

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAI PUR BENCH, JAI PUR

J U D G M E N T

D. B. INCOME TAX APPEAL NO. 80/2010

Commissioner of Income Tax, Jai pur-II
Vs.
Shri Arun Kumar Kothari

Date of Judgment: SEPTEMBER 07, 2012

PRESENT

HON' BLE THE CHIEF JUSTICE MR. ARUN MISHRA
HON' BLE MR. JUSTICE NARENDRA KUMAR JAIN-I

Mr. R. B. Mathur, for the appellant
Mr. Naresh Gupta, for the respondent

BY THE COURT (Per Jain J.)

Reportable

Heard learned counsel for the parties.

2. The Revenue has preferred this Income Tax Appeal under Section 260-A of the Income Tax Act, 1961 challenging the order dated 30th September, 2009 of Income Tax Appellate Tribunal, Jai pur Bench 'B', Jai pur, whereby Tribunal, while, dismissing the appeal of the Revenue affirmed the order of Commissioner of Income Tax (Appeals) deleting the addition of Rs. 30 Lacs made by the Assessing Officer, on account of unexplained gifts.

3. Briefly stated, the facts of the case are that the Assessing Officer vide its Assessment Order dated 10th November, 2008 relating to Assessment Year 2006-07 disallowed

the three gifts received by Assessee from his brothers amounting to Rs.30 Lacs on the ground that the Assessee has not proved the creditworthiness of the gifts and the same have been given on account of love and affection and further that there was no occasion for giving the gifts. Consequently, Assessing Officer added the said amount of gifts as income and levied the income tax on the same.

4. Being aggrieved with the order of Assessment, the Assessee preferred an appeal. The Commissioner of Income Tax (Appeals)-II, Jaipur vide order dated 25th March, 2009 allowed the appeal and deleted the addition of Rs. 30 Lacs made by Assessing Officer on account of unexplained gifts. Thereafter, Revenue preferred an appeal before the Tribunal, but the same was dismissed. Hence the present appeal has been preferred on behalf of the Revenue.

5. Submission of Shri R.B. Mathur Learned counsel appearing on behalf of appellant is that the three gifts worth Rs.30 Lacs were given to Assessee by his brothers without any occasion, therefore, the same were rightly disallowed by the Assessing Officer. He submitted that the Commissioner of Income Tax (Appeals) as well as the Tribunal both committed an illegality in deleting amount of

Rs. 30 Lacs. He, therefore, submitted that order of Assessing Officer be restored. No other argument has been advanced by Shri Mathur, learned counsel for the appellant.

6. Learned counsel for the respondent/assessee supported the order passed by the Tribunal as well as Commissioner of Income Tax (Appeals) and submitted that identity, creditworthiness of the donor and genuineness of the gifts duly proved by Assessee are questions of facts and both the authorities below have recorded a concurrent finding of facts, which cannot be and should not be interferred by this Court. He submitted that no substantial question of law is involved in this second appeal. Therefore, it is liable to be dismissed.

7. We have considered the submissions of learned counsel for the parties and examined the reasons assigned by Commissioner of Income Tax (Appeals) as well as Tribunal, for deleting the amount of Rs. 30 Lacs towards so called unexplained gifts, added by Assessing Officer.

8. The Commissioner of Income Tax (Appeals) has considered all factual as well as legal aspects of the case in detail and has observed that so far as creditworthiness of the donors is concerned, the Assessee had gone to file evidence before the Assessing Officer on

11.11.2008, the date fixed for the same by him, but the Assessing Officer refused to accept the same. Therefore, Assessee sent the relevant documents such as copy of Bank Accounts, return of income and other relevant documents of donors with regard to their creditworthiness, through registered post to the Assessing Officer. Copies of these documents were considered by the appellate authority and the same documents were again placed on record in the paper-books filed before Tribunal at Page Nos. 11 to 13. These documents are gift deeds, bank accounts of the donors, Bank statement of the donors, directorship/partnership, income of the donors and passports of the donors. Learned Commissioner also considered that donors were NRI and they were brothers of the Assessee. In these circumstances, the Learned Commissioner was satisfied about creditworthiness of the donors as well as genuineness of the gift deeds and accepted the claim in respect of gifts, as there was no reason to doubt on the identity and creditworthiness of the donors and the genuineness of the gifts, as expressed by the Assessing Officer.

