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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 15.12.2016

+ **ITA 613/2004**

COMMISSIONER OF INCOME TAX DELHI Appellant
Through: Sh. Ashok. K. Manchanda, Sr. Standing
Counsel with Ms. Sherry Goyal, Advocates.

Versus

LATE SH. K.M. BIJLI THRU LR'S Respondent
Through: Sh. Salil Kapoor, Ms. Ananya Kapoor, Sh.
Sanat Kapoor and Sh. Sumit Lal Chandani, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The question of law framed in this case is as follows:

“Whether the order of the Tribunal deleting additions made by the Assessing Officer and confirmed by the CIT(A) relating to interest on bank accounts in UK and loan given by the assessee to Mr. N. Chhabra in UK is perverse, contradictory and based upon surmises and conjectures?”

2. The original assessee died even before the proceedings commenced.

3. The brief facts are that the assessee, Late Sh. K.M. Bijli [hereafter “Sh. Bijli”] was a tax payer. On the basis of an information received from the UK tax authority through letter dated 12.05.1989, in terms of the Indo-UK Double Taxation Avoidance Agreement [hereafter “DTAA”], the appellant/Revenue reopened the completed assessment for AY 1982-83 by reassessment notice dated 08.12.1992. Sh. Bijli died on 11.01.1992. The

basis for the reopening of the completed assessment was a statement made by Bijli on 06.06.1983 to the UK revenue officials, who had suspected evasion of income on the part of one Sh. K.L. Kumar [hereafter “Sh. Kumar”] – Sh. Bijli’s brother-in-law. The communication received from the UK revenue authorities was that in the interview conducted in Sh. Kumar’s counsel’s office (since Sh. Kumar was facing investigation for concealment of income), Sh. Bijli made some statements that the amounts received by Sh. Kumar was in reality his. In the course of the interview, Sh. Bijli appears to have indicated that during his numerous visits (numbering 25) spanning several years, he consistently made deposits in Kumar’s account which aggregated to UK £2 million (the exchange value of which in 1992 was about ₹2.4 crores).

4. The reassessment notice was opposed by the legal representatives of Sh. Bijli but without success. In these circumstances, the assessment was completed and the Assessing Officer (AO) brought to tax the sum of ₹2.4 crores. In doing so, the relevant discussion in the AO’s order is as follows:

“In an interview at the offices of Rothburn Burton & Partners Manchester, on 6th June, 1983 to the assessee replies to some of the following questions as under:-

Q. No.12 - What are or have been, over the last 10 years, your business interests?

Ans. by Transport business 125 branches, 200 agencies all assessee- over India. Picture Hall, Finance Company property Income, in India; and in U.K., I have no business in United Kingdom.”

Q.No.13- Have you even had any business interests in the United Kingdom?

Ans. -Only money deposits in Banks.

Q. No.14 - How of ten have you been to the U.K. in the last ten years.

Ans. -Probably 25 in ten years – 1981 – 2 or 3 times, book at passport.

A reading to the above answers makes clear that the assessee is having transport business in India, and money deposits in Banks in U.K. He visited U.K. frequently, about 2-3 times in a year.

It was gathered from the investigation by the U.K. Tax Authority in the case of Kumar Bros., under their company name of Rajan Trading Co. Ltd. and during the interrogation, the deceased assessee deposed before the U.K. Tax Authority that he had bank deposits to the tune of £ 2 Million in U.K. The U.K. Revenue authority stated that Mr. Bijli, the assessee, came to the U.K. in June, 83 in an attempt to explain the presence of that money and when interviewed, claimed that the monies contained within the accounts belong to the assessee.

The assessee was asked to explain that in view of above facts, and his statement before the U.K. Tax Authority, why the amount of Rs.2,40,00,000/- equivalent to £2 million lying in U.K. Banks, be not treated his income. The assessee merely stated that the above accounts/allegations, are wholly baseless that there is no material to allege that the assessee had various accounts. The above material placed on record is sufficient to prove that the above accounts pertain to the assessee either in his name or in the names of his close associates in Muslim Commercial Bank, U.K.

Hence, the amount of Rs.2,40,00,000/- is treated as Income of the assessee for the year under assessment. Penalty proceedings u/s 271(1)(c) are also initiated on this point.”

5. The matter appears to have been appealed against and after successive remands, both at the original assessment and the appellate stage, the CIT(A), after analysing the nature of the correspondence between the Indian tax authorities and UK revenue authorities concluded that the evidence pointed to interest income to the tune of UK £64,500/- and further amount of UK £55,000/- in the account of one Sh. Chhabra and brought it to tax. The assessee felt aggrieved and approached the Income Tax Appellate Tribunal (ITAT). As to the correctness of the addition, based on the assumption that the UK £2 million in fact and in reality belonged to the assessee, it was urged that in the absence of any objective or cogent material, or even bank statements, the statement attributed to Sh. Bijli and his brother-in-law Sh. Kumar were *ipso facto* insufficient.

6. The Revenue, on the other hand, contended that these statements were made in the course of proceedings that should be treated as regular having regard to the nature of revenue loss in UK. The ITAT considered the letters written by the UK authorities dated 10.07.1989 and 11.09.1989, shared under the Indo-UK DTAA. It also took note of the letter written by the UK revenue department in reply to the letter of Joint Secretary of the Govt. of India on 24.11.1988. The relevant extract of the letter written by the UK tax authorities have been reproduced in the ITAT as follows:

“Copies: Assessments are not available because the matter was settled by negotiation and an officer in settlement was accepted. However, the various bank accounts at the Muslim Commercial Bank which were thought to be in the control of the Kumars were broken down into three categories. The first category was accepted as being neither in the possession of the Kumar’s nor Bijli. The second category was accepted by the Inspector as

probably being in the possession of Bijli and consisted of capital of Pound 626885 and interest of Pound 181 XXV8. Unfortunately, a breakdown of the periods for which the interest arose is not available. The third category was for accounts, the interest on which was assessed on the Kumars treated as agents for unnamed foreign parties, this interest being Pound 558590.

