
(1980) 04 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : IT Reference No. 97 of 1975

Shivcharan Dass	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 23-04-1980

Acts Referred:

Income Tax Act, 1961 — Section 69

Citation : (1980) 4 TAXMAN 530

Hon'ble Judges : G.C. Mittal, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass and S.K. Hirajee, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—Assessee, Shri Shiv Charan Dass, was a karta of the Hindu undivided family (hereinafter called as HUF). The partial partition of the HUF assets took place on 31st March, 1951. In October, 1951, the HUF declared the sum of Rs. 20,000 under the Voluntary Disclosure Scheme, which was accepted by the department. Thereafter, according to the assessee, the money which was a subject-matter of that voluntary disclosure was kept with the wife of the assessee with the consent of his two brothers. The amount was kept lying with the said lady from the year 1951 up to the date of her death in May, 1956. After her death, the amount was deposited with the Central Bank of India in the names of two unmarried daughters of the assessee in equal shares, namely, Miss Sudarshan Kumari and Miss Satya Mehta. The deposits were made on 29th October, 1956, about; four months after the death of the lady. The ITO asked the assessee to explain the sources of two deposits in the names of his two daughters and the assessee contended that the amount was out of the sum of Rs. 20,000 declared under the Voluntary Disclosure Scheme in October, 1951". The ITO did not accept the contention and added that amount as income from an undisclosed source. The assessee went up in appeal and the AAC allowed the assessee's appeal on the ground that the amount could be related to the amount voluntarily disclosed earlier.

2. The department preferred an appeal before the income tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal"). The Tribunal reversed the order of the AAC and restored that of the ITO.

3. The following question of law has been referred to this court for its opinion at the instance of the assessee.

Whether, on the facts and in the circumstances of the case, there is any evidence to hold that the sum of Rs. 20,000 represented income from undisclosed sources?

4. After hearing the learned counsel for the parties and going through the records we are of the opinion that the question of law referred to us has to be answered in the negative, i.e., in favour of the assessee and against the revenue. It is not disputed that there was no provision analogous to the provisions of section 69 of the income tax Act, 1961 (hereinafter referred to as "the Act") in the Indian Income tax Act, 1922. Since the assessment relates to the assessment year 1957-58, the provisions of the Indian Income tax Act, 1922, are admittedly applicable to the present case. It is also not disputed that the amount of Rs. 10,000 each was found deposited in the names of the two major daughters of the assessee. Sudarshan Kumari was 18 years of age at the time of partial partition of the HUF, whereas Satya Metha was 13 years old. The money was found deposited in the names of the two girls after five years of the partial partition and, therefore, it is obvious that both "these daughters were major at the time when the money was found deposited in their names. The assessee took the plea that this amount represented a sum of Rs. 20,000 "belonging to the HUF which was declared under the Voluntary Disclosure Scheme. It is not disputed that a sum of Rs. 20,000 was declared by the HUF of which the assessee was the karta under the disclosure scheme in October, 1951. It has also been found that this amount of Rs. 20,000 was not found mentioned in the books of accounts of the assessee, nor the same was found to have been deposited in the accounts of the assessee or that of the HUF. That being so, the explanation offered by the assessee has to be accepted in the absence of any other evidence to show that a sum of Rs. 20,000 disclosed under the disclosure scheme was utilised by the assessee or by the HUF in some other manner than the one which was represented by the assessee. The AAC as well as the Tribunal came to the conclusion that there was nothing on the record to show that this sum was utilised by the assessee in any other manner. That being so, the onus heavily lay on the revenue to show that the explanation put forth by the assessee should not be accepted, but there is nothing on the record to show that. Their Lordships of the Supreme Court in *Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, held as follows (p. 120):

In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee, prima facie, discharges his initial burden when he proves the balance and that it might reasonably have been kept in high

denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.

5. If the amount of Rs. 20,000 disclosed under the disclosure scheme had been found" to be deposited or utilised by the assessee or the HUF in some-other manner, in that case, a legitimate inference could be drawn that the amount in dispute was from undisclosed sources as the amount so disclosed in the disclosure scheme had been found to be otherwise utilised by the assessee or by the HUF but the finding on this aspect of the case is otherwise. The above observations of their Lordships of the Supreme Court go to support the view taken by us in this case.

6. The matter can be looked from another angle also. The amount of Rs. 10,000 each was found in the accounts of the major daughters of the assessee. There is no finding that this amount was found in the accounts or the possession of the assessee himself. If his explanation, that this "amount represents the same amount as disclosed in the disclosure scheme, is not accepted, in that case, the presumption that the amount in question was from undisclosed sources, can be raised only against the major daughters of the assessee and not against the assessee himself. In view of the finding that this amount does represent the amount disclosed under the disclosure scheme, it cannot be said that this amount is income of the assessee from undisclosed sources. For the reasons recorded above, we answer the question referred to us in the negative, i.e., against the revenue and in favour of the assessee with costs.

G.C. Mital, J.

I agree.