

(2009) 02 P&H CK 0064

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Dr. Prem Chand Sharma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 3, 2009

Citation: (2009) 181 TAXMAN 186

Hon'ble Judges: Nawab Singh, J; J.S. Khehar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.S. Khehar, J.

The appellant-assessee, in the first instance, impugned the order passed by the Assessing Officer dated 7-9-2006 by preferring an appeal before the Commissioner of Income Tax (Appeals). The aforesaid appeal was dismissed by the Commissioner of Income Tax (Appeals) vide order dated 16-3-2007. The appellant impugned the order dated 16-3-2007 by preferring a second appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal also dismissed the appeal preferred by the appellant-assessee vide an order dated 25-4-2008.

2. Through the instant appeal, the appellant-assessee has impugned the orders passed by the Assessing Officer, the Commissioner of Income Tax (Appeals), as also, the Income Tax Appellate Tribunal, referred to hereinabove.

3. The issue under consideration relates to the addition of Rs. 7,00,000 to the income of the appellant-assessee. The claim of the appellant-assessee was that, he entered into an agreement dated 4-11-2003 (Annexure A-4) for the sale of his agricultural land, wherein the total consideration payable to the appellant-assessee was Rs. 31,60,000 in lieu of the sale of land measuring 23 kanals 13 marlas to one Basau Ram. During the course of the execution of the agreement, referred to above, a sum of Rs. 7,00,000 was paid by the aforesaid Basau Ram to the appellant

-assessee as earnest money. The case of the appellant - assessee before the Revenue Authorities was that, the aforesaid amount of Rs. 7,00,000 stood forfeited as Basau Ram could not comply with the terms and conditions of the agreement dated 4-11-2003 (Annexure A-4). It is the vehement contention of the learned Counsel for the appellant-assessee, that the amount of Rs. 7,00,000, which stood forfeited to the appellant-assessee on account of non-compliance of the conditions stipulated in the agreement dated 4-11-2003 (Annexure A-4), should be treated as a capital receipt in the hands of the appellant - assessee. While determining the issue under reference, the Income Tax Appellate Tribunal has arrived at the conclusion, that theory of forfeiture suggested by the appellant-assessee has been concocted by him so as to save his tax liability. The reasons which had weighed with various authorities in arriving at the conclusion, that the agreement dated 4-11-2003 (Annexure A-4) was only a sham transaction so as to save tax, emerged from the factual position taken into consideration by all the authorities. The same stand crystallized in the order passed by the Assessing Officer in the following format:

(a) Dr. P.C. Sharma did not actually sell any agricultural land. The piece of land at Pankjikhara is still with him. The circumstances indicate that he had no intention of selling this land. As a matter of fact, he purchased more lands in the subsequent year ending 31-3-2005 where the addition to the agricultural land is Rs. 10,21,720. It is also relevant to mention that even in subsequent year, he has again shown the forfeiture of earnest money of Rs. 2,50,000 against the sale of lands.

(b) As per agreement dated 4-11-2003, the area of land which was shown to be sold was 23 kanals 13 marlas at the rate of Rs. 10,70,000 per acre. The total sale consideration was about Rs. 3.16 lakh out of which Rs. 7,00,000 was shown as earnest money received by Dr. P.C. Sharma. The date by which the registration deed was to be executed was shown as 5-12-2003 i.e., only one month's time. The said agreement was not written on any stamp paper which undermine the legal sanctity of the document. What is really strange is that the alleged purchaser named Shri Basau Ram did not ask or request the seller even once to extend the time for execution of registration deed. More so, he did not even request the seller to refund the amount of Rs. 7,00,000 or part thereof when the transaction did not mature. There is no evidence of any extension or refusal to extend the time limit on the said agreement dated 4-11-2003. Shri Basau Ram did not even feel the necessity of sending any legal notice to Dr. P.C. Sharma for return of Rs. 7,00,000.

These facts prove that the agreement dated 4-11-2003 was sham.

(c) The enquiries were made from the SBOP, Kaithal and from Shri Basau Ram personally at his village Budha Khera. In letter dated 22-7-2006, the said Bank has mentioned that the loan given to Shri Basau Ram was for agricultural purposes (as stated by the borrower) which was for purchase and development of agriculture inputs, machinery etc. Shri Basau Ram is an agriculturalist and he had mortgaged his personal agricultural lands in favour of the Bank for sanction of these loans.

Interest was charged by the Bank on these loans. As per procedure and requirement of Rules governing the sanction of loans, Shri Basau Ram had declared and furnished a certificate dated 29-10-2003 to the said Bank that the amount of said loans of Rs. 4,00,000 would be utilized for the purpose for which this loan was taken by him. The copy of this certificate as sent by the Bank is lying at file page - 58 Vol. III. This document clearly proves that the loan of Rs. 4,00,000 was not meant for purchase of land belonging to Dr. P.C. Sharma.

