
(2005) 11 GUJ CK 0025
In the Gujarat High Court
Case No : Tax Appeal No. 424 of 2003

Sheelaben M. Patel

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Income Tax Act, 1961 — Section 10(3), 131, 143(3), 147, 148

Citation : (2007) 290 ITR 189

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : J.P. Shah and Manish J. Shah, for the Appellant; B.B. Naik, for the Respondent

Judgement

D.A. Mehta, J.—Heard Mr. J.P. Shah, learned advocate for the appellant, and Mr. B.B. Naik, learned standing counsel for the respondent.

2. Admit.

3. The following substantial question of law arises for determination :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in restoring the matter back to the file of the AO to determine whether the sum of Rs. 4,00,000 which was received in cash by the assessee was or was not in consideration of surrender of tenancy rights ?

4. The asst. yr. 1990-91 and the relevant accounting period is financial year ended on 31st March, 1990. In the assessment order, framed u/s 143(3) r/w Section 147 of the IT Act, 1961 (the Act), the AO has recorded as under :

The assessee was carrying his business in the shop situated near Dhiraj Sons, Athwalines, Surat. This shop was owned by Shri Navinbhai Ratilal Modi and others which was taken on monthly rent of Rs. 80 by the assessee. During this year under consideration, the assessee relinquished his tenancy right in respect of this shop and received an amount of Rs. 5,00,101 (Rs. 1,00,101 by cheque

and Rs. 4,00,000 in cash) in the month of January, 1990 from the owners of the shop. The receipt of an amount of Rs. 5,00,101 for relinquishment of his tenancy right in respect of shop at Athwalines was admitted by the assessee before the ADI, Surat during the course of giving his statement on oath u/s 131 of the Act on 28th Oct., 1991. The assessee also admitted before the ADI that out of Rs. 500,101 an amount of Rs. 400,000 was received by him as on-money for relinquishment of tenancy right for which he had also admitted a disclosure of income of Rs. 400,000 for the year under assessment as on-money and undisclosed income. It may be pointed out that the amount of Rs. 400,000 has not been accounted for in the books of account.

However, in the course of proceedings u/s 148 of the Act, the assessee retracted from his statement given on oath by him before the ADI u/s 131, of the Act and had taken a stand that the amount received towards relinquishment of tenancy right is not taxable under the head "capital gains" relying upon the decision in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, and in view of the decision of various High Courts.

Apart from above, in fact, the receipt of an amount of Rs. 500,101 as relinquishment of tenancy right is characterised as "income" in its general connotation....

5. The AO, accordingly, brought the sum of Rs. 5,00,101 to tax as income of casual and non-recurring nature in view of provisions of Section 10(3) r/w Section 28(iv) of the Act.

6. The assessee carried the matter in appeal before the CIT(A). Vide order dt. 10th Jan., 1995, the CIT(A) bifurcated the total amount of Rs. 5,00,101 into two parts: the first one being an amount of Rs. 1,00,101 being receipt by cheque, and the second one being Rs. 4,00,000 being receipt in cash. For the reasons stated in his order he came to the conclusion that the sum of Rs. 1,00,101 which was received by cheque was not liable to tax as it was compensation received by a tenant for relinquishment of tenancy rights, and the same had wrongly been brought to tax u/s 10(3) r/w Section 28(iv) of the Act.

7. Regarding the balance amount of Rs. 4,00,000, it was recorded by the CIT(A) that the onus lies on the assessee to prove that the receipt of Rs. 4,00,000 was on account of compensation in lieu of relinquishment of tenancy rights. That the assessee had not been able to disclose the source of the said sum of money and, therefore, the amount was taxable under the head "income from other sources".

8. Being aggrieved by the treatment given to the receipt in question by the CIT(A), the assessee carried the matter in second appeal before the Tribunal. The Tribunal, after recording the facts and the submissions made, disposed of the appeal by making following observations :

...The CIT(A) has not appreciated the explanation given at the time of examination u/s 131 wherein it was clearly admitted that the assessee had

received unaccounted cash of Rs. 4 lakh in addition to the cheque payment of Rs. 1,00,101 for relinquishment of the said shop. There is nothing on record to suggest that Rs. 4 lakhs is not for relinquishment of tenancy right in addition to Rs. 1,00,101. The fact that Rs. 4 lakhs is a part of Rs. 5,00,101 received at the time of surrendering, could be, ascertained by the opportunity of cross-examination of the payee/shop owner. So in the facts and circumstances of the case, we restore the matter to the AO to decide the same after providing opportunity of hearing to legal heirs of assessee. This ground is allowed for statistical purposes accordingly.

9. As can be seen from the aforesaid observations or findings, howsoever one may describe them, the Tribunal has contradicted itself in two sentences which follow one after another. If the earlier portion wherein it is observed that there was nothing on record to suggest that Rs. 4,00,000 is not for relinquishment of tenancy rights in addition to Rs. 1,00,101 is correct, there was no occasion for the Tribunal to go on and observe in the second sentence that the said fact viz., Rs. 4,00,000 being part of Rs. 5,00,101 received at the time of surrender of tenancy could be ascertained by opportunity of cross-examination of the shop-owner could not be correct. Similarly, the sentence which precedes, wherein the Tribunal has categorically recorded that the CIT(A) had not appreciated the explanation given at the time of statement made u/s 131 of the Act wherein the assessee had clearly admitted receiving unaccounted cash of Rs. 4,00,000 in addition to the cheque payment of Rs. 1,00,101 for relinquishment of the said shop, could not have been recorded if the Tribunal was of the view that it was necessary to ascertain whether the said amount of Rs. 4,00,000 had been received at the time of surrender of tenancy rights.

10. The Tribunal has also failed to appreciate the true import of the findings recorded by the AO. There was no dispute, as can be seen from the extracted portion hereinbefore, as to source of receipt of Rs. 4,00,000 before the AO. The AO had treated the entire sum as taxable u/s 10(3) r/w Section 28(iv) of the Act. The applicability of the said provisions had categorically been ruled out by the CIT(A) and the only issue before the Tribunal was in relation to taxability of the amount of Rs. 4,00,000 as income from other sources as held by the CIT(A), or non-taxability of the said sum as being compensation for relinquishment of tenancy rights. In the circumstances, the Tribunal ought to have recorded the correct findings of fact, and in the event it was inclined to restore the matter back to the file of the AO, it ought not to have recorded any contradictory findings.

11. In these circumstances, the question is answered in the negative. The Tribunal was not justified in restoring the matter back to the AO. The appeal is, accordingly, restored to the file of the Tribunal so as to decide the same afresh after giving reasonable opportunity of hearing to both the sides. Needless to state that in the view that the Court has taken, any observations made on merits of the matter are merely prima facie expression of opinion and the entire issue is

at large before the Tribunal.

12. The appeal stands disposed of accordingly. There shall be no order as to costs.