
(2011) 02 P&H CK 0136

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 174 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Tejinder Singh (HUF)

RESPONDENT

Date of Decision: Feb. 8, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 131, 131, 132, 133A, 158BC

Citation: (2011) 239 CTR 342 : (2011) 197 TAXMAN 325

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the Revenue u/s 260A of the IT Act, 1961 (for short "the Act") against the order dt. 25th July, 2008 of the Tribunal, Special Bench, Delhi in ITA No. 163/Asr/2003 reported as Tejinder Singh (HUF) v. Dy. CIT (Inv.) (2008) 117 TTJ (Del)(SB) 145 : (2008) 11 DTR (Del) for the asst. yr. 1998-99 proposing to raise following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the order of the Special Bench of Tribunal, New Delhi is ex facie perverse in that it ignores all the evidences and facts brought on record demonstrating the Hawala nature of the impugned transactions, while holding that these evidences were not sufficient to doubt the bona fides of the said transactions?

(ii) Whether on the facts and in the circumstances of the case, the order of the Special Bench of Tribunal, New Delhi has erred in deciding the case of the Respondent on the basis of the factual findings in the case of M/s Bemco Jewellers (P) Ltd./Manoj Aggarwal whereas they were entirely different?

(iii) Whether the Special Bench of Tribunal, New Delhi has erred in holding that M/s Bishan Chand Mukesh Kumar was a genuine trader of jewellery because facts of this

firm were similar to the case of M/s Bemco Jewellers/Manoj Aggarwal, even though Shri Manoj Aggarwal was found to be a Hawala operator by the Special Bench, Tribunal, Delhi?

(iv) Whether the Special Bench of Tribunal, New Delhi has committed an ex facie perversity in holding that no useful purpose will be fulfilled in allowing the AO to examine the additional evidence in the form of material collected during the course of assessment proceedings of M/s Bishan Chand Mukesh Kumar, even while the Special Bench of Tribunal, New Delhi had held that:

...and the issue about the genuineness of the transactions of purchase and sale of jewellery by M/s Bishan Chand Mukesh Kumar including the purchase of jewellery from the Assessee has not been considered and decided by us on merits.

(v) Whether the Special Bench of Tribunal, New Delhi has erred in relying upon the sales-tax assessment orders filed at page Nos. 138 and 139 of the Appellant's paper book without giving an opportunity to the AO to verify the same without giving any reasons for the same rendering the order perverse and non-speaking?

(vi) Whether on the facts and in the circumstances of the case, the Special Bench of Tribunal, New Delhi was right in ignoring the glaring errors and gaping holes pointed out by Appellant Revenue Department in the evidence led by the Assessee in cases such as when the jewellery was valued at Delhi as per business practices of M/s Bishan Chand Mukesh Kumar, then how was it possible that cheque of exact amount was issued at Amritsar at the time of purchase of jewellery. This argument is not disposed of in the final order issue, thus rendering it non-speaking and perverse?

(vii) Whether on the facts and in the circumstances of the case, the Special Bench of Tribunal, New Delhi was justified in accepting the genuineness of the jewellery transactions of the Respondent, when the Respondent's conduct conflicted with the test of "normal human conduct" principle laid down by the Hon'ble Supreme Court in the cases of [Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More](#), and [Sumati Dayal Vs. Commissioner of Income Tax Bangalore](#), ?

(viii) Whether the Special Bench of Tribunal, New Delhi has committed a gross perversity in sweepingly ignoring all the facts and evidences of the Appellant Revenue Department whilst accepting every far-fetched argument of the Respondent?

(ix) Whether the learned Tribunal grossly erred in law by applying two different yardsticks and standards by requiring the Appellant Revenue Department to pass test of cross-examination of all witnesses and at the same time being satisfied by all the Respondent's averments at face value, thus forcing the Revenue to prove its case beyond all reasonable doubt?

(x) Whether the learned Special Bench of Tribunal, New Delhi was justified in giving no finding regarding the genuineness of sale of the jewellery by the Respondent to M/s Bishan Chand Mukesh Kumar?

