

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 241 of 2014 (O & M)

Date of decision : 27.8.2015

Sh. Makhan Singh

.....Appellant

Versus

Income Tax Officer, Ward 2(1), Amritsar and another

.....Respondents

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present : Mr. Avneesh Jhingan, Advocate, for the appellant

Mr. Denesh Goyal, Advocate, for the respondents

Ramendra Jain, J.

The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter called as 'the Act') against the order dated 28.1.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar (in short 'the Tribunal') in ITA No. 440/ASR/2012 for the assessment year 2009-10 claiming the following substantial questions of law:-

- i. Whether in the facts and circumstances of the case the donation collected for specific project could have been added to the personal income of the appellant?
- ii. Whether in the facts and circumstances of the case in

light of explanation to Section 2(24) (iia) of the Act, the Dera is not a deemed trust?

- iii. Whether in the facts and circumstances of the case the corpus donation received by the appellant is not a legal obligation giving a dual capacity to the appellant?
- iv. Whether in the facts and circumstances of the case disallowance of expenses to the extent of one sixth is sustainable in law?
- v. Whether in the facts and circumstances of the case the adding back of ₹ 13,35,658/-is sustainable in law?
- vi. Whether in the facts and circumstances of the case the disallowance of expenditure of ₹ 7,42,848/-and adding the same amount back is sustainable in law?

2. Brief facts of the case are that the appellant filed return of his income for the Assessment Year 2009-10 on 31.3.2010 declaring income of ₹ 2,10,870/-. The said return was processed under Section 143(1)(a) of the Act. Subsequently, the case was selected for scrutiny. Accordingly, notice under Section 143(2) of the Act was issued to the appellant, besides a notice under Section 139C(1)/139D(c) of the Act, requiring to file certain documents. In compliance thereto, the appellant filed copy of his Income Expenditure Account and other documents while submitting that no bank account was maintained by him in his name. Notice under Section 142(1) of the Act was served upon the appellant requiring him to furnish necessary information. However, he did not respond to the same. Thereafter, many questionnaires were issued to him from time to time, which he duly replied that “he was a religious

preacher doing no business activity and not maintaining any personal bank account. He was residing in Dera of Sant Amir Singh Ji, Bazaar Satto Wala, Amritsar. Expenses towards electricity, telephone and water were being borne by aforesaid Dera. Some mobile phone expenses were incurred by him in 2008-09, details of which were furnished in the Income & Expenditure Account etc.” The Assessing Officer vide assessment order dated 17.11.2011 (Annexure A-1) made an addition of ₹ 1,21,67,653/- by treating the bank deposits as his income from profession and vocation while, *inter alia*, disallowing the expenses towards insurance and 1/5th expenses towards telephone, travelling and vehicle etc. amounting to ₹ 6,12,725/- besides, adding back ₹ 1,39,85,512/- claimed by the assessee towards donation of Chhattar of gold weighing 12.670 Kgs. to Sri Hazur Sahib, Abchalnagar, Nanded, Maharashtra and ₹ 13,35,658/- spent towards air conditioner, computer, vehicle, television, purchase of generator etc. Aggrieved with the same, the appellant filed an appeal before the Commissioner of Income Tax (Appeals), Amritsar [for brevity “the CIT(A)”], who dismissed the same vide order dated 18.10.2012 (Annexure A-2). Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 28.1.2014 (Annexure A-3) dismissed the appeal. Hence, the present appeal by the assessee.

3. Learned counsel for the appellant argued that the authorities below have failed to appreciate the dual capacity of the appellant, first as Preacher and other as Mukh Sevdar of Dera, Sant Amir Singh Ji Taksal. The said Dera is an old Historic Dera of about 100 years old being managed by the appellant. The said Dera is carrying various charitable and religious activities by utilizing the donations made

