

Ashwani Oberoi Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 20, 2012

Acts Referred: Income Tax Act, 1961 "Section 260A, 271(1)(c), 51

Citation: (2013) 212 TAXMAN 392

Hon'ble Judges: Surya Kant, J; R.P. Nagrath, J

Bench: Division Bench

Advocate: Akshay Bhan and Alok Mittal, for the Appellant; Yogesh Putney, for the Respondent

Final Decision: Dismissed

Judgement

R.P. Nagrath, J.

This is an appeal u/s 260A of the Income Tax Act, 1961 (for brevity "the IT Act") against the order dated 27.07.2011

(Annexure A-6) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A" (ITAT) for the assessment year 2002-03 and the order

dated 15.02.2010 (Annexure "A-5") of the CIT (Appeals), Chandigarh deciding appeal against the assessment order dated 29.12.2008

(Annexure "A-4"). The background of this appeal may be briefly stated:

The appellant-assessee had shown advance of Rs. 2,50,000/- against the land in his capital account for the relevant assessment year. He claimed

that this was on account of forfeiture of the earnest money amounting to Rs. 2,50,000/-, for sale of his plot No. 137, Sector 1, Ambala, received

on 25.02.2002 vide payees demand draft (DD) No. 625557 dated 22.02.2002 of State Bank of Patiala, Delhi (SBOP). The DD was later on

found to be issued by Jai Laxmi Cooperative Bank Ltd., Fatehpuri, Delhi (for short described as "Bank") through State Bank of Indore, Chandni

Chowk. The copy of agreement for sale of plot produced by the appellant was entered into with one Leela Dhar Gupta son of Chandgi Ram of

Delhi on 22.02.2002. The Assessing Officer (AO) held an enquiry into the matter and found this entry of Rs. 2,50,000/- to be fake and held it as

undisclosed income routed by the appellant, in this manner. Addition of Rs. 2,50,000/- therefore, was made in the income of the appellant for the

assessment year in question. It was further proposed to initiate penalty proceedings u/s 271(1)(c) of the IT Act vide order dated 24.03.2005

(Annexure A-1).

2. The appellant preferred appeal before CIT (Appeals) and filed certain documents to justify the entry of Rs. 2,50,000/- in his capital account.

The Appellate Authority called for the remand report from AO. On examination of remand report and the proceedings conducted by AO, the

appeal was dismissed vide order dated 09.12.2005 (Annexure A-2). The order of authorities below was challenged before ITAT and it was

contended that the Department might have contacted another Leela Dhar whereas the appellant was in a position to produce the said person even

now. In view of these facts, the Tribunal formed an opinion that one more opportunity be provided to the appellant-assessee to produce Leela

Dhar Gupta before AO, who was directed to examine whether Leela Dhar Gupta was an existing person or not and to satisfy himself about the

genuineness of the transaction. The matter was remitted to AO for fresh adjudication vide order of ITAT dated 05.07.2007 (Annexure A-3) with

a direction that due opportunity be given to the appellant-assessee, who was also at liberty to produce evidence, if any, to substantiate his plea.

3. It may be noted that there was another addition under the head agricultural income, but on that matter the appellant's contention was allowed by

the Tribunal.

4. After remand, the AO issued questionnaire to the appellant-assessee, asking him to produce complete identification of Leela Dhar Gupta along

with affidavit of said person with regard to the transaction of forfeiture of Rs. 2,50,000/-. The appellant was also directed to produce Leela Dhar

Gupta in person in order to satisfy AO about genuineness of the transaction. After seeking couple of adjournments, the representative of appellant-

assessee placed written submissions, contending that he has produced complete particulars with regard to assessment of income tax, wealth tax

relating to Leela Dhar Gupta, and his PAN number. It was also stated that Leela Dhar Gupta aforesaid was a stranger not related to the assessee

and was not in a position to use any pressure tactics to locate and produce him.

5. The AO observed that in the earlier enquiry Leela Dhar Gupta was not available at the address furnished by the appellant-assessee, and onus

was definitely on the assessee to produce Leela Dhar Gupta. The assessee failed to produce Leela Dhar Gupta even after availing couple of

opportunities. Ultimately, the earlier adjudication to add Rs. 2,50,000/- was reiterated in the order dated 29.12.2008 (Annexure A-4) and to

initiate penalty proceedings vide u/s 271(1)(c) of IT Act. The appeals filed before CIT Appeals and ITAT were unsuccessful and these orders

have been impugned in the present appeal.