2. The Assessee is HUF engaged in the business of fabrics. In its return for the assessment year in question, the Assessee claimed long-term capital loss on account of sale of jewellery. The said jewellery was disclosed under Voluntary Disclosure of Income Scheme, 1997 (for short "VDIS") valued at Rs. 7,88,131 as on 1st April, 1987. Indexed cost was higher than the price at which the same was claimed to be sold on 2nd Feb., 1998 and 18th Feb., 1998. The AO doubted the genuineness of the transactions and held the sale proceeds to be unaccounted funds of the Assessee. The CIT(A) upheld the additions. On further appeal, the Tribunal reversed the view taken by the AO and the CIT(A) mainly on the ground that in the decision rendered in the case of M/s Bemco/Manoj Aggarwal Jewellers ("Bemco") which was held applicable to M/s Bishan Chand Mukesh Kumar ("BCMK") to whom the jewellery was sold by the Assessee, additions were set aside. Findings recorded on the issue by the AO, the CIT(A) and the Tribunal are as under:

Finding recorded by the AO

This office frames its inference on the basis of material on record and comes to the conclusion that the alleged sale of jewellery is bogus and is in fact the introduction of the unaccounted money of the Assessee through the garb of sale of jewellery disclosed by the Assessee under VDIS. The conclusion is based on the following factors:

(a) The Assessee has submitted that the jewellery was very old and had sentimental value. However, the same has been immediately sold after the date of receipt of VDIS certificate from the office of worthy CIT, Amritsar.

(b) The Assessee submits that M/s Bishan Chand Mukesh Kumar jeweller was introduced to him through his relatives at Delhi. However, he was unable to identify the relatives.

(c) The Assessee has further submitted that the representative of the jeweller came to Amritsar to take delivery of the jewellery worth approximately Rs. 14 lakhs without any receipt or without receiving the payment for the same is also not believable.

(d) Confirmation has been received by this office while the party is not traceable at the address as given by the Assessee. It is then strange as to why the letters sent by this office were not received back. In case they were duly received and replied, then why were they not traceable on enquiry of Inspector of DDI office. Also non-co-operation of the jeweller with the office to whom commission was issued by this office also gives credence to the conclusion being drawn by this office.

(e) The jewellery sold inter alia includes diamond jewellery sold worth Rs. 3.67,868 whose value as on 1st April, 1987 had been shown at Rs. 77,170. Thus, the increase has been shown at 4.77 times. However, as per the date of the gem and jewellery export promotion council this increase in rates of diamond jewellery has not been so sharp.

Thus considering all the above factors, it is clear that the sale of jewellery as disclosed by the Assessee is bogus and has been used only to introduce his own unaccounted income into the regular books. Thus, the Assessee has not explained to the satisfaction of the office the introduction of credit of Rs. 16,80,475 in his regular books and is thus added to the income of the Assessee u/s 68 of the IT Act. Accordingly, the loss of Rs. 1,82,891 as claimed by the Assessee is also disallowed and the capital gain on sale of MEP units at Rs. 1,227 is separately brought to tax.

Findings recorded by the CIT(A)

7.1 I have considered the Appellant's contentions in the background of facts on appellate record and the reasons given by the AO in the assessment order and his remand report, as mentioned above. The issue to be decided here is as to on whom the onus lies to prove the genuineness of sales and whether the party on whom the onus lies has been able to discharge such onus in a complete manner so that it can be said that the onus has shifted on the other side to disprove the same. In the present case, the Appellant's counsel has filed confirmation of sales purportedly from M/s Bishan Chand Mukesh Kumar, Saraf, Delhi which bears date much prior to the calling of information by the AO in this case. This raises serious doubts about the genuineness of confirmation because in the normal circumstances confirmation is sought from the party only when it is required by the other party during the course of assessment or other proceedings. In the present case, it appears that this confirmation was obtained by the Appellant much before the date of query raised by the AO which indicates a prior planning and premeditated approach. This raises serious doubts about the genuineness of the confirmation filed and in my opinion, this confirmation could not be said to be sufficient to discharge the onus of proving the sale of jewellery in the context of the following facts:

(i) Though the Appellant claimed jewellery to be very old and having sentimental value, the Appellant had promptly sold this very jewelleiy immediately after the date of receipt of VDIS certificate.

