In the High Court for the States of Punjab and Haryana at Chandigarh

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ITA No.424 of 2007

Date of decision:10.4.2008

The Commissioner of Income Tax , Jalandhar-II, Jalandhar

Appellant

Versus

Avinash Chander Sharma .. Respondent

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr.Justice Rakesh Kumar Garg

Present: Mr.Sanjiv Bansal, Advocate
for the Revenue/appellant.

Rakesh Kumar Garg,J

A search under section 132 of the Income Tax Act, 1961 (for short the "Act") was conducted on 24.6.1997 at the residential and official premises of the assessee. Thereafter, making post search inquiries, the case was handed over to the Assessing officer. A notice under Section 158 of the Act was issued to the assessee, which was served on 31.8.1997. In response to the notice, the return of income for the block period 1.4.1987 to 24.6.1997 was filed on 29.5.1998 declaring therein a total undisclosed income of Rs.56,408/-. During the course of proceedings, it was found that the

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assessee has four daughters, namely, Nisha, Meenakshi, Sonia and Sunaina. The first three daughters were married between December 1995 to November, 1996 and the other one i.e., Sunaina was unmarried at the time of search. It was further found that the daughters of the assessee were not engaged in any business or any other work, which could generate any income, but they were maintaining bank accounts in which huge amounts were deposited from time to time. Therefore, the Assessing officer on the basis of seized material conclusively held that the bank account in the name of daughters, namely, Nisha, Meenakshi,Sonia and Sunaina were controlled by the assessee, who is none else than the benamidar of the daughters and therefore, the following additions were made by the Assessing Officer for the block period vide order dated 30.6.1999 passed under Section 158 BC(c) of the Act:-

a) On A/c of cheques and cash deposits in S.B.A/cs of 4 daughters	Rs.70,33,060/-
b) On A/c of interest income during Block period on bank deposits of Four daughters	Rs. 3,23,118/-
c) On A/c of deposits during Block period in S.B.A/c No.810 with Bank of Baroda	Rs.1,16,310/-
d) On A/c of expenses on marriages of daughters	Rs. 5,78,100/-
e) On A/c of deposits of Rs.1,32,158/- during block period in the name of Smt. Sita Rani.	Rs. 1,32,158/-
f) On A/c of Foreign Remittance received by assessee and family members.	Rs.20,43,756/-
g) On A/c of investment and estimated	

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profit during block period in the concern of Sujeet Sharma held to be property concern of assessee. Rs. 7,00,000/-

h) Household items Rs. 50,000/-"

On an appeal filed by the assessee, the Commissioner of Income Tax(Appeals) (for short the "CIT(A)") deleted some of the additions,i.e.,(i) Rs.70,33,060/- on A/c of cheques and cash deposits in S.B.A/cs of 4 daughters,(ii) Rs.3,23,118/- on A/c of interest income during Block period on bank deposits of Four daughters (iii) Rs. 5,78,100/- on A/c of expenses on marriages of daughters (iv) Rs.20,43,756/- on A/c of Foreign Remittance received by assessee and family members (v) Rs. 7,00,000/- on A/c of investment and estimated profit during block period in the concern of Sujeet Sharma held to be property concern of assessee and (vi) Rs. 10,000/- on account of Household items vide order dated 28.3.2002 by holding that the daughters of the assessee are independent assessees and having declared the bank accounts, deposits in their name, have to be considered in their hands.

Feeling aggrieved against the said order, the Revenue filed an appeal before the Tribunal by raising the following grounds:-

"1. That on the facts and circumstances of the case, the learned CIT(A) has erred in law in deleting the addition of Rs.70,33,060/- made on account of undisclosed income of the assessee by bringing to tax the deposits in the Saving Bank Accounts of the four daughters of the assessee.

2. That on the facts and circumstances of the case, the

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learned CIT(A) has further erred in law in deleting the addition of Rs.3,23,118/- on account of interest income during the block period on bank deposits of the four daughters of the assessee.

3. That on the facts and circumstances of the case, the learned CIT(A) has again erred in law in deleting the addition of Rs.20,43,756/- on account of foreign remittance received by the assessee, his wife and four daughters .

4. That while giving relief as per ground number 1,2 and 3 above, the ld. CIT(A) failed to appreciate that the daughters were benamidars of the assessee and the unexplained deposits and interest thereon was rightly treated as income of the assessee and assessed accordingly.

5. That on the facts and circumstances of the case, the learned CIT(A) has further erred in law in deleting the addition of Rs.5,78,100/- on account of unexplained marriage expenses of the daughters of the assessee.

6. That on the facts and circumstances of the case, the learned CIT(A) has further erred in law in deleting the addition of Rs.7,00,000/- on account of unexplained investment and estimated profit in respect of the benami concern of the assessee styled Surjit Sharma & Co."

The Tribunal vide its order dated 2.3.2007 rejected all the grounds raised by the Revenue and dismissed the appeal of the Revenue.

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Still not satisfied with the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar,(for short the "Tribunal") the Revenue has filed the present appeal challenging the order of the Tribunal passed in IT(SS)A No.22(ASR)2002 dated 2.3.2007 for the block period 1.4.1987 to 21.6.1997, raising the following substantial questions of law:-

(a) Whether in the facts and circumstances of the case the ITAT was right in law in confirming the order of the CIT(A) therein deleting the addition of Rs.70,33,000/- & 3,23,118/- by holding that daughters of the assessee are not Benamidars of the assessee ?

(b) Whether in the facts and circumstances of the case the Tribunal was right in law in confirming the order of the CIT(A) therein deleting the addition of Rs.20,43,756/- on account of foreign remittances and the addition of Rs. 7 lacs on account of investment and profit in benami firms without appreciating the facts on record ?

Mr. Sanjiv Bansal, Advocate, learned counsel for the Revenue has vehemently argued that the Tribunal has gone wrong while upholding the order of the CIT(A), who has deleted the addition of Rs.70,33,000/- made by the Assessing Officer as the said amount was clearly proved to be unexplained income of the assessee as the daughters of the assessee were merely Benamidars. The daughters of the assessee had, admittedly, no source of income as no details

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regarding their earnings were given.

We have heard learned counsel for the Revenue and perused the record. We find that undisputedly, the four daughters of the assessee are independent assessees. They are having their own separate bank accounts containing the deposits in question. The theory of these daughters being benamidars of the assessee does not carry any weight. In the assessment of the daughters of the assessee, all bank accounts were explained and the return of income was accepted. These daughters of the assessee filed affidavits confirming the deposit in their Saving Bank Accounts belonging to them only and that their father (the assessee) had nothing to do with those deposits. These affidavits were never controverted by the department. Thus, these deposits have therefore, to be considered in their hands. We also find that the bank account in which these foreign remittances were deposited, were duly disclosed by the daughters of the assessee, while filing their return of income before the date of search. The remittances were received by the daughters when they were major. The affidavits of the donors were also placed on the record. There is no evidence to controvert their affidavits. Thus in view of the above facts, it is crystal clear that the questions as raised by the Revenue does not arise in the facts and circumstances of the case, as a pure finding of fact based upon evidence and documents on record has been recorded by the Tribunal. No perversity has been shown by the Revenue in these findings reached by the Tribunal.

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Thus, we find that the appeal is without any merit and the same is hereby dismissed.

(RAKESH KUMAR GARG)
JUDGE

April 10, 2008
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(SATISH KUMAR MITTAL)
JUDGE

HIGH COURT OF PUNJAB AND HARYANA
सत्यमेव जयते

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