

In The High Court Of Judicature For Rajasthan
Bench At Jaipur

DB Income Tax Appeal No.297/2009

Shanti Lal Jain v. The Commissioner of Income Tax, Kota

16.4.2012

Hon'ble Chief Justice Mr. Arun Mishra
Hon'ble Dr. Justice Meena V. Gomber

Mr. N.L. Agarwal, for appellant

Mr. Mahi Yadav for Mr. Sameer Jain, for respondents

By the Court

Heard on the question of admission.

2. The appeal has been preferred as against order dated 19.9.2008 passed by the Income Tax Appellate Tribunal dismissing the appeal no.716/JP/2007. The Assessment Officer has made the addition of Rs.16,47,512/- . The same has been affirmed by the Commissioner of Income Tax in appeal as also by Income Tax Appellate Tribunal. Aggrieved by the aforesaid addition, the assessee has come out with the appeal under Section 260A of the Income Tax Act.

3. The submission raised is that payment of commission paid by the assessee to Shri Uttam Chand Jain and Smt. Sunita Jain, who are son and daughter-in-law, ought not to have been added. It was a business expenditure.

4. Shri Agrawal has submitted that the documents on record prove that the amount paid to Shri Uttam Chand Jain and Smt. Sunita Jain was towards commission as such business expenditure, though they

were related in the capacity of son and daughter-in-law of the assessee. The Assessment Officer, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal have erred in not treating the same as business expenditure.

5. After hearing learned counsel for the appellant at length and going through the material on record, we find that the decision taken by the Assessment Officer, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal, is based upon the facts of the case and the material which has been placed on record. The brokerage given to the son and daughter-in-law, was not mentioned as brokerage but has been shown as payment made to the family members. The Income Tax Appellate Tribunal in its order, has assigned various grounds for confirming the addition. Paras 16 and 17 are thus quoted :-

“16. The brief facts of the case are that out of the total brokerage/commission of Rs.80,56,910/- received by the , he has shown payment brokerage/commission amounting to Rs.13,44,167/- to Shri Uttam Chand Jain, his son and Rs.3,03,345/- to Smt. Sunita Jain, his daughter in law. The AO asked the assessee to explain the basis and justification of these payments of brokerage/commission to his family members. It was explained that these relatives have made investment through the assessee by using the specific code number of the assessee and accordingly brokerage so paid by the company has been passed on to these family members pm their investment. The AO examined the various statements of brokerage furnished by the assessee before him and he noticed that

investment in the mutual fund have been made by various persons by using code number of the assessee. In the case of these various investors, the assessee has not shown any payment of brokerage to the investor concern and it has only shown payment of brokerage to his family members. Thus, the AO observed that this payment of brokerage to family members is as per the convenience of the assessee on pick and choose method and that also without any basis and justification. The AO has gone to the extent of observing that the assessee has apparently done so to divert his income to his family members, which would otherwise become taxable in his own hands, whereas Shri Uttam Chand Jain and Smt. Sunita Jain are having huge brought forward loss, where the income so diverted is adjusted against huge loss. The AO vide another letter dated 9-1-06 along with notice u/s 147(1) has given one more opportunity to the assessee to explain the basis and justification of these payment but no explanation was furnished on the date of hearing. Accordingly, the AO disallowed the payment of brokerage/commission to the family members amounting to Rs.16,47,512/-. The Id. CIT(A) confirmed the action of the AO.

17. We have heard the rival contentions and perused the facts of the case. The assessee has earned brokerage from various companies on account of investments made by the various investors including his relatives Shri Uttam Chand Jain and Smt. Sunita Jain who are son and daughter in law of the assessee. The assessee claims the brokerage of Rs.16,47,512/- since the same has been passed over to the said relatives. The case is squarely covered under the Provisions of Section 40A(2)(b) of the Act. The assessee has not passed over the brokerage to any other investors and nothing has been brought on record that it is a practice to pass over the brokerage to the investors whereas the assessee has passed over the total brokerage to his relatives. Therefore, the said expenditure claimed by the assessee is excessive/unreasonable to the fair market value. Therefore, we find no infirmity in

the order of the Id. CIT(A) who has rightly confirmed the action of the AO. Thus Ground No.3 of the assessee is dismissed.”

6. It is apparent that Assessment Officer has examined various statements of the brokerage which were furnished by the assessee before him, and in the case of investors, the assessee has not shown any payment of brokerage to the investor concerned and it has only shown payment of brokerage to his family members. It has been found by the Assessment Officer that it has been done to divert his income to his family members which would have otherwise become taxable in his own hands. Shri Uttam Chand Jain and Smt. Sunita Jain were having huge brought forward loss. The income was also diverted as against the huge loss. Provisions of Section 40A(2)(b) of the Act has been attracted.

7. Shri Agrawal has relied upon the decision of the Madras High Court in Commissioner of Income-Tax v. Computer Graphics Ltd., [2006] 285 ITR 84 (Mad), in which the decision was based upon the material which was placed on record so as to treat the payment made as business expenditure. It depends upon the facts of each case, as such case has no application. Reliance has also been placed upon Commissioner of Income-Tax v. Print Systems And Products, [2006] 285 ITR 337 (Mad). Relevant material was considered. Relevant material in every case differ as such the decision cannot be said to be applicable in the facts of the case.

8. There are findings of fact recorded by the Assessment Officer, Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, in this regard and we do not find any infirmity in the findings of facts. No substantial question arises in the appeal.

Appeal is dismissed in limine.

(Dr. Meena V. Gomber) J.

(Arun Mishra) CJ.

db

[All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.]

Deepankar Bhattacharya
PS