(ii) Jewellery was sold to unknown party of Delhi i.e., M/s Bishan Chand Mukesh Kumar claimed to have been introduced through a relative of the Appellant to whom the Appellant was not able to identify.

(iii) The Appellant handed over jewellery worth Rs. 14 lacs to this unknown jeweller of Delhi without any receipt or without receiving any payment on the delivery of the jewellery.

(iv) Although confirmation has been received by the AO, but the party is not traceable at the address given on the confirmation.

(v) All the letters sent by the AO through registered post/speed post have not been received back undelivered.

(vi) The said party i.e., M/s Bishan Chand Mukesh Kumar, Delhi is stated to be not traceable as per the report of the Inspector, referred to above.

Hence, it is clear that the onus which lies on the Appellant to prove genuineness of sale of jewellery cannot be said to have been discharged. Report of the Inspector of the Investigation Wing, Delhi dt. 16th Jan., 2002 along with letter of the Addl. Director of IT (Inv.) Unit-I(2), Delhi are reproduced hereunder for ready reference:

Per letter No. Addl Director of IT (Inv.) Unit-I/2001 02/1081, dt. 22nd Jan.. 2002 sent by Shri K.L. Anand, Addl Director of IT (Inv.) Unit 1(2), New Delhi to Shri B.B. Vig, ITO, Ward IV(4), Amritsar.

2. After receipt of your letter, another summons u/s 131 was issued to the party, namely M/s Bishan Chand Mukesh Kumar and the same could not be served at the given address. Copy of Inspector's report in this regard is enclosed. It is also brought to your notice that action u/s 132(1) was carried out by the Investigation Unit-I this Directorate on 3rd Aug., 2000 in the case of Shri Manoj Kumar and others. One of the associates covered u/s 132(1) was the same M/s Bishan Chand Mukesh Kumar. This group has since been centralized with Shri Ram Mohan Singh, Chief Director of IT, Central Circle-3, Mayur Bhawan (Room No. 724, Connaught Circus), New Delhi.

3. I am directed to request you to please contact Shri Ram Mohan Singh, Dy. CIT holding jurisdiction M/s Bishan Chand Mukesh Kumar for conducting necessary enquiries in the case."

Per Inspector Shri Praduman Singh, ITI, Unit-I, New Delhi's report in the case of M/s Bishan Chand Mukesh Kumar dt. 16th Jan., 2002.

As directed, I visited the premises No. 1166/202, Kucha Mahajani, Chandni Chowk, Delhi on 14th Jan., 2002 to serve the summons on the abovesaid party. The premises is on the 2nd floor and there is no sign board of M/s Bishan Chand Mukesh Kumar at this premises. Local enquiry made revealed that this party is not functioning from this place. Efforts are being made to locate the present address of the party.

The report received from the Dy. Director of IT (Inv.) dt. 25th Oct., 2002 throws further light on the authenticity of the confirmation letters filed in this case. Content of the letter dt. 25th Oct., 2002 is reproduced hereunder for ready reference:

Per letter No. DSDIT (Inv.) Unit-II(2)/2002/2003/21 dt. 25th Oct, 2002 sent to this office by Shri S.S. Jain, Dy. Director of IT (Inv.), UnitII(4), New Delhi.

Kindly refer to your letter No. 205/2002-03-671 dt. 23rd Aug., 2002 on the subject noted above. After going through the appraisal report the required information is submitted as under:

As per the information it was found that Shri Manoj Aggarwal and others had been in the business of selling bogus accommodation book entries of various types for consideration of commission and that he had no real business. He had been operating from different premises in Delhi.

