Rakesh Mahajan Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 24, 2007

Acts Referred: Evidence Act, 1872 â€" Section 158BC, 158BFA, 17, 18, 19
Income Tax Act, 1961 â€" Section 132, 143, 260A, 69

Citation: (2008) 214 CTR 218 : (2009) 316 ITR 369

Hon'ble Judges: M.M. Kumar, J; Ajay Kumar Mittal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
The assessee has approached this Court by filing instant appeal u/s 260A of the IT Act, 1961 (for brevity, "the Act"),

challenging order dt. 11th Aug., 2006, passed by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (for brevity, "the Tribunal"), in

IT(SS) No. 215/Del/2003, for the block period 1st April, 1990 to 29th Aug., 2000 (A-1). It is claimed that the following questions of law would

arise for our determination:

(i) Whether the Tribunal conclusions are perverse by interpreting the paper note as a dying declaration u/s 32 of the Indian Evidence Act, 1872?

(ii) Whether the Tribunal has misconceived on having made the assumption of facts of the cash paid without determining the relatability and the

longevity of the same to the block period?

(iii) Whether the judgment of the Tribunal is correct by having given two differential treatments of the same cause of action of the addition which

have attained finality since not challenged by the respondent?

2. Brief facts of the case are that on 29th Aug., 2000 a search and seizure u/s 132 of the Act was conducted at the residence of the assessee. On

18th May, 2001, a notice u/s 158BC was issued requiring the assessee to file return for the block period 1st April, 1990 to 29th Aug., 2000. The

assessee filed his return for the aforementioned block period on 17th July, 2001, declaring total undisclosed income as "nil". Thereafter, on 17th

June, 2002, notices under Sections 143(2) and 142(1) of the Act were issued to the assessee. The assessment was completed on 29th Aug.,

2002. On the basis of a note, which was seized during each with the heading ""Just in case"", the undisclosed income of the assessee was assessed

at Rs. 5,29,750 (Annex. A-3). It has been claimed by the Department that the aforementioned note was written by the assessee at the time when

he was about to be taken to the operation theatre for a surgery on 21st Oct., 1995. The relevant portion of the note on which reliance has been

placed by the assessing authority reads as under:

Just in case

Tyagi has a cash entry of Rs. 4,11,000 ask him to withdraw this money from PFL and give you the cash. Penalty proceedings u/s 158BFA(2) of

the Act were also initiated.

3. The assessee then filed an appeal before the CIT(A), which was allowed vide order dt. 10th Feb., 2003 and various additions concerning

unexplained money were deleted (Annex. A-2).

4. The Tribunal rejected the submission made by the assessee that the statement was made by him under emotional stress or anxiety because the

assessee has made a detailed note of all his accounts and receivables. The note was written by him at the time when he was about to be taken for

surgery. The Tribunal has treated the note as good as a dying declaration because it contains realistic account of the assessee and the assertions

made in the note are quite significant as the note contained the details of properties/assets held by the assessee which has been rightly entitled just

in case". It is significant that the note mentions a cash entry of Rs. 4,11,000, which was given to Tyagi, which in the ultimate result family was to

receive back from Tyagi. The AO vide his questionnaire dt. 17th June, 2002 required the assessee to furnish complete address of Tyagi and

explain the entry to which mention has been made in the note. He was also asked to explain why the amount should not be added as unexplained

income. The Tribunal also held that no satisfactory explanation has been furnished and the question was not to depend on whether such sum was

given to Mr. Tyagi or not. The statement in the note has been regarded as correct and complete revelation of the assessee made in contemplation

of death, which leads to the conclusion that the assessee at the first instance has given a sum of Rs. 4,11,000 to Mr. Tyagi and the after effect of

the entry given to Mr. Tyagi has since not been explained satisfactorily by the assessee, it has been considered as unexplained income in the hands

of the assessee. The Tribunal, therefore, added the amount u/s 69 of the Act. The Tribunal has further held that it was not a case of double addition

nor it was a case of addition in two hands. Holding that the CIT(A) committed error, the Tribunal held that the addition was deleted in the case of

Pan Foods Ltd. because no such entry was available in their books of accounts, which could be called as fictitious entry. The assessee since has

not discharged the onus to prove that he did not give any sum to Mr. Tyagi, the amount has been rightly added to his unexplained income.

