

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) INCOME TAX APPEAL No. 68 of 2002

Suryaveer Singh
V/S
Dy. Commissioner of Income Tax

(2) INCOME TAX APPEAL No. 41 of 2001

Raghuvendra Singh
V/S
Dy. Commissioner of Income Tax

Mr. Anjay Kothari, for the appellant/petitioner.
Mr. K.K. Bissa, for the respondent.

Date of Order : 5.3.2008

HON'BLE SHRI N P GUPTA, J.

HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

These two appeals arise out of the same judgment of the learned Tribunal being dated 7.12.2000. Appeal No.68/2002 was admitted by this Court on 21.3.2007 by framing following two substantial questions of law:

"(1) Whether in the facts and circumstances of the case, when the search at the premises of Ajeet Bhawan took place in December 1987 and the declaration filed by Mr. Swarup Singh & Mr. Sobhag Singh that the jewellery found at the time of search even if accepted to be their undisclosed

income, the family arrangement which has been alleged to have taken place thereafter on 5.4.88, subsequent to search, could be discarded on the ground of the declaration made by Sh. Swarup Singh & Mr. Sobhag Singh in respect of status as on the date of search.

(2) Whether in the present case even if the claim of the assessee about the jewellery found during search to be ancestral is discarded, on sale of such jewellery, whole of receipt can be considered as income during relevant previous year could be considered from undisclosed sources not exigible to tax as capital gains."

This Court, vide order dated 27.9.2001, in Appeal No.68/2002 (as it then was, Appeal No. DR(J) 1763/2001), ordered to connect it with Appeal No.41/2001. However, by order dated 15.7.2002, passed in both the appeals, show cause notices were ordered to be issued. Then on 29.1.2003, both the matters were heard for admission. However, the matter was adjourned. Thereafter, vide order dated 16.3.2007, the matter was ordered by Hon'ble the Chief Justice to be listed before the regular Bench. This order was passed in Appeal No.68/2002. However, no such order could be passed in Appeal No.41/2001, as the last order-sheet is dated 22.11.2005, to the effect, that appropriate orders be sought from the Hon'ble Chief Justice, in this regard. Thus, the Appeal No.68/2002 came to be admitted after the aforesaid order from the Hon'ble Chief Justice, on 21.3.2007, as mentioned above. However, despite being connected matter, it appears, that simply for want of separate express order from

Hon'ble the Chief Justice, this Appeal No.41/2001 did not come to be listed. It is in this background, that when Appeal No.68/2002 came up for hearing on 4.3.2008, we directed that to be listed alongwith Appeal No.41/2001, and it is thereupon, that the above facts have come to notice. In these circumstances, we feel it appropriate, to treat the order passed by the Hon'ble Chief Justice, in the Appeal No.68/2002, on 16.3.2007, to be applicable to Appeal No.41/2001 also, and accordingly instead of standing to ceremonies, we admit Appeal No.41/2001 also, by framing same two substantial questions of law, as have been framed in Appeal No.68/2002, vide order dated 21.3.2007. Obviously, Mr. Bissa appears for the respondents, as such, formal issuance of notice is also not necessary.

This is how the two appeals arise out of the common judgment, and involve common substantial questions of law, and are being decided by this common order.

The necessary facts, in very brief are, that a Search was conducted in the premises of Shri Sobhag Singh and Swarup Singh and other family members of the assessee in December 1987, in which, certain valuables were found, and seized. Then we are told, that on certain conditions, the valuables were released, and

thereafter a family arrangement is said to have been entered into between different family members, distributing the valuables in accordance with different schedules, appended to such family arrangement. Thereafter, the assessee is alleged to have sold certain articles, which, according to assessee, fell to his share, under the family arrangement, and accordingly, the assessee submitted return, declaring the long term capital gain, arising out of sale of such valuables.

The Assessing Officer did not consider the same as actual sale, and made the addition of entire sale consideration, as undisclosed income. This order was upheld by the C.I.T.(Appeals). Then the matter was carried in further appeal to I.T.A.T. by the assessee. It was contended before the I.T.A.T. that it was only after release, that the jewellery was allocated to different family members, in accordance with the memorandum of family arrangement, executed by the family members on 5.4.1988, and accordingly the respective persons received the share in the old and ancestral jewellery, out of which certain jewellery were sold in the open market, in support whereof requisite vouchers and invoices were produced, and that the amount of consideration was received by the assessee by A/c payee cheques or drafts. Some items,

which were not saleable in the same condition, were ofcourse got converted, with a view to make them saleable, which had caused discrepancy in the shape of ornaments, but then, jewellery sold was the same.

It appears, that two of the family members being Sobhag Singh and Swarup Singh made certain declaration, under the Kar Vivad Samadhan Scheme (KVSS), wherein, jewellery falling to their share was declared to have been acquired by them from income by undisclosed sources, during the relevant period, relating to the assessment year 1988-89. However, it was contended that on the basis of such declaration, the assessee should not be taxed, treating sale proceeds as income from the undisclosed sources, and could be taxed only as capital gain, in accordance with law.

