

As we read Section 68 it appears that whenever a sum is found credited in the books of accounts of the assessed then, irrespective of the colour or the nature of the sum received which is sought to be given by the assessed, the Income Tax Officer has the jurisdiction to enquire from the assessed the nature and source of the said amount. When an Explanation in regard thereto is given by the assessed then, it is for the Income Tax Officer to be satisfied whether the said Explanation is correct or not. It is in this regard that enquiries are usually made in order to find out as to whether, firstly the persons from whom money is alleged to have been received actually existed or not. Secondly depending upon the facts of each

case the Income Tax officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is a mere name lender or not. Be that as it may, it is clear that the Income Tax Officer has jurisdiction to make enquiries with regard to the nature and source of a sum credited in the books of account of an assessed and it would be immaterial as to whether the amount so credited is given the colour of a loan or a sum representing the sale proceeds or even receipt of share application money. The use of the words "any sum found credited in the books" in Section 68 indicates that the said Section is very widely worded and an Income Tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money.

9. The Court further held:

What is clear, however, is that Section 68 clearly permits an Income Tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessee. In other words, the truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of account can be gone into by the Income Tax Officer.

10. In Commissioner of Income Tax Vs. R.S. Sibal, , this Court held as follows:

There is no quarrel with the proposition that a mere identification of the donor and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift and since the claim of a gift is made by the assessee the onus lies on him not only to establish the identity of the donor but his capacity to make such a gift.

10. In Prem Nath Goel and Co. Vs. Commissioner of Income Tax, , this Court held as follows:

Section 68 of the Act requires an assessed to prove the credits appearing in his books of account, as to the nature and source of such amounts, so that if the Explanation furnished is not satisfactory, the Assessing Officer can treat it as the assessed's income. The assessed is required to prove three important conditions, namely, (i) the identity of the creditor, (ii) the capacity of the creditor to advance the money, and (iii) the genuineness of the transaction. What evidence would be sufficient to establish the said conditions or what material would be relevant in a particular case, would depend on the facts of each case. There cannot be one general guiding yardstick in the matter.

In Premnath Goel's case the assessed produced the three creditors to show that they had advanced a credit of Rs. 1 lakh each to the assessed. However, the said Explanation was not considered to be satisfactory by the Tribunal since these creditors were persons of small means and there was no evidence of the availability of the amount advanced by them to the assessed on the dates on which they were ostensibly advanced to the assessed.

11. In the present case it is clear that the initial Explanation offered by the assessed was found to be patently wrong, inasmuch as, the Chief Manager of SBI clarified that the amount credited to the account of the assessed came from a Savings Bank account of one Arun L and not from any NRE account. This assertion was admittedly false, inasmuch, as the funds did not come from any NRE account. Further investigation showed that the said Arun L was not traceable, his address was found to be incorrect and that the account had been opened, operated and closed within a span of about 20 days. It was also found that cash had been deposited in the said account to the tune of Rs. 25 lakhs and withdrawn by way of demand drafts including the one in the name of the assessed on the day of closure of account. It is clear from the aforesaid that the authorities had clearly nailed the lie of the assessed in the present case.

12. We find no force in the submission of the assessed that he had not been treated fairly since the Chief Manager, SBI was not produced for cross examination, and, Therefore, the communication sent by him cannot be relied upon. As noticed by the CIT(A) and the Tribunal, the assessed had himself conceded before the Settlement Commission that the declaration made by him under the Foreign Exchange Immunity Scheme, 1991 was incorrect. Therefore no prejudice seems to have been caused to the assessed in this case.

13. We also find, that independent of the evidence produced by the Chief Manager, SBI, the assessed had not discharged his obligation to establish either the identity or the credit worthiness of the donor nor had he established the genuineness of the transaction. Consequently, in the facts of this case the Taxing Authorities were justified in treating the amount of Rs. 2,55,000/- as income of the assessed.

14. In view of the aforesaid, we find no infirmity with the order passed by the Tribunal dated 16.9.2005 and we affirm the same. Since no question of law arises in the present case, we dismiss the present appeal.

15. In the present case the Appellant has been pursuing for the last over 14 years, a line of argument which is contrary to well settled principles of law by continuing to insist that he has no responsibility to establish the identity and creditworthiness of the donor and the genuineness of the transaction and that the entire responsibility rests with the Department. This we find is neither bona fide nor responsible conduct on his part, particularly in the facts of this case. Consequently, we impose costs of Rs. 10,000/- on the Appellant.