

ITA No. 281 of 2007
Date of decision 31 . 7.2007

Versus
CIT III, Rishi Nagar, Aayakar Bhawan, Ludhiana. .. Respondent

PRESENT: Mr.SK Mukhi, Advocate for appellant

This is assessee's appeal filed under Section 260 A of the Income Tax Act, 1961 (for brevity 'the Act') challenging order dated 24.8.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench B, Chandigarh (for brevity 'the Tribunal') in IT (SS) A. No. 42/Chandi/ 2003 in respect of block period from 1.4.1988 to 8.1.1999 (Annexure A.1). The Tribunal has come to a firm conclusion that addition of Rs. 9,58,811/- was fully justified and accordingly the order passed by the Commissioner of Income Tax (Appeals) (for brevity 'CIT(A)') affirming the view taken by the Assessing Officer was upheld. The appellant- assessee has claimed that following substantial questions of law would arise for our determination:

“ A)Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of the authorities below by upholding the addition made on account of impugned foreign bank transfers from the brother of the appellant for taking care of his business activities as undisclosed income of the appellant without appreciating proper facts, evidences and statement of the

brother of the appellant before the A.O.

B)Whether on the facts and in the circumstances of the case the Income Tax Appellant Tribunal was justified on facts and in law in confirming the action of the authorities below by erroneously applying the provisions of Section 158BB (c) of the Income Tax Act,1961 and thereby treating the foreign legal bank transfers over a period of ten years as Undisclosed Income whitely duly stood disclosed before the action u/s 132 was taken in the regular books/bank accounts of the appellant and his wife;

(C)That whether the Tribunal was justified in confirming the orders of the CIT(A) and thereby concurring with the decision of the A.O. And thereby holding that impugned amount of Rs.9,58,811/- as undisclosed income by wrongly applying the provisions of Section 158 BB(c) of the Income Tax Act,1961 which finding of the ITAT is bad in law and perverse;

D) Whether on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidence on record thus unsustainable in law; and

E)Whether the ITAT has misdirected itself in being influenced by irrelevant factors and app;lying erroneous criteria while deciding the issue of genuineness of the impugned amount of Rs.,9,58,811/- on the basis of credit worthiness of the brother of the appellant being

misconceived of facts and evidences on record.”

Brief facts of the case are that the appellant- assessee is employed as Junior Engineer with Punjab State Electricity Board. A search at his residential premises was carried on 8.1.1999 and accordingly notice under Section 158 BC of the Act was issued on 16.11.1999 calling upon the appellant assessee for filing of return of undisclosed income. He filed the return on 11.12.2000 claiming that there was no undisclosed income. The Assessing Officer after enquiry from the assessee completed the assessment vide order dated 30.1.2001 determining the undisclosed income of Rs.43,53,520/-. On appeal filed by the assessee-appellant to the CIT(A) he was granted a partial relief. However, his undisclosed income amounting to Rs.9,38,811/- which before the Assessing Officer was claimed by the assessee to have come from his NRI brother was treated as undisclosed income and the finding in that regard by the Assessing Officer was affirmed.

On further appeal to the Tribunal the claim of the appellant- assessee that the afore-mentioned amount of Rs.9,58,811/- could not have been treated as his undisclosed income, the Tribunal held that it was the duty of the appellant-assessee to establish the identity of the creditor, his credit worthiness and also genuineness of the transactions. The appellant- assessee had identified his brother who remitted the money in foreign exchange to the appellant-assessee. His brother Harbans Singh was also produced before the Assessing Officer where he deposed that his monthly income in USA was between US \$ 2500-5000. From the documentary and other evidence produced before the Assessing Officer it was found that his annual income was US \$ 2658 in 1995 and US \$ 9646 in 1998. In other words his average monthly income was found to be less than US\$ 500. As

no other evidence was led before the Assessing Officer to establish the financial capacity of his brother the Assessing Officer recorded the finding that the claim of the assessee-appellant of having received the amount of Rs.9,58,811/- from his brother could not be established. It was further held that the mere fact that the amount has been received through banking channel would not itself constitute a sufficient basis to discharge the onus which was placed on the appellant- assessee. The Tribunal placed reliance on a Division Bench judgement of this Court in the case of Indu Jain v. CIT (Chandigarh) in ITA 327 of 2006 dated 27.3.2006 and Delhi High Court in the case of Sajan Das and Sons v. CIT (2003)264 ITR 435 (Del)and observed as under:

“..... the financial capacity of the creditor has been indicated elsewhere in this order. His (The ?) monthly income in USA of the (his ?) creditors being less than \$500 on an average would hardly be sufficient to meet his expenses in that country. Therefore, the source and the nature of remittances from the brother of the assessee cannot be said to have been satisfactorily explained. It is also pertinent to mention that the assessee has claimed that the money was received from the brother in connection with the business carried on by the assessee on behalf of his brother. However, no evidence has been placed on record to establish that any such business was being carried on by the assessee on behalf that any such business on by the assessee on behalf of his brother Shri Harbans Singh. Taking the totality of facts and circumstances of this case into consideration, we are of the considered view

that the addition of Rs.9,58,811/- is justified and the same is accordingly confirmed.”

We have heard learned counsel for the assessee-appellant at a considerable length and find that the appeal merits dismissal because there are categorical findings recorded by the Assessing Officer which have been duly affirmed by the CIT(A) and the Tribunal. The financial capacity of the NRI brother of the appellant- assessee has been found to be so inadequate that the claim made by the appellant-assessee could not at all be supported. It has been found that his monthly income in the country like USA was less than US \$ 500 and he could hardly make both ends meet. In the teeth of this firm finding concerning the financial capacity of the creditor and the appellant-assessee it is not possible to hold that the money transaction claimed to have emanated from his NRI brother had actually come from him. Therefore, we find that the appeal does not warrant admission as pure findings of fact have been recorded. Even the questions of law which have been claimed by the appellant-assessee proceed on presumption of facts which are contrary to the well based findings recorded in one tone by the Assessing Officer, CIT(A) and the Tribunal.

Question (A) has been framed on the presumption that the foreign bank transfers from NRI brother of the appellant-assessee was fully explained and were received from him through banking channel. This proceeds on the assumption that his NRI brother was financially sound which is absolutely against the categorical finding as noticed in the preceding para. Likewise question (B) proceeds on the assumption that the undisclosed income was disclosed by the assessee in response to notice under Section 158 BC of the Act whereas the appellant- assessee filed the

return on 11.12.2000 claiming that there was no undisclosed income. The factual and legal position would be the same with regard to questions (C), (D) and (E). We find that the provisions of Section 158 BC of the Act have been rightly invoked and the amount of Rs. 9,58,811/- has been rightly treated as undisclosed income of the appellant- assessee. There is no merit in the appeal and the same is liable to be dismissed.

For the reasons afore-mentioned this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

31.7.2007
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