(2010) 09 JH CK 0144

In the Jharkhand High Court

Case No : Tax Appeal No. 74 of 2007

Sudama Singh through its Karta Shri Akhilesh Kumar Singh — APPELLANT

Vs

Assistant Commissioner of Income Tax and Others — RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Income Tax (Appellate Tribunal) Rules, 1963 — Rule 11
Income Tax Act, 1961 — Section 124, 124(3), 124(4), 158BC, 158BD

Citation : (2010) 09 JH CK 0144

Hon'ble Judges : Sushil Harkauli, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : A.R. Choudhary, for the Appellant; Deepak Roshan, Senior Standing Counsel and Amit Kumar, J.C. to Sr. S.C. for I. Tax, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard learned Counsel for the parties.

2. Pursuant to a search and seizure operation conducted on 21.11.1996 an amount of Rs. 5,24,546/- was found in three accounts of Mr. Sudama Singh held jointly with his wife and sons. This amount was in deposit with the Canara Bank of Jamshedpur. A notice u/s 158BC was issued to Mr. Sudama Singh asking him to file a return for the block period 01.04.1986 to 21.11.1996. Thereupon Mr. Sudama Singh filed a Return of income on 24.07.1997 in the status of HUF showing himself as Karta. No return was filed by him in his individual capacity. Against the assessment of Sudama Singh (individual), the matter was taken to the I.T.A.T. by way of IT(SS) A. No. 100/Pat/1997. It was pleaded by Mr. Sudama Singh that the deposits, earning interest income, was made out of agricultural income of Sudama Singh (HUF). The plea was accepted by the Tribunal which decided the appeal by order dated 27-9-2001, observing that the interest be deleted from the block return under consideration i.e. Sudama Singh (individual), and the same may be considered in the hands of Sudama Singh (HUF). Thereafter a notice dated 28-3-2003 (Annexure 3 to this Appeal) was issued to

Sudama Singh (HUF). At the top of the notice it is mentioned that it is u/s 158BC read with Section 158BD of the Income Tax Act. However, in the body of the notice Section 158BC has been scored out and only Section 158BD is indicated. Taking advantage of this technical lapse a reply dated 21-7-2003 was submitted by the new Karta of HUF namely Akhilesh Kumar Singh, S/O Sudama Singh saying that a Return of income had already been filed on 24-7-1997 and that the assessment of HUF is barred by limitation. It was also stated in that reply that Section 158BD did not apply and it was prayed that the proceeding be dropped.

3. At this point, it may be pointed out that in the assessment order of Sudama Singh (individual) which is dated 27.11.1997 the A.O. had observed as follows:

The Assessee in his reply has submitted that from his salary tax was regularly deducted by the concerned Department but he has furnished no evidence in support of the contention that there has ever been any deduction of tax at source from his salary. Furthermore, the Assessee has submitted that he or his HUF has never filed any return.

Mr. Sudama Singh, his wife Mrs. Chameli Singh and his two sons Mr. A.K. Singh & Mr. Sant Kumar Singh were summoned for their personal appearance but only Mr. Sudama Singh and his wife Mrs. Chameli Singh appeared. Their statements were taken which are placed on record. From the statements in becomes clear that Mr. Sudama Singh was posted at Chandil (near Jamshedpur) from 1980 to 1984. Here it is worth mentioning that most of the KD Rs were made in Canara Bank, Jamshedpur during this period only.

The contention of Mr. Sudama Singh that all the money deposited are from agricultural income does not appear to be tenable in light of his own statements and other circumstantial factors. In his statement he has said that his agricultural income for every year comes to Rs. 4 to 5 lakhs. But the surprising part of this affair is that he has never deposited any sum in any bank a/c from his agricultural income prior to 1982, even though as per evidence he has been having agricultural land since 1943. If anybody has got an idea of bank accounts and he is getting Rs. 4 to 5 lakhs every year from agricultural income he must deposit at least some part of it in it. From the documents on record it becomes very easy to conclude that there is sudden deposit of amounts during the period when Mr. Sudama Singh was posted at Chandil (near Jamshedpur). The trend of deposit in the bank accounts shows that it is not exactly from agricultural income because had it been from agricultural income there would have been a more or less consistent trend of deposit and withdrawal of money since 1943 itself. In his statement Mr. Sudama Singh does not appear to be consistent in the sense that he being an engineer is supposed to be enlightened enough to know as to how in todays advance world money is kept. His contention is quite unnatural. In my opinion Mr. Sudama Singh has tried to divert his undisclosed income by showing it as agricultural income of HUF. The statement of Mrs. Chameli Singh also reveals that she had nothing to do with any of the accounts nor she had ever got any idea about any accounts. All her accounts were dealt by Mr. Sudama Singh and she has been no more than a rubber stamp as far as handling of any account is concerned. This directly points to the fact that all the money shown as debited and credited must have been done by none but by Mr. Sudama Singh himself. Because his two sons Mr. A.K. Singh and Mr. Sant Kr. Singh were not produced, Mrs. Chameli Singh''s statements definitely give a very important clue to operation of various accounts because in almost all the accounts apart from Mr. Sudama Singh either his wife or his two sons figure.

Therefore, I conclude that the income shown as HUF income from agriculture is absolutely fabricated one to thwart the lawful point of Income Tax for escaping from payment of tax on the amount reflected in various S.B. A/Cs and KD Rs. Mere having agricultural land is not sufficient proof to show any deposit as income from agriculture. Apart from submitting agricultural land papers the Assessee does not have any evidence in support of his contention. Moreover, the circumstantial factors too go against the Assessee''s contention.

