

Commissioner of Income Tax Vs Hara Singh Fetheja

Court: Calcutta High Court

Date of Decision: Sept. 6, 1993

Acts Referred: Income Tax Act, 1961 "Section 132(5), 256(2), 69

Citation: (1994) 73 TAXMAN 120

Hon'ble Judges: Nure Alam Chowdhury, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256(2) of the income tax Act, 1961 ("the Act") for the assessment year 1979-80, the following question of law has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the source of deposit of Rs. 48,000 has

been satisfactorily explained and thereby deleting the addition of Rs. 48,000 from income ?

The assessee is an individual. The assessment year involved is 1979-80 for which the accounting year ended on 31-3-1979. The income tax

Department carried out a search in the residential premises of the assessee on 19-8-1981 and seized fixed deposit receipts of the total value of Rs.

1,60,700 out of which fixed deposits of Rs. 48,000 were found to be related to the assessment year under consideration. A deposit of Rs. 36,000

was in the joint names of Smt. Indarjit Kaur (assessee's wife) and Smt. Rani Kamal Patheja (assessee's daughter). Another deposit of Rs. 12,000

was found in joint names of Smt. Indarjit Kaur (wife) and Shri Narendra Singh (assessee's son). Smt. Indarjit Kaur made a statement to the

authorised officer at the time of search that she was only a housewife and had no source of income. She further admitted that all the fixed deposits

in the joint names of self, son and daughter were made out of money given to her by her husband.

2. However, in the proceedings u/s 132(5) of the Act, and during the course of regular assessment proceedings, Smt. Indarjit Kaur and other

ladies tried to explain the source of said two fixed deposits. The Assessing Officer rejected the claim and treated Rs. 48,000 (value of two fixed

deposits) as the assessee's income from undisclosed sources.

3. The assessee challenged the above addition in appeal before the Commissioner (Appeals). The Commissioner (Appeals) deleted the addition

with the following observations:

I have carefully considered the facts of the case and the submission made. It is seen that the investment of Rs. 36,000 by way of fixed deposit in

the name of the assessee's wife Smt. Indarjit Kaur has been properly explained as having been made by her out of a loan of Rs. 36,000 taken by

her from her mother-in-law. Adequate evidence has been filed in support of the claim for the loan. Smt. Indarjit Kaur has also shown this loan and

investment in fixed deposit in her balance sheet and the same has been considered by the income tax Officer. The Hon'ble Settlement Commission

has also held in disposing of the settlement petition filed by the assessee that the investment of Rs. 36,000 is to be considered in the hands of Smt.

Indarjit Kaur only. As regards the investment of Rs. 12,000 in fixed deposit in the name of Smt. Garnit Kaur, daughter-in-law of the assessee, the

appellant's contention is that the investment is out of cash gifts received by her at the time of her wedding from friends and relations. It is seen from

the order u/s 132(5) that this explanation had not been accepted by the income tax Officer only for the reasons that the investment was made in

July 1978 and the marriage was in the year 1977. I do not see anything surprising about this delay of a few months in making the investment.

Moreover, the amount of Rs. 12,000 cannot also be such an amount as could not have been received as marriage gift at the time of the wedding in

a fairly well-to-do business family. It is also seen that the income tax Officer assessing Smt. Garnit Kaur has also considered this amount while

completing her assessment. On all these facts, I am of the opinion that there was no justification for rejecting the explanation furnished for the

investment in the two fixed deposits of Rs. 36,000 and Rs. 12,000 and making addition for the same amounting to Rs. 48,000 in the hands of the

assessee u/s 69 of the income tax Act. The addition of Rs. 48,000 is, therefore, deleted.

4. Being aggrieved, the revenue brought the issue in appeal before the Tribunal. The Tribunal after hearing both the parties at length confirmed the

order of the Commissioner (Appeals).

5. As would appear from the narration of facts, the Commissioner (Appeals) accepted and found that the investment of Rs. 36,000 by a fixed

deposit in the name of the assessee's wife has been properly explained as has been made by her out of a loan. Adequate evidence has been filed in

support of the claim for the loan which the Commissioner (Appeals) had accepted. The revenue preferred an appeal. The Tribunal did not accept

the contention of the revenue and confirmed the order. That apart, Settlement Commission also held that the investment of Rs. 36,000 shall be

considered in the hands of Smt. Indarjit Kaur only. The revenue has not challenged the aforesaid findings of the authorities as being perverse and,

accordingly, this question as to whether the source of deposit was satisfactorily explained or not cannot be raised before this Court.

6. Regarding the other deposit of the investment of Rs. 12,000, the only ground on which the revenue proceeded was that the investment was

made in July 1978 and marriage took place in the year 1977. In other words, in a short spell of time this could not have been done. The

Commissioner (Appeals) and the Tribunal accepted that such a small amount could have been received as a marriage gift at the time of the

wedding in a fairly well-to-do business family. It was also found that the ITO assessing Smt. Garnit Kaur has also considered this amount while

completing her assessment. Here again the basic findings have not been challenged as being perverse and it must be held that the assessee

satisfactorily explained the source of the investment.

7. For the aforesaid reasons, we answer the question in the affirmative and in favour of the assessee. There will be no order as to costs.

Chowdhury, J.

I agree.