

ORDER SHEET  
ITA No. 96 of 2005  
IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION (INCOME TAX)  
ORIGINAL SIDE

KAFEEL AHMED  
Versus  
COMMISSIONER OF INCOME TAX, KOLKATA- XX, & ANR.

BEFORE:  
The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 21st April, 2015.

Appearance:  
Mr. Ananda Sen, Adv.  
Mr. Biswajit Mal, Adv.  
For the Appellant.

Mr. S. B. Saraf, Adv.  
For the Respondents.

The Court :- The subject matter of challenge in the appeal is a judgment and order dated 7<sup>th</sup> October, 2004 pertaining to block assessment for the period between 1<sup>st</sup> April, 1989 and 20<sup>th</sup> January, 2000. The facts and circumstances briefly stated are as follows:

During search and seizure conducted on 20<sup>th</sup> January, 2000 and subsequent thereto it was discovered that the assessee had from time to time paid a sum of Rs.9 lacs to various persons. Particulars of the persons to whom such payment was made was called for from the assessee, but he did not disclose. The assessee was asked to produce his books of accounts which he did not disclose on the ground that due to unavoidable reasons he was unable to produce the same. The assessee came up with an explanation that he had in his

possession old silver utensils and gold jewellerys. He wanted to sell the aforesaid jewellerys and the utensils. He contacted middlemen to whom possession of the utensils and the jewellerys was made over in lieu of deposits made by them in cash with the assessee. The middlemen thereafter sold the utensils and the jewellerys to the merchants located in Surat, Jaipur and Kolkata. After the sale proceeds were paid to the assessee by cheque, the deposits earlier made together with payment of some amount on account of commission were refunded to the middlemen. The aforesaid explanation offered by the assessee was not proved either by any oral or documentary evidence. Books of accounts he had not disclosed as already indicated above. The Assessing Officer in these circumstances treated the payment of a sum of Rs.9 lacs as the undisclosed income of the assessee during the block period. The aforesaid finding has been upheld by the C.I.T. and the learned Tribunal. The assessee is before us. The appeal was admitted on 13<sup>th</sup> June, 2005 and the following question of law was formulated.

“Whether on a true and proper interpretation of Section 68 the learned Tribunal was correct in law in confirming the addition and/or treating the said sum of Rs.9 lacs as an undisclosed income of the petitioner when considering the facts and circumstances of the case and the failure of the CIT (Appeals) in not exercising the powers given to the same as co-equal to that of the Assessing Authority, the confirmation of the order of the CIT (Appeals) by the Tribunal by merely observing that the case had been considered in its totality

without indicating the background for its consideration is correct and/or perverse?”

From the facts and circumstances narrated above the undisputed fact which emerges is that the assessee paid a sum of Rs. 9 lacs or a little more than that in cash and received identical amount in cheque. These two facts are not in dispute and they have been admitted. Rest of it is an attempt on the part of the assessee to offer an explanation which, however, did not exceed the boundary of a fiction.

Mr. Sen, learned Advocate appearing for the Appellant, submitted that the Assessing Officer is both an adjudicator and an investigator. He, therefore, was under an obligation to make the necessary investigation. Without investigation the Assessing Officer could not have held that the sum of Rs.9 lacs or a little more than that paid in cash by the assessee was his undisclosed income and not the amount of security as was the version of the assessee.

We are unable to accept such a specious plea. True it is that the Assessing Officer occupies the position of an adjudicator and an investigator but the role of investigator is to be discharged for the purpose of ensuring that income made by the assessee does not go unassessed. It is no part of the duty of the Assessing Officer to make investigation for the purpose of collecting evidence in support of the case made out by the assessee. It is the bounden duty of the assessee to prove his case. If he has adduced prima facie evidence in support of his case, it will be for the Assessing Officer to adduce evidence to disprove the facts proved prima facie by the assessee. If the Assessing Officer fails to discharge his onus the prima facie evidence adduced by the assessee may in some cases become

conclusive. But, if the assessee does not adduce any evidence it is no part of the duty of the Assessing Officer to start investigation and/or to collect evidence in support of the case of the assessee. It is to be pointed out that the assessee in this case did not disclose the identity of the persons to whom the payment was made. The assessee could have asked the Assessing Officer to issue summons to the so called middlemen under Section 131 and/or 133(6) of the Income Tax Act. The assessee could have done it because he knew the person to whom the payment was made. It was not, therefore, possible for the Assessing Officer even if he wanted to, to undertake any such enquiry. For the aforesaid reasons the submissions advanced by Mr. Sen are rejected. The judgment rendered by the learned Tribunal considering the admitted facts and circumstances of the case cannot but be said to have expressed a possible view and therefore the question has to be answered in the negative. The addition of a sum of Rs.9 lacs as an undisclosed income is correct in law. The judgment rendered by the learned Tribunal is not perverse. The question is accordingly answered against the assessee. The appeal is dismissed.

The parties shall bear their own costs.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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