

CIT, Jaipur Vs. M/s. Bhatnagar Hotels & Resorts

DATE OF ORDER ::: **03.01.2017**

Mr. Anuroop Singhi, for the appellant.
Mr. Prakul Khurana for Mr. Sanjay Jhanwar, for the respondent.

- “1. Whether on the facts and circumstances of the case, the learned ITAT was right and justified in reducing the additions of Rs.15,81,000/- to Rs.3,12,932/- on renovation of Hotel Hawamahal without there being material on record and whether the finding in respect of above additions is perverse?
2. Whether on the facts and circumstances of the case, the learned ITAT was right and justified in allowing the set off Rs. 16 lacs as lease payment which was disallowed by the A.O. and confirmed by CIT(A) and whether the finding in respect of the above additions is perverse?
3. “Whether on the facts and circumstances of the case, the learned ITAT was right and justified in holding that Rs. 16 Lac had flown back from unexplained lease payments and whether the finding in respect of the above additions is perverse?”
4. “Whether on the facts and circumstances of the case, the learned ITAT was right and justified in deleting the additions made of Rs. 1,73,600/- for investment in kullu land and whether the finding in respect of the above additions is perverse?”
5. “Whether on the facts and circumstances of the case, the learned ITAT was right and justified in deleting the additions of Rs. 4,82,065/- for Raisina

land and whether the finding in respect of the above additions is perverse?"

3. The brief facts of the case are that the assessee company is a closely held company of Mr. V.K. Bhatnagar and his family members and it is running the business of hotels and restaurants. A search u/s 132 was conducted on 15.1.1999 at various places of assessee group. Among other places in the group, search u/s 132(1) of I.T. Act was conducted at registered office of the company at A-1, South Extension Part-I, New Delhi on 15.1.1999. Besides, surveys u/s 133A on 15.1.1999 were conducted at Hotel Hawa Mahal, Jaipur and at Hotel Manali Mahal, Manali during the course of search/surveys various documents relevant to the assessee company were found/seized from the above premises as well as some other premises searched.

3.1 A notice u/s 158BC was issued and served on the assessee company on 22.11.2000. The return u/s 158BC was due on 8.12.2000. The assessee company vide letter dt. 4.12.2000 sought extension of time of 45 days to prepare the return stating that it did not have the Xerox of the seized documents. Assessee company vide this office letter dt. 1.12.2000 was given due opportunity to take the Xerox of required documents and was asked to file the return by 18.12.2000. Thus, the extension was granted upto 18.12.2000. However, the assessee company sought further extension till 30.12.2000 as complete copies of documents/statements could not be taken by it. Further extension was granted upto 1.1.2001. The assessee company

filed its return for the block period on 1.1.2001 declaring undisclosed income of Rs.65.50 lacs.

4. Counsel for the department Mr. Singhi has contended that in view of the issue no.1 the unexplained investment in renovation of Hotel Hawa Mahal, the assessee has shown the addition of Rs.15,81,000/- whereas the assessing officer has shown addition of Rs.30,16,789/- which reflected in page no.6 to 16 and he further contended that CIT(A) has considered the same at Rs. 375789/- and discussion has taken place in para no.5 to 10 and the amount of Rs.375789 was allowed to be deducted which was accepted by the department. However, tribunal has committed serious error in reducing Rs.3,12,932/- though at the time of search, no search entry was found in the books of accounts and the same was not reflected. It was only admitted by one representative Umesh Mehta during search.

5. Counsel for the appellant Mr. Singhi has relied upon the following decisions:-

5.1 In Tribhovandas Bhimji Zaveri vs. Union of India reported in (1993) 204 ITR 368 (SC) holding as under:-

“We do not find ourselves in agreement with Mr. Divan's submission that Sub-section (2) of [Section 3](#) should be construed as if it were a proviso to Sub-section (1) and to treat it as merely carving out of the ambit of Sub-section (1), The authorities dealing with the manner of interpreting a proviso need not, therefore, be dealt with. Nor do we agree with Mr. Divan when he says that reading the words of Sub-section (2) literally will produce an absurd result. The words of Sub-section (2) are clear and unambiguous; the words must, therefore, be interpreted as they read. So read, they harmonise with the provisions of [Section 14](#). To those assesseees who have declared concealed income, subsequent to a seizure during a previous year, for that previous year or any previous year prior thereto the more beneficial provisions of [Section 3](#) do not apply, for the declaration is not really voluntary, and the less beneficial provisions