The learned Tribunal found that the issue, which is relevant is, regarding the source of jewellery, and mode of its acquisition in the hands of the assessees, and it was observed, that the jewellery was found in the possession of Sobhag Singh and Swarup singh, both of whom admitted the same to be their unaccounted income, in the statement recorded under Section 132(4), and that, they had surrendered this undisclosed income of Rs. 24,38,593/- and Rs. 30 lacs,

to cover up the unaccounted valuables, found in the Search. It was noticed, that this issue was however disputed by both of them, and litigation continued before the different Appellate Authorities, over the years, and that none of the family members disclosed the jewellery in their wealth tax returns filed before the Search. On the other hand, it was observed, that the very basis, being the memorandum of family arrangement, lost its ground, when Sobhag singh and Swarup singh filed their KVSS declaration, accepting the said jewellery as acquired in the previous year from undisclosed income, in their individual capacity. Consequently, there remained no legal sanctity available to the said family arrangement memorandum, and the assessees' stand about source of jewellery, and mode of acquisition, is left without any feet to stand, in absence of authenticity of the memorandum of family arrangement. Thus, the addition has been upheld.

It was pointed out by the learned counsel for the assessees, that by the family arrangement, various properties had fallen to the share of various family members, including the two appellants, and with respect to other family members, who also had sold some of the jewellery, received in their said family arrangement, had been taxed, by levying only capital gain tax, on the valuables sold. Learned counsel has

also filed, with additional affidavit, a judgment of the Tribunal, rendered in the case of Ranvijay Singh, one of the recipients in the said family arrangement dated 5.4.1988, being the judgment dated 21.12.2003, in Income Tax Appeal No.1508 (JP)/1994, and stressed, that in this judgment it has clearly been found, that the assessee is liable to pay only capital gain tax. It was submitted, that this order was not challenged by the Revenue, and has acquired finality. It was also contended, that likewise, after passing of the impugned order even by the I.T.A.T. Itself, in case of other family members of assesseees, who were the recipients of valuables in the said family arrangement dated 5.4.88, the assesseees were found liable to pay only capital gain tax, and the sale proceeds have not been taken as income from the undisclosed sources, and that those judgments have also acquired finality, having not been challenged by the Revenue in appeal.

On this premise, it was contended, that the two substantial questions of law framed by this Court, are required to be answered in favour of the assesseees, and the impugned order is required to be set aside.

On the other hand, learned counsel for the Revenue, supported the impugned judgment, by contending, that the statements of Sobhag Singh and

Swarup Singh were recorded prior to making of the family arrangement, and in the statements given under Sec.132(4), which were given at the time of search in December, 1987 itself, he has clearly admitted the valuables to be his assets, acquired by income from undisclosed sources, during the previous year, and since it is those assets only which have been the subject matter of family arrangement dt.5.4.88, and therefore, when in view of the declaration made under the KVSS, the assets have been found to be assets acquired by Sobhag Singh and Swarup Singh, by income from undisclosed sources, during the previous year, and the family arrangement has also been found to have lost its relevance, or significance, and thus, the order impugned does not require any interference. The factual aspect of rendering the judgment in Ranvijay Singh's case, produced by the assessee, and the fact of passing of judgment by the I.T.A.T., specifically in the cases of other family members, being recipients under the family arrangement, holding them liable to pay only capital gain tax, and those judgments having not been appealed against, has not been disputed.

We have considered the submissions and have gone through the papers available. In our view, firstly the declaration made by Sobhag Singh and Swarup Singh, can bind themselves only, and could not have the effect of

deciding the fate of appellant assessee, when the appellant assesseees are independent assesseees, in their own right. It is strange, that on the one hand, reliance is sought to be placed on the statement of Sobhag Singh and Swarup Singh, about the valuables having been acquired by them in the previous year, from undisclosed income, in their individual capacity, and then, when some of those very articles are sold by the present assesseees, they are sought to be taxed on the ground of assesseees having acquired them during the relevant period, from their undisclosed income. It would suffice it to observe, that the articles having been acquired by Sobhag Singh and Swarup Singh, could not be re-acquired by the assesseees from the undisclosed income, as it is not the case, that Sobhag Singh and Swarup Singh have sold those articles to the assesseees, and since the articles have come to the assesseees, from Sobhag Singh and Swarup Singh, as is the case of Revenue, and it is not shown, that they have come by sale, obviously, it cannot be said, on any hypothesis, that the assesseees had acquired those articles during the relevant previous year by their income from undisclosed sources.

That being the situation, there is no escape from the conclusion, that in the event of sale of some of those articles, the assesseees can be taxed only for

the capital gain, and not as their having acquired those articles in the previous year by their income from the undisclosed sources.

The other aspect also, is no less important, that in case of other assesseees, being the other family members, after passing of the impugned order, the Tribunal has found them liable to pay, only capital gain tax, and those orders have acquired finality, as such, the position boils down to is, that the two assesseees stand meted with differential treatment, despite being similarly situated, on factual matrix, which also cannot be permitted.

Thus, in our view, both the questions, as framed, are required to be answered in favour of the assessee, and against the Revenue, and are accordingly answered. The appeals are allowed. The impugned orders of the learned Tribunal are set aside. The matter will now go back to the Assessing Officer, to give effect to this order, and tax the assesseees, on capital gains.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

RANKAWAT JK, PS