5. Mr. Pankaj Jain, learned Counsel for the assessee has argued that the approach of the Tribunal is wholly erroneous, inasmuch as, the statement

of the assessee, who is a living human, has been treated as ''dying declaration''. According to the learned Counsel in order to fit in the definition of

expression ''dying declaration'' it is sine qua non that the statement must have been made by a dead person in relation to cause of his death or in all

the circumstances which has led to his death, as contemplated by Section 32(1) of the Evidence Act, 1872 (for brevity, ''the 1872 Act''). Learned

Counsel has submitted that such a statement cannot constitute a basis for sustaining the findings recorded by the Tribunal that somebody called

Tyagi was given cash entry of Rs. 4,11,000 and that he was to be asked by the family to withdraw the amount from PFL to pay in cash. Learned

Counsel has maintained that such an approach is wholly unsustainable and the order of the Tribunal is liable to be rejected while answering the

questions of law in favour of the assessee.

6. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that there is no merit in this appeal. It is well

settled that admissions constitute best piece of evidence because admissions are self-harming statement made by the maker believing it to be based

on truth. It is well known that no one will tell a lie especially harming one''s own interest unless such a statement is true. Section 17 of the 1872 Act

defines admission to be a statement, oral or documentary, which suggests an inference as to any fact in issue or relevant fact which has been made

by a party to proceedings or his agent and others as per details given in Sections 19, 20, 21, 22 and 23 of the 1872 Act. If an admission has been

made by a party to proceedings under Sections 17 and 18 of the 1872 Act, suggesting an inference that the income was unexplained then such an

admission is an admissible piece of evidence. Admissions have also been regarded as substantive evidence because it sustains their veracity from

the fact that maker has said something against his own interest. Moreover, in the present case the assessee has made a self-harming statement in a

note just before his entry to an operation theatre for a surgery, titled as ''Just in case''. The note has clearly stated that somebody called Tyagi has a

cash entry of Rs. 4,11,000, who was to be told to withdraw that money from PFL and the family was to get the cash. The admission was put to

the assessee in the form of questionnaire by the AC), who has stated that the questionnaire dt. 17th June, 2002, was prepared by him and the

assessee was required to furnish complete address of Mr. Tyagi to explain the entry of Rs. 4,11,000. The assessee was also asked to explain why

the aforementioned entry be not added as his unexplained income. As no satisfactory explanation was furnished, the Tribunal has rightly reached

the conclusion that the assessee had given a sum of Rs. 4,11,000 to Mr. Tyagi irrespective of the fact whether Mr. Tyagi ultimately gave such an

amount or not. The Tribunal has categorically concluded that it is neither a case of double addition nor a case of addition in two hands.

7. It is true that the Tribunal has committed error in treating the statement made by the assessee as a statement in the nature of ''dying declaration''.

Statement of a dead person is a relevant fact in cases where it relates to cause of his death or is made in due course of business or against interest

of maker. The basic ingredients that the statement has to be of a ''dead person'' in order to constitute ''dying declaration'' is missing in the present

case and, therefore, the Tribunal could not have opined that the statement was in the nature of ''dying declaration'' or it was as good as ''dying

declaration''. It is, however, equally true that the statement made by the assessee in the instant case has been made in contemplation of death.

Once a statement is made in contemplation of death then its veracity is supported by impending fear of death because once a person is anticipating

his demise then all his interest in this world comes to an end and he is supposed to make a truthful and correct statement. The contemplation of

death has been regarded as equivalent to administration of oath. Therefore, even if the statement made by the assessee cannot be regarded as

''dying declaration'', it has to be regarded as admission within meaning of Sections 17 and 18 of the 1872 Act, which has further been supported

for its veracity emanating from contemplated death. Moreover, the maker of the statement has been confronted with it, given adequate opportunity

to explain and in the absence of any satisfactory explanation, the statement has been rightly relied upon by the AO as well as by the Tribunal. It is,

thus, clear that despite the fact that the statement is not regarded as ''dying declaration'' it cannot be brushed aside giving benefit to the assessee.

8. In view of the above, question Nos. 1 and 2 are answered against the assessee appellant. Question No. 3 has not even been pressed by the

counsel and, therefore, does not need to be commented upon. Accordingly, the appeal fails and the same is dismissed.