9. The finding of the Commissioner as appellate authority was quoted by Tribunal in its order impugned in this appeal. Learned Tribunal after considering the factual and

Legal aspects of the matter affirmed the finding of the Commissioner of Income Tax (Appeals) and dismissed the appeal filed by the Revenue. Para 5 of the order of the Tribunal is reproduced as under: -

"5. The first appellate order on the issue is reasoned one to which we concur with in view of the decisions of Hon'ble Jurisdictional High Court in the case of CIT v/s Padam Singh Chauhan 215 CTR 303 (Raj.) and in the case of Nek Kumar v/s ACIT 274 ITR 575 (Raj.) & Ors. In the case of CIT v/s Padam Singh Chauhan (supra) the Hon'ble Jurisdictional High Court has been pleased to hold that there is no legal basis to assume that to recognize the gift to be genuine, there should be any blood relationship or any close relationship, between the donor and the donee. Instances are not rare, when strangers made gift, out of very many considerations, including arising out of love, affection and sentiments. When the assessee has produced the copies of the gift deeds and the affidavits of the donors, in the absence of anything to show that the act of assessee in claiming gift was an act by way of money laundering, simply because he happens to receive gifts, it cannot be said that, that is required to be added in his income, held the Hon'ble High Court. The case of present assessee before us on the issue stands on better footing as herein the donors are brothers of the assessee wherein there is no room to doubt love and affection amongst them to make the gifts. Besides, the assessee had furnished gift deeds stating the relationship with the donors and that the gifts were made out of natural love and affection, bank accounts of the donors and their passports to support the genuineness of the claimed gifts. Contents of these documents have not been disputed. Under these circumstance, we are of the view that the Ld.CIT(A) has rightly accepted the claimed gifts of Rs. 30 Lacs with direction to the AO to

delete the addition made on this account. The first appellate order on the issue is thus upheld."

10. From the above, it is clear that the Commissioner of Income Tax (Appeals) as well as Tribunal both were satisfied with regard to identify and creditworthiness of the donors and genuineness of the gifts. Learned Tribunal also satisfied that there is no room to doubt about love and affection of the donors with the assessee as donors were brothers of the assessee. Therefore, gifts could have been given without any occasion and only for the love and affection with the assessee.

11. After considering the reasons assigned by the Commissioner of Income Tax (Appeals) as well as Tribunal for deleting the amount of gifts, which was wrongly added by the Assessing Officer. We are satisfied that the reasons assigned by Tribunal as well as Commissioner of Income Tax (Appeals) are absolutely justified and legal and no interference in the same is called for. Learned Tribunal has also relied upon judgments of this Court reported in CIT v/s Padam Singh Chauhan 215 CTR 303 (Raj.) and in the case of Nek Kumar v/s ACIT 274 ITR 575 (Raj.) & Ors..

12. This Court in Commissioner of Income-tax v. Ram Dev Kumar Chitlangia, reported in

(2009) 315 ITR 435 held that, whether the gift was genuine would essentially be a question of fact and finding of fact recorded in this behalf cannot be interfered with.

13. After considering submissions of learned counsel for the parties, we are of the view that genuineness of the gifts has been accepted by the Commissioner of Income Tax (Appeals) as well as Appellate Tribunal. The identity and creditworthiness of the donors have also been accepted by both the authorities. These are questions of facts and there is a concurrent finding of fact by both the authorities below and no illegality or perversity in the finding recorded by both the authorities below has been pointed out by the learned counsel for the Revenue. The said finding of fact of both the authorities below cannot be interfered with by this Court.

14. The Income-tax Appeal before this Court lies only on substantial question of law. Since, no substantial question of law is involved in this appeal, therefore, it is liable to be dismissed and is, hereby, dismissed in limine.

(NARENDRA KUMAR JAIN-I), J.

(ARUN MISHRA), CJ.

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

*B.K. SHRIVASTAVA
PRIVATE SECRETARY*