by the general public etc. and thus, the donations so received by the appellant were deposited in the bank account. Though the said bank accounts are in the name of the appellant, but in fact, the same are of the Dera. The appellant was merely operating the same. The authorities below have miserably failed to appreciate that the appellant was only operating the bank account and doing his duty as care taker. The authorities below have erred in not appreciating the fact that the donations received from general public cannot be treated as income from business of the appellant, more particularly, when the same were 'corpus' donations. The Assessing Officer, the CIT(A) and the Tribunal have wrongly ignored the certificate issued by Takhat Sachkhand Sri Hazur Sahib, Abchalnagar, Nanded Sahib, Maharashtra, regarding donation of gold chhabba. In support of his contentions, learned counsel has relied upon the judgments in **Commissioner of Income Tax-II, Chandigarh v. The Punjab State E-Governance Society, Income Tax Appeal No. 75 of 2011**, decided on 21.4.2011; **Director of Income Tax v. Society for Development Alternatives, ITA Nos. 12 of 2012 and 18 of 2012**, decided on 13.1.2012; **Sukhdeo Charity Estate, Landu v. CIT, Rajasthan, Jaipur, (1984) 149 ITR 470 (Raj)**; **Commissioner of Income Tax (Central), New Delhi v. Bijli Cotton Mills (P) Ltd., AIR 1979 SC 346**; **CIT, West Bengal v. Tollygunge Club Ltd., AIR 1979 SC 1343**; **CIT, Kanpur v. Sant Baba Mohan Singh, (1979) 118 ITR 1015 (All.)**; and **CIT v. Baba Avtar Singh, (1972) 83 ITR 738 (Del.)**.

4. On the other hand, learned counsel for the respondents pleaded the legality and validity of the impugned order passed by the Tribunal.

5. We have heard learned counsel for the parties.

6. It is pertinent to mention here that to the questionnaire issued to the appellant-assessee by the Assessing Officer, he replied that he does not maintain any personal bank account in his name. However, being dissatisfied with the aforesaid reply, his bank account opening documents were called from the City Bank, Ludhiana under Section 133(6) of the Act. In the account opening form, it was found that in the 'Nomination Column' the appellant-assessee had nominated his son Amandeep Singh as his nominee in case of his death. Upon being asked from the appellant-assessee that when the account was in the name of Dera and not his personal account, then in what capacity, he could nominate his son as his nominee, he could not submit any satisfactory reply. In these circumstances, the Assessing Officer treated the aforesaid bank account as individual account of the appellant-assessee.

7. There is no force in the argument of learned counsel for the appellant that entire activities done by the appellant were of charitable and religious in nature and were being done in the name of Dera. It is completely devoid of any merit, because the Dera, Sant Amir Singh Ji, of whom, the appellant-assessee is claiming himself to be a Mukh Sevadar, is admittedly, not registered under Section 12AA of the Act or under the Societies Registration Act, 1860. There is also no trust deed of it, showing its activities as charitable or religious nature. It has also not obtained any certificate under Section 10 (23C) (iv) of the Act. Its account were never audited under any law. Even no approval under Section 80G(5) of the Act was ever obtained from any prescribed authority. It was evident before the Revenue Authorities that the entire

affairs of the Dera, i.e donations/collections were solely managed and controlled by the appellant-assessee, according to his own whims and fancies in his individual capacity.

8. The Tribunal has rightly observed that the collection certificates were also stereo-typed without any PAN etc. Even no effort was made to produce any so called donation affirming the same. Bank accounts were found in the sole name of the appellant-assessee without indicating any adverse eventuality. The nomination of his son by him in the bank accounts, clearly required to draw an inference that all the bank accounts were his personal accounts and not of the Dera. The appellant has miserably failed to show before the authorities that any charitable activities was ever been carried out by him as prescribed under Section 2(15) of the Act. Its affiliation with any other charitable institution was also not proved. The Assessing Officer, the CIT(A) and the Tribunal as well have found on the basis of material before them that the appellant-assessee had purchased LIC policy, gas connection, cylinder etc. from the so called funds of the Dera, which were indicative of the fact that the bank account was being operated by him for his personal use. The cumulative effect of all these factors shows that all the transactions done by the appellant-assessee, were in his individual capacity and thus, no case to differ with any of the findings of the Tribunal upholding the decision of the CIT(A) and that of the Assessing Officer has been made out.