6. We have heard the appellant's counsel and counsel for the department and given our thoughtful consideration to the contentions raised by them.

7. The appellant-assessee has proposed the following substantial questions of law in this appeal:-

(i) Whether in facts and circumstances of the case, the action of the authorities below having no legs to stand as the same was on the basis of a

similar transaction which has been decided in favour of the assessee, is legally sustainable in the eyes of law?

(ii) Whether in fact and circumstances of the case, the action of the authorities below in ignoring the material/evidence produced by the assessee on

record and relying solely upon the similar transaction in the subsequent year which is found to be genuine is legally sustainable in the eyes of law?

(iii) Whether in facts and circumstances of the case, the action of the authorities below in not giving the assessee with an opportunity of cross-

examining the person on whose statement the department has relied is violative of the principles of natural justice as held in the case of

Commissioner of Income Tax Vs. Sanjeev Kumar Jain, , is legally sustainable in the eyes of law?

(iv) Whether in fact and circumstances of the case, the action of the authorities below in making the addition on the basis that the assessee had not

shown the source of his funds despite the fact that the assessee was not under any obligation/duty to explain the source of the amount is legally

sustainable in the eyes of law?

(v) Whether in fact and circumstances of the case, the action of the authorities below in not considering the position of law that the said amount

shall be brought to tax at the time of sale of the said land by virtue of the provisions of section 51 of the Act and therefore the whole exercise being

revenue neutral is legally sustainable in the eyes of law?

(vi) Whether in the facts and circumstances of the present case, the action of the departmental authorities would lead to an adverse inference being

drawn against the department regarding the account from which the assessee received the amount as the department was in a position to place the

report of the investigation and the same was not placed which would lead to an conclusion that the said account and transactions are genuine and

the same was not done by the Id. Authorities below is legally sustainable in the eyes of law?

(vii) Whether in fact and circumstances of the case, the action of the authorities below, the impugned orders Annexure A-4 to A-6 are legally

sustainable in the eyes of law?

8. We do not consider point No. (i) to be substantial question of law, simply because for the next assessment year 2003-04, the assessee's claim

of Rs. 2,50,000/- in the capital account based on a similar transaction was accepted by ITAT vide order dated 27.03.2008 (Annexure A-7). That

pertained to an agreement entered with one Harish Aggarwal for sale of plot No. 85/104 Khasra No. 16, Village Jandi, Ambala, which transaction

did not materialize and the amount of the earnest money received by the appellant-assessee was forfeited. The appellant-assessee had set up an

agreement dated 04.07.2002 for that assessment year. That transaction has no relevance to the assessment year 2002-03. The controversy raised

on this point is held against the appellant.

9. On point No. (ii), again we would find the same to be not a substantial question of law as it is basically the appreciation of evidence by the

assessing authorities as to whether the transaction set up by the appellant-assessee is genuine or not. The appellant-assessee took up the plea in his

earlier appeal before ITAT that he can produce said Leela Dhar Gupta even now, cannot turn around and say that it was not within his power to

reach said Leela Dhar Gupta and produce him before AO. It was rather found that though copy of agreement produced by the appellant-assessee

was entered with Leela Dhar Gupta son of Chandgi Ram, yet the draft of Rs. 2,50,000/- received by the appellant-assessee was prepared from

the account of one Deepak Gupta and issued by the Bank. There was of course account of one Leela Dhar in the said Bank, who was contacted

by the Department in the enquiry but that Leela Dhar stated that he never entered into such a transaction with the appellant-assessee. The

authorities below also took serious note of the fact that there were transactions running into more than 40 crores in the account of said Deepak

Gupta. Seriousness of such transaction was under investigation of the Department of Income Tax and ultimately it was found that the Bank has

been closed by the Reserve Bank of India because of the shady deals in which the said Bank was indulging.

10. The appellant-assessee has tried to take advantage of the subsequent information which he tried to obtain from the Department of Income Tax

as to what happened with the said investigation, but no concrete information was given, but that cannot even be entertained for considering it to be

a substantial question of law.

11. The following facts can be noted:-

(i) When the appellant-assessee was asked to explain the entry of Rs. 2,50,000 in his capital account for the assessment year in question, the

appellant-assessee placed reliance upon an agreement to sell.