As a consequence of information, search was conducted u/s 132 of IT Act, 1961 on 3rd Aug., 2000 at the office premises and at the residential premises of Shri Manoj Aggarwal, as well as at the premises of one of the mediators Shri Kamlesh Kumar Gupta, and one of the beneficiaries Shri Girish Mittal. Survey operations u/s 133A of the IT Act, 1961 were also carried out on 3rd Aug., 2000 at B-19, Swasathya Vihar, Delhi i.e., the premises of Shri Manoj Aggarwal.

It revealed that he had various bank accounts in different banks which had been opened and operated by him and his associates to facilitate his business of selling bogus accommodation book entries.

As per page Nos. 4-7 of the appraisal report there are 51 bank accounts in different names including the names of Bishan Chand Mukesh Kumar as given below. Majority of these accounts have been used in his widespread operations of providing bogus accommodation book entries:

| Nos. | |
|------|--|
| 4001 | |
| 0512 | |
| 0528 | |
| 1255 | |
| 0832 | |
| 2637 | |
| 0237 | |

The case was centralized with Central Circle-III in the charge of CIT, Central-II, New Delhi and the seized record along with the appraisal report was sent to the AO, Central Circle-III on 17th Sept., 2001. In view of the above, any further information in this regard may kindly be asked for by the AO who was suggested to ascertain the volume and nature of transactions in the abovesaid bank accounts before arriving at the correct income of the Assessee."

Perusal of the said letter shows that the partners of the concern M/s Bishan Chand Mukesh Kumar are known to be involved in the business of selling bogus accommodation book entries of various types for consideration of commission and

they had no real business. On the basis of such information, search has been conducted u/s 132 at the office premises and residential premises of the partners of the concern, M/s Bishan Chand Mukesh Kumar. Investigation Wing has been able to identify various bank accounts in different banks which have been opened and operated by the partners and its associates to validate the selling of bogus accommodation book entries. These bank accounts have been identified and further investigations are in progress. In spite of various enquiry letters issued by the Investigation Wing, the party M/s Bishan Chand Mukesh Kumar has failed to appear and confirm the purchases made from the Appellant. Considering the totality of facts and circumstances of this case including the various reports, referred to above, I am of the opinion that firstly confirmation letter filed by the Appellant or received subsequently by the AO cannot be said to be sufficient to discharge the onus which lies on the Appellant particularly in the context of the fact that the party whose confirmation is sought to be relied upon by the Appellant is known to be indulging in providing bogus accommodation book entries for a consideration. Further the said party M/s Bishan Chand Mukesh Kumar, Delhi has failed to appear or produce evidence in respect of jewellery claimed to have been purchased by them from the Appellant even after a lapse of 2 years including the period of time during the assessment proceedings as well as appellate and remand proceedings. Further, even if the said party, M/s Bishan Chand Mukesh Kumar is proved to be existing on the address given, but that is not sufficient to completely discharge the onus of proving the alleged sale of jewellery and genuineness of the transaction because nexus between sale of jewellery claimed to have been sold by the Appellant and the transaction with M/s Bishan Chand Mukesh Kumar does not seem to have been proved. In view of the above, the Appellant's contentions in this regard are rejected and it is held that the AO was justified in making addition of Rs. 16,80,475 on account of bogus sale of jewellery and also in rejecting the loss claimed by the Appellant at Rs. 1,82,891.

Findings recorded by the Tribunal

166. After hearing the arguments of learned representatives of all the sides in these cases, we felt that it would be appropriate to consider and decide the appeals filed in the case of M/s Bishan Chand Mukesh Kumar and Shri Manoj Aggarwal/Bemco Jewellers first as the issues relating to genuineness of the transactions of purchase and sale of jewellery in the said cases have been investigated in detail and the decision thereon will have a direct bearing on the ultimate fate of the case of the Assessee i.e., Tejinder Singh, HUF. Accordingly, the appeals filed in the case of M/s Bishan Chand Mukesh Kumar have already been disposed of by us in the foregoing portion of this order wherein the assessment made u/s 158BC r/w Section 158BD has been held to be bad in law on the grounds and for the reasons set out thereon. Consequently, the said assessment made in the case of M/s Bishan Chand Mukesh Kumar has been quashed by us holding the same to be invalid and keeping in view this decision on the preliminary legal issues, we have refrained ourselves from

