
(2006) 09 P&H CK 0072
In the Punjab And Haryana At Chandigarh

Tirath Ram Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Citation : (2008) 304 ITR 145 : (2009) 177 TAXMAN 294

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee proposing the following substantial questions of law arising out of the order dated January 19, 2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal") in I.T.A. No. 503/Chandi/2001, in respect of the assessment year 1997-98:

A. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in confirming the action of the authorities below by upholding the addition made on account of the impugned gift of Rs. 1 lakh?

B. Whether, on the facts and circumstances of the case, the findings of the Income Tax Appellate Tribunal are perverse and against the evidence on record thus unsustainable in law?

C. Whether the Income Tax Appellate Tribunal has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue of genuineness of the impugned gift?

2. The assessee had shown a foreign gift of Rs. 1 lakh from one Darshan Singh. The Assessing Officer asked the assessee to explain the foreign gift and relationship with the donor. On being asked, the assessee stated that he was not aware about the business of the donor. The statement of the father of the donor, Shri Mukhriar Singh was recorded and it was found that the gift was not genuine.

On appeal, the Commissioner of Income Tax (Appeals) reversed this view taken by the Assessing Officer. On further appeal, the Tribunal set aside the order of the CIT(A) relying upon the judgment of this court in *Lal Chand Kalra v. CIT* [1981] 22 CTR P&H 135 and the judgment of the Delhi High Court in *Sajan Dass and Sons v. CIT* [2003] 264 ITR 435, holding that:

the mere identification of the donor and the receipt of gift amount through banking channel was not sufficient to prove the genuineness of the gift. Since the claim of the gift was made by the assessee, the onus lay on him not only to establish the identity of the person making the gift but also his capacity to make the gift and that it had only been received as gift from the donor.

3. Reference was also made to the judgments of the hon^{ble} Supreme Court in *Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, and Sumati Dayal Vs. Commissioner of Income Tax Bangalore*, . The Tribunal concluded that the gift was not genuine.

4. We have heard learned Counsel for the parties and perused the findings recorded by the Tribunal.

5. A gift is generally given out of natural love and affection and without any consideration, which necessarily denotes the closeness between the donor and the donee. It can be given either on some occasion or to help a relative or friend. To see the genuineness of a gift, the test of human probability is the most appropriate. A gift cannot be accepted as such to be genuine, merely because the amount has come by way of a cheque or draft through banking channel, unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion is proved. Unless the recipient proves the genuineness thereof, the same can very well be treated to be an accommodation entry of the assessee's own money, which is not disclosed for the purpose of taxation.

6. The above considerations for testing the genuineness of a gift are not exhaustive, as there may be other reasons also which would be appropriate for considering the genuineness of the gift.

7. In the instant case, what has been found by the Tribunal is that there was no occasion for the alleged donor to have gifted huge amount of money to the assessee and his family. The donor was merely working as a watchman in a foreign country who gifted a sum of Rs. one lakh each to the assessee, two sons and two other family members, which is highly improbable. Further, as regards the relation of the assessee with the donor is concerned, the evidence on record put in by the assessee is contradictory. When the assessee was asked to inform the name of the donor, he did not know the same except saying that in fact, his name was "Titoo". When other details regarding the donor were asked, the answer of the assessee was that it is only his counsel who will give further details and in fact, rightly so because it seems that it was all arranged by some one else for the assessee.

8. The Tribunal on a consideration of the facts including what has been narrated in brief above, has come to the conclusion that the gift received by the assessee was not genuine. Learned Counsel for the assessee, though took pains to challenge to the findings recorded by the Tribunal, but miserably failed as he was not able to justify the inherent discrepancies in the statement made by the assessee himself. The view taken by the Tribunal is only possible view in the facts and the evidence on record. Concurring with the same, we do not find any merit in the contention raised by learned Counsel for the assessee.

9. In the judgment dated July 31, 2006, rendered by us in I.T.A. No. 265 of 2006 Subhash Chander Sekhri Vs. Deputy Commissioner of Income Tax, , wherein in identical circumstances, we have upheld the view taken by the Tribunal.

10. In view of the above, we hold that no substantial questions of law arise.

The appeal is dismissed.