(ii) The agreement that was produced was entered with Leela Dhar Gupta son of Chandgi Ram.

(iii) It was found as a matter of fact that the particulars of demand draft vide which payment under the said agreement was made, was from the

account of one Deepak Gupta, whose account with the Bank was found to be shady.

(iv) Despite every effort to trace out Leela Dhar Gupta failed because the said person was not found at the addresses furnished by the appellant-

assessee.

(v) The appellant-assessee was successful in his earlier appeal before the ITAT mainly on the contention that given an opportunity that he could

produce aforesaid Leela Dhar Gupta for proving the genuineness of the expenditure, which he failed to do.

(vi) The burden could be placed upon the revenue only if genuineness of the person on whose account, the appellant-assessee was claiming the

receipt of amount of Rs. 2,50,000/- was established and the said person could not be located at the addresses furnished by the appellant, and

(vii) There is no illegality committed by the authorities below in holding that the assessee routed undisclosed income in his capital account as

forfeited amount, and thus added the amount in his income for the assessment year in question.

We also determine this point against the appellant.

12. On point No. (iii), counsel for the appellant-assessee contended that the Department recorded the statement of one Leela Dhar, who was

having different parentage as per record of the Bank but the appellant-assessee was not given opportunity to cross-examine the said person. This

argument is wholly fallacious because the appellant-assessee claimed that Leela Dhar Gupta with whom he entered into an agreement was a

different person than the said account holder.

13. Point No. (iv) deserves to be decided against the appellant in view of the discussion on point No. (iii). There is concurrent finding on

appreciation of material collected and thus the authorities were justified in holding that assessee routed his undisclosed income to his capital

account in this manner.

14. The main thrust of argument of appellant was based upon the record of Income Tax and Sales Tax Return of said Leela Dhar Gupta, from

which the Revenue should have located the said assessee. This contention deserves to be rejected outrightly as CIT (A) in his earlier order dated

09.12.2005 (Annexure A-2) found as under:-

In the copies of return claimed to be of Sh. Leela Dhar Gupta, which were filed at the appellate proceedings, shows different addresses of Sh.

Leela Dhar Gupta, i.e. one address shown as W2-120, Arya Samaj Road, Uttam Nagar, Delhi, another address is shown as B-29, Somdutt

Chember, Bhikaji Cama Place, New Delhi. The assessee is giving different addresses in the returns and Ward/Circles etc. shown are different and

incomplete, for example: "for the Asstt. Year 2002-03, it is 26(3), and for the Asst. Year 2003-04, it is 24 N.D. Further, there is no evidence of

filing these returns as from the photocopy, stamp of the Department is not legible. Further enquiry had revealed that B-29, Som Dutt Chamber,

Bhikaji Cama Place, New Delhi, is an incomplete address. The assessee, therefore, cannot say that he had proved the identity of Sh. Leela Dhar

Gupta.

15. We may notice the judgment of Apex Court in Commissioner of Income Tax Vs. United Trading and Construction Co., that there is nothing in

Section 24 of the Finance (No. 2) Act which prevents the Income Tax Officer, if he is not satisfied with the explanation of the assessee about the

genuineness of sources of amounts found credited in his books to add them to the assessee's income amount in spite of these having already been

made the subject matter of the declaration made by the depositors/creditors. This point, thus, also goes against the appellant.

16. With the above findings, the appellant cannot possibly rely upon the provision of Section 51 of the IT Act. Moreover, the appellant never

raised this plea before any of the authorities below. When the transaction has not been accepted as genuine, there is no question of taking recourse

of Section 51 of the IA Act. Even the provisions of Section 51 of the IT Act are not applicable to the facts of this case.

17. As far as point No. (vi) is concerned, the result of investigation in the account of Deepak Gupta in Jai Laxmi Cooperative Bank Ltd. cannot be

of any consequence to the assessment in the case of appellant. There was no agreement with Deepak Gupta nor the appellant-assessee claimed

any direct link with Deepak Gupta, whose account was under investigation in a separate case. This point is also found against the appellant.

18. The legality or otherwise of the impugned order depends on determination of other questions. Point No. (vii) is disposed of accordingly. From

the above discussion, we hold that no substantial question of law arises in this appeal, which would turn the events in favour of appellant for either

remitting the matter for fresh decision or in interfering with the conclusions arrived at by the authorities below in respect of the disputed transaction.

We find no merit in the appeal and the same is dismissed.