This information has been provided under the terms and conditions of Article XXV of our Double Taxation Conventions.”

7. The ITAT carried out an analysis of the queries put to Sh. Kumar and the materials considered, including the bank account statements in relation to Sh. Kumar as well as Sh. Chhabra. It thereafter was of the opinion that since UK revenue authorities did not accept the assessee's explanation, particularly, that the amounts deposited belonged to him, there could be no question of assessing him since such amounts have been brought to tax in the UK. The ITAT, based its conclusions on the following observations:

“16. We may refer to another important aspect having a bearing on the evidentiary value of the interview notes communicated by the British Tax Authorities. Interviews with the assessee were conducted by the tax officials of Inland revenue UK at the office of Rothburn Burton & Partners, who were Tax Advisors of Shri K.K. Kumar. The interviews with the assessee were obviously informal, oral and outside the pale of tax laws of the UK. No statement has been recorded and no oath has been administered to the assessee by the Enquiry Officials. A mere informal conversation with the assessee at the office premises of his brother in law Shri K.L. Kumar's Tax advisors could not be the sole basis of the finding that the assessee had invested his funds in bank accounts particularly when no evidence whatsoever to support and supplement the preliminary details, elucidated in the informal conversation with the assessee have been brought on record. We are aware

that rigors of rules of evidence contained in the Evidence Act are not applicable to the income tax proceedings and the income tax authorities are fully entitled to invoke the principles contained in it. However, the proposition cannot be extended to support and sustain tax assessments made on the sole basis of oral and informal conversation held with the assessee by a tax authority which is denied by the assessee.

17. Regarding the factual merits of the two additions, even if we proceed on the basis of the interviews as recorded by the British Tax authorities, we feel that the impugned additions sustained by the Id. CIT(A) are liable to be deleted. Regarding the interest income of Pound 64,500 estimated by the Id. CIT(A), we are unable to sustain the same in as much as there is no evidence brought on record before us in support of any such interest earned by the assessee during the financial year 1981-82. There is no information on record before us regarding the extent of deposit held by assessee in his account. Merely because a sum of Pound 6,50,000 has been deposited on 22.7.1980 would not by itself justify the assessment of any interest income for the financial year 1981-82 relevant to assessment year 1982-83 under reference. With regard to loan to Shri P.N. Chhabra even the so called bank entries do not support any such addition for assessment year 1982-83. The loan has been given on 1981. There is nothing on record as to whether the advancement of the loan falls in the accounting year 1982-83. Moreover, we find from the extract of the interview containing questions and answers No.34 to 37, as reproduced above, that the assessee has transactions with Mr. Chhabra right since the year 1970 and even has received loans from him in the year 1980 or 1983. Thus, the date of the loan in question as falling during the year under reference or being out of undisclosed funds generated during the year under question is not established. Even otherwise, from the interview it is clear that the assessee has been having deposits right since 1974 in the bank and therefore, any addition merely on the basis of answer to question no.36 would not be justified. Thus, even on merits of the two additions, proceeding on the basis of the bank

accounts as per the interview recorded by the tax officials, we feel that the impugned additions deserve to be deleted.”

8. It is urged by the Revenue that the ITAT’s observations with regard to the probative value of the statements made are erroneous. Highlighting the compulsions of the Indian authorities who were concerned by the information flow as well as the nature of the revenue proceedings in UK, it was contended that the best evidence was in fact available with the assessee who did not reveal anything before the Indian tax authorities or even for that matter, the UK authorities. Sh. Ashok. K. Manchanda, learned counsel emphasized that adverse inference ought to have been drawn and was in fact drawn by the AO, who brought the entire amount to tax and this was pruned to a certain extent by CIT(A) who brought to tax only the interest.

9. Learned counsel for the assessee, on the other hand, submitted that there is no infirmity with the impugned order of the ITAT which has correctly applied the principles. It was submitted that in the absence of any corroborative material which would well have been sourced by the Indian authorities at the relevant time, the belated reassessment proceedings carried out after the death of the original assessee could not have resulted in these adverse consequences.

10. This Court has considered the submissions and materials on record. No doubt, the letters received from the UK authorities were sufficient to trigger a reassessment proceedings but exactly that is where the Revenue, in our opinion, faltered. Having received information, it could well have proceeded through a reassessment proceeding at the earliest opportunity, i.e. in October 1989 or latest by December of that year, the revenue chose to wait for three years and sought to reopen at least a decade-late completed

assessment. By then the assessee had died. There are certainly pointers to interesting omissions and in any event, leads that could have been developed by the AO, such as queries to the Bank of India, for foreign inward remittances and their source. If the assessee were alive, upon receipt of such information, he might well have been confronted with them. The lack of any probe in this regard and almost exclusive reliance upon the UK revenue information, in our opinion, was not sufficient to conclude that the amount which was attributed to the deceased assessee, i.e. UK £2 million in fact belonged to him. In fact, the materials show that these amounts were brought to tax in the hands of Sh. Kumar. Rather than accepting what ought to be the correct standard, this Court is of the opinion that the tax authorities did not do what they could have and had not done what they should have when they did get information in September 1989 and woke-up far too late.

11. For these reasons, we are of the opinion that the question of law framed should be answered against the revenue and in favor of the assessee. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

DECEMBER 15, 2016