of [Section 14](#) do. Certainly, the classification between those who make truly voluntary disclosures of concealed income and those who are impelled to make such disclosures because seizures of their books, documents and assets have already been effected is real and valid and bears a nexus to the object to be won. Emphasis was laid upon the fact that even a seizure during the previous year subsequent to the making of the declaration under [Section 3](#) could nullify the declaration if the provisions of Sub-Action (2) thereof were read as we read them, and this would lead to the absurd position that some income-tax authority, with that object in mind, could conduct a search, seize some articles' and so invalidate the declaration. The said Ordinance/Act does not say that upon a declaration being made thereunder the income-tax authorities are de-barred from conducting a search and effecting a seizure in respect of the previous year concerned. There is no reason to assume that such search or seizure, if conducted, would be for any ulterior motive. It could well be that an assessee has disclosed only a part of his concealed income for a previous year and a search and seizure is required to unearth the rest.

Upon the interpretation placed by us on [Section 3](#) "and [Section 14](#), we are of the view that the appellants' declaration of concealed income was rightly rejected under [Section 3](#) and the High Court was justified in dismissing the appellants' writ petition there against."

5.2 In *Hakam Singh vs. CIT* (1980) 124 ITR 228 (Allahabad)

which reads as under:-

"The question is whether a return, filed out of a sense of fear of penalty or prosecution, is voluntary. [The I.T. Act](#) does not define the term "voluntarily". The word "voluntary" has been denned in Shorter Oxford Dictionary, Vol. 2, p. 2371, as performed or done of one's own free will, impulse or choice not constrained, prompted or suggested by another, proceeding from the free unprompted or unconstrained will of a person. A return filed under the constraint of exposure to adverse action by the I.T. department, in our opinion, will not be voluntary within the meaning of [s. 273A](#). The action of the petitioners in filing the returns after the books of account had been seized at a raid was impelled by the compelling circumstance that the petitioner was likely to be dealt with under the penal provisions of the [I.T. Act](#). The action of the petitioner in filing the returns under such a constraint cannot be said to be voluntary. In [Mool Chand Mahesh Chand v. CIT](#) [1978] 115 ITR 1 (All), the ITO started investigation by asking for details in respect of several matters while conducting the assessment proceedings for the year 1969-70.

Thereafter, the assessee filed returns for the years 1964-65 to 1970-71. It was held that since the investigation had started and concealed income had come to light, it was a case covered by the word "detection" occurring in [s. 273A](#). It was further observed that in these circumstances the returns were filed after the assessee felt that the game was up because the investigation initiated by the ITO exposed him to a situation that he had assessable income in respect of other years; it cannot be said that the filing of the return was voluntary. This decision shows that the term "voluntary" under [Section 273A](#) has been used to indicate an action free of any constraint. A return filed in order to save oneself from a possible penal action cannot be termed "voluntary".

5.3 In *Natwar Lal Joitram Raval vs. CIT* (1993) 70 Taxman 523

(Bombay) wherein it has been observed as under:-

"Now, as against this, our attention has been drawn by Dr. Balasubramanian, learned counsel for the Revenue, to the judgment of the Allahabad High Court in [Hakam Singh vs. CIT](#), which followed the earlier judgment of that Court in *Mool Chand Mahesh Chand vs. .* The Allahabad High Court said that the question was whether a return filed out of a sense of fear of penalty or prosecution was voluntary. The word 'voluntary' had been defined as 'performed' or done of one's own free will, impulse or choice, not constrained, prompted or suggested by another, proceeding from the free, unprompted or unconstrained will of a person'. A return filed under the constraint of exposure to adverse action by the Revenue would not be voluntary within the meaning of [s. 273A](#). The action of the petitioner before the Allahabad High Court in filing the returns after the books of account had been seized at a raid was impelled by the compelling circumstances that the petitioner was likely to be dealt with under the penal provisions of the [IT Act](#). The action of the petitioner in filing the returns under such constraint could not be said to be voluntary. This was what had earlier been held in *Mool Chand Mahesh Chand's case*."