(d) Shri Basau Ram had stated on 13-7-2006 that the other draft of Rs. 3,00,000 which was payable to Dr. P.C. Sharma was purchased out of cash amount lying at his residence in the village. It has been found that Shri Basau Ram had opened a saving Bank A/c. No. 9159 with SBOP, Kaithal on 29-10-2003 by depositing Rs. 1,000 in cash. If any cash like Rs. 3,00,000 was lying with him, it can be expected that he would have preferred to keep the same in his Bank account. At the same time, if any such amount like Rs. 3,00,000 was available with him, there was no need to mortgage his lands to raise the loans of Rs. 1,00,000 and Rs. 3,00,000 from the said Bank where the interest was also to be paid. The Bank had actually charged the interest of Rs. 3,156 on the loan of Rs. 3,00,000 for the period of just one month. It is also a fact that the loan of Rs. 3,00,000 could not be returned by Shri Basau Ram in time and there was debit balance of Rs. 2,00,900 as on 12-7-2006 against him. Similarly, the other loan of Rs. 1,00,000 was also not returned and debit against him as on 12-7-2006 was Rs. 99,800 (file pages-7 and 8 Vol. III). These facts prove that Shri Basau Ram did not have the financial capacity to enter into any transaction like purchase of land at Panjokhera the value of which would go up to Rs. 31.6 lakh. This fact again proves that the agreement dated 4-11-2003 was sham.

(e) In view of the fact that Shri Basau Ram continued to be under debt for the loans raised from the SBOP, Kaithal, it cannot be believed that he would forego and get forfeited the substantial amount of Rs. 7,00,000 without raising any hue and cry. The whole story regarding the forfeiture of amount by Dr. P.C. Sharma is nothing but manipulation.

The impugned orders also reveal, that the statement of the vendee - Basau Ram was also recorded by the Assessing Officer, wherein Basau Ram inter alia, acknowledged the following factual position:

(i) A depreciation chart was enclosed with the return which is lying at file page -11. The perusal of this chart shows that assessee had deducted a sum of Rs. 7,00,000 from the value of agricultural lands showing the same as sale. It was actually not a sale. In the note below the depreciation chart, assessee had mentioned - a sum of Rs. 7,00,000 has been deducted from agricultural land, which is on account of forfeiture of earnest money against sale.

During the course of assessment proceedings, assessee was requested to produce the evidence for ownership and sale of land for the earnest money, which was

received against the agricultural land. This is per order sheet entry dated 12-6-2006.

(ii) A written reply was filed on 16-6-2006. A copy of one agreement dated 4-11-2003 was produced which is lying at file pages 135-136 Volume-II. As per this agreement, the assessee had agreed to sell 23 kanals 13 marlas of land situated in Panjokhara (Ambala) to Shri Basau Ram of village Budha Khera (Kaithal) at the rate of Rs. 10,70,000 per acre. Out of this sale consideration a sum of Rs. 7,00,000 is said to be received by way of bank drafts dated 30-10-2003 of Rs. 4 lakhs and Rs. 3 lakhs which were purchased from State Bank of Patiala, Kaithal. This agreement was not written on any stamp paper and it was not entered with any petition writer or any authority. Normally such agreements are written on stamp papers.

(iii) Enquiry was made from the State Bank of Patiala, Kaithal by writing a letter dated 13-7-2006. Written replies dated 13-7-2006, 22-7-2006 and 9-8-2006 were given by the said Bank. I had personally gone to village Budha Khera to make enquiries from Shri Basau Ram. His statement was recorded by me on 13-7-2006, which is lying at pages 29-36 of Volume-III. The source of payment of Rs. 7,00,000 with Shri Basau Ram was stated as under:

(a) Loan of Rs. 4,00,000 was raised from SBOP, Kaithal and draft payable to Shri P.C. Sharma prepared. It was admitted by Shri Basau Ram that the purpose of raising loan was agricultural development and it was returned to the Bank in instalments.

(b) Bank draft of Rs. 3,00,000 was prepared from the SBOP, Kaithal out of cash amount lying at his residence in the village.

(iv) Assessee Dr. P.C. Sharma was confronted with the fact that the SBOP, Kaithal had given the loans of Rs. 1,00,000 (cash credit limit) and Rs. 3,00,000 (Kisan Gold Card) against mortgage of lands for agricultural purposes i.e., for purchase and development of agricultural inputs, machinery etc., this means that these loans were not for purchase of any lands.

Collectively, on the basis of the factual position noticed hereinabove, the Assessing Officer, the Commissioner of Income Tax (Appeals), as well as, the Income Tax Appellate Tribunal arrived at the conclusion, that the agreement dated 4-11-2003 (Annexure A-4) set-up by the appellant -assessee was a bogus document.

4. Having heard the learned Counsel for the appellant-assessee and having considered the factual position noticed hereinabove, we are satisfied that the inferences drawn by the Revenue Authorities are wholly justified and call for no interference.

5. Having arrived at the conclusion, that the agreement dated 4-11-2003 was a bogus transaction, we are satisfied that no question of law arises for determination at our hands in the instant appeal. The same is, accordingly, dismissed.