considering and deciding the other issues involved in the said case on merits including the issue relating to genuineness of the transactions of purchase and sale of jewellery. Assuming the possibility of such an eventuality and keeping in view that the material collected during the course of assessment proceedings in the case of M/s Bishan Chand Mukesh Kumar , which has already been filed and admitted as additional evidence in the case of Tejinder Singh, HUF, can still be utilized, Shri S.D. Kapila has urged that the case of Shri Tejinder Singh should be restored to the file of the AO to consider and decide the same afresh in the light of the said additional evidence. He has submitted that this will also facilitate in giving an opportunity to the Assessee to cross-examine the deponents whose statements have been sought to be relied upon by the Department and also to rely upon the letters/affidavits of the said deponents which have been filed by him and admitted by the Tribunal as additional evidence. He has contended that this will enable the AO to reach a proper conclusion after taking into consideration this entire evidence which has been gathered after the completion of assessment in the case of Tejinder Singh, HUF and which is relevant to decide the issues involved in the said case. Although this plea of Shri S.D. Kapila sounds to be logical and legally tenable, we find it difficult to accept the same in view of our decision rendered in the cases of Shri Manoj Aggarwal and Bemco in the foregoing portion of this order. It is no doubt true that jewellery by Tejinder Singh, HUF, was sold to M/s Bishan Chand Mukesh Kumar and the issue about the genuineness of the transactions of purchase and sale of jewellery by M/s Bishan Chand Mukesh Kumar including the purchase of jewellery from the Assessee has not been considered and decided by us on merits. However, a similar issue involved in the case of Bemco/Manoj Aggarwal has been considered and decided by us on merits. In the said cases, the facts involved were almost similar to the facts involved in the case of M/s Bishan Chand Mukesh Kumar in as much as the transactions relating to purchase and sale of jewellery were held to be bogus by the Department alleging that such transactions were entered into in order to give accommodation entries on commission basis. This allegation was based on the similar type and nature of evidence collected by the Department and the modus operandi allegedly followed by Bemco/Manoj Aggarwal was the same as alleged to be followed by M/s Bishan Chand Mukesh Kumar while giving accommodation entries in the form of bogus sales entries of jewellery. The case sought to be made out by the Department about the alleged bogus purchase and sale of jewellery transactions on the basis of similar nature of evidence has been examined by us in detail and on such examination, we have held that the evidence collected by the Revenue authorities was not sufficient to establish their stand that the jewellery transactions carried on by Bemco Jewellers (P) Ltd. were only paper transactions or bogus and the same were put through by accommodation entries in order to earn commission income therefrom. We have found it difficult to reject the Assessee's plea about the genuineness of the jewellery transactions as opposed to the normal course of human conduct even applying the principles laid down by the Hon'ble Supreme Court in the cases of Durga Prasad More (supra) and Sumati Dayal (supra).

