

(2006) 11 P&H CK 0136
In the Punjab And Haryana At Chandigarh

Som Nath Maini

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Evidence Act, 1872 — Section 106
Income Tax Act, 1961 — Section 68

Citation : (2008) 306 ITR 414

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The assessee has preferred this appeal against the order dated August 11, 2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench A, Chandigarh, in I.T.A. No. 829/Chandi/2002, for the assessment year 1998-99, proposing the following substantial questions of law:

(i) Whether the Tribunal misdirected itself in law as well as on the facts in reversing the order passed by the learned Commissioner of Income Tax (Appeals) by recording its conclusion based on surmises and conjectures and in ignoring uncontroverted material on record?

(ii) Whether, on the facts and in the circumstances of the case, it was open to the Tribunal to reverse the order of the Commissioner of Income Tax (Appeals) without advertng to the reasons assigned by the latter with reference to uncontroverted material on record so as to reflect the application of mind by the Tribunal?

(iii) Whether on a harmonious construction of the provisions of Section 68 of the Income Tax Act, 1961, and Section 106 of the Evidence Act, was the Tribunal on the material on record, legally correct in reversing the order passed by the Commissioner of Income Tax (Appeals), when the appellant-assessee had discharged his burden of proving the transaction of sale and purchase of shares

to be genuine?

(iv) Whether the impugned order passed by the Tribunal reversing the perfectly legal and valid order passed by the Commissioner of Income Tax (Appeals), is perverse and result of failure to act judicially and non-application of mind?

2. The assessee incurred capital loss on account of sale of gold jewellery and also had short-term capital gain of almost equal amount. The Assessing Officer observed that short-term gain was not genuine inasmuch as the assessee had purchased 45,000 shares of M/s. Ankur International Limited at varying rates from Rs. 2.06 to Rs. 3.1 per share and sold them within a short span of six-seven months at the rate varying from Rs. 47.75 paise to Rs. 55. These shares were purchased through a broker Munish Arora & Co. and sold through another broker M/s. SK Sharma & Co. The Assessing Officer took by surprise the astronomical rise in share price of a company from Rs. 3 to Rs. 55 and started further enquiry.

3. The Assessing Officer after enquiry made addition to the income of the assessee, which was upheld by the Commissioner of Income Tax (Appeals) as well as by the Tribunal.

4. Learned Counsel for the assessee submitted that the view taken by the Tribunal is perverse. The assessee having discharged the burden of proving the transactions of sale and purchase of the shares to be genuine, burden of proving that the said transactions were not genuine, was on the Department and in the absence of any material on record, holding the transactions to be not genuine, was not permissible.

5. We are unable to accept the submission made. The burden of proving that income is subject to tax is on the Revenue but on the facts, to show that the transaction is genuine, burden is primarily on the assessee. The Assessing Officer is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of evidence that the transaction was genuine, cannot be conclusive. Such evidence is required to be assessed by the Assessing Officer in a reasonable way. Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trust-worthy, even if the Department does not lead any evidence on such an issue.

6. In view of the above, we are of the view that the finding recorded by the Tribunal is a finding of fact and cannot be held to be perverse.

7. No substantial question of law arises.

8. The appeal is dismissed.