The details of the interest accrued on the said F. Ds during the various assessment years of the block period have been incorporated in the Annexure-A attached herewith. It can be seen therefore that the interest amount in every year was much beyond the exemption limit. Had it been the income of the HUF from disclosed source i.e. agricultural land the HUF should have furnished the returns for all these years but admittedly it did not do so. It therefore, further goes against the Assessee''s submission. Therefore, the KD Rs and S.B. A/C are held as being owned by the Assessee.

4. To continue with the facts, the A.O. assessed the HUF. Against the order of assessment of HUF an appeal was filed before the I.T.A.T. which has been dismissed by the I.T.A.T. by order dated 13.06.07. The said order of I.T.A.T. is under challenge in this appeal.

5. The first question raised in this appeal is that the notice issued u/s 158BD was not valid. We are unable to agree because of the following reasons:

(i) The grounds taken in the memo of appeal before the Tribunal are detailed on page-10 of the paper book. This ground has not been specifically taken before the Tribunal.

(ii) The Tribunal''s order does not refer to any such argument from the side of the Assessee.

(iii) Rule-11 of the Income Tax (Appellate Tribunal) Rules, 1963 prohibits urging or being heard in support of any ground not set forth in the memorandum of appeal. Although the Tribunal is empowered to take into consideration grounds other than those set forth in the memorandum of appeal but those grounds have to be intimated to the other side to enable the other side to reply to such grounds in an effective manner. Not taking any such ground in the memo of appeal before the Tribunal and non-mentioning of any such ground in the order of the Tribunal would suggest that no such ground was raised even during the arguments before the Tribunal.

(iv) As indicated above at the top of the notice both Sections i.e. 158BC and 158BC were mentioned. More importantly the notice required the HUF to file a return. Section 158BD does not require any notice to be issued and filing of a return is required only u/s 158BC and not u/s 158BD.

6. Thus, reading the notice dated 28.03.2003 in its totality leaves no doubt that it was u/s 158BC read with Section 158BD and it required filing of return as contemplated by Section 158BC and not contemplated by Section 158BD.

7. While the law of Income Tax is a technical law but technicalities cannot be stretched to unreasonable limits. Here the Assessee had been made very clearly aware of the unambiguous legal and factual situation and there was no scope for any two opinions in the matter. In such situation no Assessee can be permitted to play the fool with the law on the basis of hyper technicalities.

8. One of the differences between Section 158BC and Section 158BD is that where the notice u/s 158BC is to be given to the person whose premises has been searched, Section 158BC alone, and not Section 158BD, will apply. But where notice is issued to a person other than the person whose premises has been searched, Section 158BC will apply along with Section 158BD. The relevant words of Section 158BC (excluding irrelevant words) are quoted below to support the above proposition:

Section 158BC - Where any search has been conducted...in the case of any person...the Assessing Officer shall...serve a notice to such person....

The relevant words of Section 158BD (excluding irrelevant words) are quoted below to support the above proposition:

Section 158BD - Where the assessing officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made...the Assessing Officer shall proceed (under Section 158BC) against such other person....

9. The second ground urged by the Appellant before us is about the block assessment of the HUF being barred by limitation. For this purpose reliance was placed by the learned Counsel for the Appellant upon Section 158BE(1)(a). The reliance is misplaced. The case of the Appellant is covered by Section 158BE(2). Under the said Section 158BE(2) the block assessment of the HUF was within the limitation period.

10. An argument was also raised that in view of Section 124 of the Income Tax Act the Assessing Officer at Jamshedpur had no territorial jurisdiction to assess the HUF which was located in the State of Bihar.

11. We do not find such objection to have been taken before the Assessing Officer or in the Appeal before the Tribunal. A perusal of Section of Section 124(3) and (4) indicates that such objection has necessarily to be taken before

the Assessing Officer, failing which it cannot be raised at a later stage.

12. Another argument raised from the side of the Appellant was that the observation of the Tribunal in its order dated 27.09.2001, (regarding consideration of the income in the hands of HUF), cannot be said to be binding upon the HUF because the HUF was not a party to the said appeal. We are unable to accept this submission. It is not disputed that pursuant to the original notice u/s 158BC to Sudama Singh (individual), the HUF of which Sudama Singh was the Karta had filed the return for the block period and the said Karta did not file any return in his individual capacity. The Karta of the HUF in his individual has agitated the matter throughout the proceedings. The Tribunal''s order dated 27.09.2001 accepted the plea of Sudama Singh that the Income was not in his individual capacity but was that of the HUF of which he was the Karta. After this plea was accepted by the Tribunal, the HUF cannot turn around and start saying that it was not the income of the HUF.

13. The filing of return for the block period of HUF through the same person who was its Karta and who was a party to the appellate proceedings disentitles the HUF from taking a U turn at this belated stage.

14. We have already mentioned above that even if it is technical in nature, no Law can be reduced to a mockery by any Assessee and no Court should allow such tactics. Technicalities are helpful only if noncompliance of the same has resulted in prejudice. When a litigant has known throughout the real intent and meaning in a case where there cannot possibly be been two opinions, permitting hyper technicalities even in such cases may result in evasion of taxes, which is undesirable.

15. In the circumstances, we do not find any merit in this appeal, which is accordingly dismissed.