We have also found that the circumstances surrounding the case were not strong enough to hold the claim of the Assessee about genuineness of the jewellery transactions as totally unbelievable or outrageous. We have also found that no evidence of any consequence was unearthed during the course of search to directly show that the jewellery business was bogus and that it was only accommodation entry business. On the other hand, the evidence brought on record by the Assessee especially the evidence in the form of sales-tax assessment order wherein the transactions of purchase and sale of jewellery were accepted by the sales-tax authorities was found to be reliable by us to support the case of the Assessee that the relevant transactions of purchase and sale of jewellery were genuine. As the issue involved in the case of Bemco/Manoj Aggarwal as well as all the material facts relevant thereto including the evidence brought on record are similar to the case of M/s Bishan Chand Mukesh Kumar, we are of the view that the decision rendered in the case of Bemco/Manoj Kumar on the said issue is applicable even in the case of M/s Bishan Chand Mukesh Kumar with equal force and this being so, no meaningful purpose will be served by sending the matter back to the AO for reconsideration and redecision merely because the issue has not been decided on merits in the case of M/s Bishan Chand Mukesh Kumar. In our opinion, this exercise would prove to be merely academic and it would result only in multiplicity of litigation. In that view of the matter and keeping in view the reasons given above, we do not find any justifiable reason to send this matter to the AO for reconsideration as sought by Shri Kapila and following our conclusion drawn in the case of Bemco/Manoj Aggarwal, we hold the transaction relating to sale of jewellery in the case of the present Assessee, i.e., Tejinder Singh (HUF) is genuine. Accordingly, we delete the addition made by the AO and confirmed by the CIT(A) u/s 68 and allow this appeal of the Assessee.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the Revenue submits that the Tribunal erred in reversing the finding recorded by the AO and the CIT(A) solely on the basis that since in the case of Bishan Chand Mukesh Kumar transactions of jewellery were held to be genuine, the case of the Assessee was not required to be gone into on merits. It was submitted that case of the Assessee was required to be individually gone into to ascertain genuineness of the claim of the Assessee for capital loss. Even if Bemco or even Bishan Chand Mukesh Kumar to whom the jewellery is said to have been sold by the Assessee was not liable to be taxed in respect of said transactions, the case of the Assessee had to be examined to determine whether sale by the Assessee was genuine. Finding in the case of Bemco could not be mechanically applied to Bishan Chand Mukesh Kumar and on that basis to the Assessee. The issue of genuineness of the transaction of sale by the Assessee and correctness of the finding recorded by the AO and the CIT(A) were required to be gone into by the Tribunal before setting aside the addition. Reasons given by the AO and CIT(A) are required to be dealt with. The documents produced for the first time such as sales-tax assessment order in the

case of Bishan Chand Mukesh Kumar, required the matter being remanded to consider the circumstances such as whether the jewellery allegedly sold was not the same as had been declared under the VDIS, as held by the CIT(A).

5. Learned Counsel for the Assessee fairly stated that the finding that order in the case of Bemco could be automatically applied to the Bishan Chand Mukesh Kumar and to the Assessee without considering the merits of the case of the Assessee could not be justified. She, however, submitted that the Assessee has furnished sufficient explanation in support of genuineness of its claim, as noticed in the impugned order. She also relied upon the judgment of Hon"ble Supreme Court in [Commissioner of Income Tax, Orissa Vs. Orissa Corporation \(P\) Ltd.](#), to contend that it was for the Revenue to examine source of income of the creditor/purchaser of the jewellery, in absence of which addition in the hands of the Assessee could not be made. Once the Assessee discharged the onus, addition u/s 68 was not justified.

6. We are satisfied that the finding recorded by the Tribunal that addition u/s 68 in respect of alleged bogus sale of jewellery was not justified is perverse. The Tribunal has not considered the merits of the genuineness of the transaction of sale by the Assessee. In the light of finding recorded by the AO and the CIT(A), it was expected that the Tribunal should have gone into the question of identity of the jewellery declared under the VDIS and jewellery sold in the transaction in question. It was necessary to go into the question whether the Assessee had not received any bogus accommodation book entries as inferred in the orders of AO and CIT(A). In absence thereof, the impugned finding cannot be sustained. In this view of the matter, it is not necessary to go into the submission made on behalf of the Assessee that there was sufficient explanation as this is an issue which is yet to be gone into by the Tribunal which is a final fact-finding authority.

7. Accordingly, we hold that the order of the Tribunal is perverse to the extent indicated above. The questions raised stand answered accordingly. The impugned order of the Tribunal is set aside and the matter is remanded to it for fresh decision on merits in accordance with law. It is made clear that the parties will be at liberty to raise such contentions as may be relevant and necessary including the contention of applicability of Section 68. The parties may appear before the Tribunal for further proceedings on 4th April, 2011.

8. The appeal is disposed of accordingly.