6. For issue no.2 & 3, he contended that setting off of payment of lease rent, claimed to be received back, is baseless inasmuch as the AO while considering this issue in para no.4 of the order which was confirmed by the tribunal, tribunal discussed the same and deleted it completely.

7. Unexplained investment in land at Kullu was discussed in

para no.5.1 by AO which was confirmed in the order of CIT(A) in para no.33 to 35 but the same was deleted by the tribunal in para no.28 to 29 as perverse.

8. Unexplained investment in land at Raisina was explained in para no.5.3 by the AO with reasoning which was confirmed by the CIT(A). However, tribunal deleted in para no.28 to 29.

9. Counsel for the respondent Mr. Khurana contended that it is block assessment under section 69.

Section 69 of the Income Tax Act reads as under:-

"69. Unexplained investments.- Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year. "

10. He has taken us to para 8 of the tribunal which reads as under:-

"By keeping in mind the ratio laid down by Bombay High Court in the case of CIT vs. Shamlal Balram Gurbani, 249 ITR 501, we are of the view that such income cannot be considered as undisclosed income in the hands of the assessee. Even otherwise entry in the books of accounts is not very important factor for making the addition u/s 69C where the more important factor is whether the expenditure has explained source or not. Once the source is explained, then the addition is not warranted. "

11. With regard to issue no.2 & 3, the Tribunal has held as under:-

"In the instant case, the availability of the cash of Rs.35,16,670/- was already proved as this amount was for tax. In other words, the availability of the cash has not been proved incorrect by the lower authorities. When the assessee has already offered this amount, it cannot be taxed twice as submitted by

the Id. A/R that firstly when it was considered as undisclosed income and second time when it was debited in the books out of regular source. In that instant case, the nexus is already established for the reason that the total lease rent was paid for Rs.40,16,670/- out of which only Rs.5,00,000/- was verifiable at the proper place. It means that the total lease rent was not disputed by the lower authorities. The balance amount was paid from undisclosed sources and was offered for tax. When it is so, then the assessee is entitled for the telescoping benefit. Hence, by setting aside both the orders of the lower authorities, we delete the addition of Rs.16 lakhs. Thus, the assessee will get the benefit of this amount. The next grievance of the assessee is mentioned in Ground No.5, which runs as under:-

"Under the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals)-I, Jaipur has erred in confirming the addition of Rs.1,73,600/- on account of investment in land at Kullu and Rs.4,82,065/- on account of investment in Rajasthan land by not allowing the set off of such investment out of availability of cash from lease rent flown back in respect of hotel Ibex."

This is the supplementary ground to Ground No.3. For the similar

reasons, we delete the addition of Rs.1,73,600/- on account of investment in land at Kullu and Rs.4,82,065/- on account of investment in Rajasthan land. Both the additions are deleted being set off against the available cash which was flown back in respect of Hotel Ibex, as discussed above. The assessee will get the relief accordingly."

12. He further contended that the view taken by the tribunal is just and proper. There is no substantial questions of law. It is only appreciation of evidence and there is concurrent finding as the order of CIT(A) was not challenged by the Department. In view of the same the appeal deserves to be dismissed.

13. We have heard counsel for the parties.

14. Issue no.1 regarding deletion, addition which was made for renovation of Hotel Hawa Mahal, in view of the provisions of Section 69 after renovation, it was made Rs.15,81,000/-. No doubt it has come on record as argued by Mr. Singhi that it is make to believe but that is block assessment. In our opinion, in

view of the provisions of Section 69, no error has been committed by the tribunal. Therefore, issue no.1 is answered in favour of the assessee and against the department.

15. Regarding issue no.2,3,4 & 5 it is true that original payment was made and subsequently for the cash in hand, the assessee has explained different years income which is unexplained and the tribunal while appreciating the same in para no.27, 28 & 29 held as stated above.

16. We are in complete agreement with the view taken by the tribunal. The issue is answered in favour of the assessee and against the department.

17. Accordingly, the appeal stands dismissed.

(Vinit Kumar Mathur), J.

(K.S. Jhaveri), J.

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