9. Adverting to the judgments relied upon by the learned counsel for the assessee, it may be noticed that in **The Punjab State E-Governance Society's case (supra)**, the assessee was registered under the Societies Registration Act, 1860, besides under Section 12AA

of the Act. Its object was to promote the implementation of E-Governance using information technology in the State of Punjab. It received many grants from the State Government and interest from the banks on the deposits. The Assessing Officer assessed those grants as its taxable income, being failed to spent 85% out of it, as required under Section 111 of the Act, besides interests thereon as taxable income, being separate from the grants-in-aid. The CIT (A) set aside the above additions holding that tied-up grants will not constitute income of the assessee. Further, the Tribunal also upheld the aforesaid decision of the CIT(A) by observing that the assessee had received certain grants from Government with a stipulation that such grants are to be utilized only for the stated purposes which are pre decided by the disbursing agency. The learned CIT(A) has also noted that unspent amount of such grants is required to be refunded to the distributing agency and as such considered by the assessee as income in its Income Expenditure Account, but has been shown in the balance sheet. The other types of grants received by the assessee as general grants, do not carry such restrictions, has been credited by the assessee as income in the Income Expenditure Account. A Coordinate Bench of this Court upholding the decision of the Tribunal held that grants-in-aid received from the Government for specific purpose, cannot be treated as voluntary contributions of the society. The interest received by the assessee on the amount of such grants deposited in the bank was also in the nature of the grant in aids, whereas, there are no such circumstances in the present case, because as discussed above, the appellant is not a registered society under the Act or the Societies Registration Act, 1860. Moreso, it could not produce the list of any genuine donors, who have

allegedly donated huge amount of more than rupees one crore to it.

10. In **Society for Development Alternatives' case (supra)**, the respondent was again a registered society. It was undertaking the activities related to research, development and dissemination. Whereas, in the instant case, the appellant has miserably failed to prove any of its activities as of religious or charitable nature.

11. In **Sukhdeo Charity Estate's case (supra)**, it was held that the voluntary contributions received from another trust were not assessable as income. It is intention of the donor and donee at the initial stage which is to be taken into consideration. In that case the assessee had taken donations of 1 lakh from another trust of Calcutta which remained unutilized. The Assessing Officer assessed the said amount as income under Section 12(2) of the Act. However, the High Court of Rajasthan held that since the contribution was for specific charitable purpose, therefore, even if the amount remained unutilized, it hardly makes any difference. In any circumstance, it cannot be termed as assessable income of the trust under the provisions of Section 12(2) of the Act

12. In **Bijli Cotton Mills (P) Ltd's case (supra)**, the question was that whether the 'dharamada' collected from the customers on sales was part of trading, whereas, there are no such circumstances in the present case.

13. In **Tollygunge Club Ltd's case (supra)**, Sports Club- assessee took surcharge on charges for admission into the enclosure of the club at the time of horse races for local charities like, Red Cross Society etc., whereas, there are no such circumstances in the present case.

14. In **Sant Baba Mohan Singh's case (supra)**, all the income spent for religious and charitable purpose was held to be exempted from tax, whereas, as discussed above, in the instant case, the assessee has miserably failed to prove any of its work as of religious and charitable nature.

15. In **Baba Avtar Singh's case (supra)**, the cash offerings were made at the feet of the religious head, who claimed that he had no interest in the same, whereas, in the instant case the appellant-assessee has miserably failed to prove that he had no interest in the donations received in his bank account in his personal name nominating his real son as his nominee.

16. The principles of law enunciated in these pronouncements is well recognized but in view of factual matrix noticed hereinbefore in the present case, it does not advance the case of the assessee-appellant.

17. No illegality or perversity could be pointed out by the learned counsel for the assessee in the aforesaid findings of fact recorded by the authorities below which may warrant interference by this Court. Accordingly, no substantial question of law arises in this appeal.

18. No other point was argued before us.

19. In view of the above, this appeal fails and is hereby dismissed being completely devoid of any merit.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

27.8.2015
Ashwani/gbs