

(2010) 12 JH CK 0012
Jharkhand High Court
Case No: Tax Appeal No. 63 of 2008

Ashok Kumar Sinha

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision: Dec. 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Income Tax Act, 1961 - Section 260A(7)

Citation: (2011) 1 LJLR 478

Hon'ble Judges: Sushil Harkauli, J; J.C.S. Rawat, J

Bench: Division Bench

Advocate: Biren Poddar, for the Appellant; J.C. to G.P. III, for the Respondent

Final Decision: Dismissed

Judgement

1. We have heard Mr. Biren Poddar Senior Advocate for the appellant at length and have also heard Mr. Deepak Roshan the learned Counsel for the Department.

2. The Assessing Officer, thereafter the C.I.T. and thereafter the Tribunal were three forums where this matter was contested by the Assessee. From the record it appears that the assessee was fully aware that as an N.R.I. only that part of his income was exempt from income tax which had been earned outside India. The assessee claims himself to be a salaried employee, who lived outside India for about 206 days and lived in India for 159 days during the relevant accounting year. The assessee had his bank account with the Bank of India in which certain amounts were deposited during the relevant accounting year. It was for the assessee to give proper account of such deposits to show and prove which part of these deposits pertained to income earned outside the country and which part of these deposits pertained to income earned within the county.

3. Despite the aforesaid three innings (before the A.O., the C.I.T, & the ITAT) no attempt was made by the assessee or the counsel for the assessee to state these simple facts, which were elementary in nature, and to furnish proof in support of such accounts.

4. In this appeal the assessee has filed an application to adduce additional evidence under Order 41 Rule 27 CPC as applicable in this appeal because of section 260A(7) of the Income Tax Act, 1961.

5. The ground given for adducing evidence does not fall within any of the clauses of Order 41 Rule 27 CPC The assessee has made an averment in paragraph No. 2 of the application under Order 41 Rule 27 CPC saying that although the assessee had not made any application before the tribunal in writing for adducing additional evidence but during the arguments some such oral prayer had been made by the counsel for the assessee which was objected to and therefore no additional evidence was adduced.

6. The averment cannot be believed. The primary reason is that the assessee appellant before us was assisted by counsel. The fact which was essential and elementary was not alleged a id proved before the A.O., or before the C.I.T. It was not taken in the memo of appeal before the ITAT. Normally, prayer for additional evidence is always made by way of j written application, and if the additional evidence is documentary as in this case, a photocopy of the same is annexed to the application.

7. We therefore, think that these averments in para 2 have been concocted by the assessee to create a ground for adducing additional evidence, Moreover, we also sense some ulterior motive due to which be simple evidence was not adduced during the 3 earlier innings of this litigation.

8. Learned Counsel for the appellant has urged that we should remand the case to give the assessee a chance to lead evidence. We are afraid that such decision on our part would set a very bad precedent. Apart from amounting to rewarding incompetence and utter negligence, if not deliberate mischief, we feel that taking such view may tempt every unscrupulous assessee to not contest matters properly and later seek remand on the ground that the case was not properly contested.

9. In the circumstances, we decline the prayer and reject the application under Order 41 Rule 27 CPC being IA. No. 1845 of 2008.

10. The appeal has been decided by the ITAT on a finding of pure fact recurred on the ground that the assessee failed to discharge the burden which he should and could easily have discharged and which was so elementary in nature that any person having the basic idea of Income Tax Law would have given the factual explanation of the source of earning leading to the bank deposits, and would have adduce documents in support of the facts in the very first instance before the

Assessing Officer, or at least in appeal before the CIT.

11. Accordingly, this appeal is dismissed being concluded by findings of fact.