IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 10 of 2015 (O&M)
Date of decision: 1.9.2015

Krishan Kumar Palta

……Appellant.

Commissioner of Income Tax, Chandigarh

…..Respondent

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

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

Present: Mr. Sachin Bhardwaj, Advocate for the appellant-assessee.
Ms. Urvashi Dhugga, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

CM No.13607 CII of 2015

1. Allowed as prayed for. The documents appended as Annexure R.1 (Colly.) are taken on record. CM stands disposed of.

ITA No.10 of 2015

2. This appeal has been preferred by the assessee-appellant under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 21.4.2014, Annexure A.10 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A' in ITA No.242/CHD/2009, for the assessment year 2000-01, claiming following substantial questions of law:-

> "i) Whether under the facts and circumstances of the case, the action in rejecting the receipt of capital account transactions as a gift and treating the same as income being of a revenue nature is unreasonable and sustainable?

ii) Whether under the facts and circumstances of the case, the action for rejecting the enforceable and executed documentary evidences substantiating the genuineness of gift, is unwarranted specifically without cross examination of the donor?

iii) Whether the chargeable income is to be in the hands of the beneficiary and the charge has to be on the real income of the assessee as emerging from the material facts containing material particulars in accordance with ***Income Tax Officer vs. Atchaiah,*** (1996) 1 SCC 417?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a proprietor of Rama Tyres, SCO 494, Motor Market,Manimajra, trading in tyres and tubes etc. He has been filing his regular returns of income. Source of his income is from agriculture and spare parts business. From 1969 onwards, he is working as government contractor. Return of income was filed by the assessee declaring income of ₹ 1,98,166/- on 31.10.2000 alongwith balance sheet as on 31.3.2000 showing gift of ₹ 10 lacs received during the year under consideration. The return was processed under Section 143(3) of the Act on 14.5.2001. On 4.3.2005, notice for reassessment proceedings was issued under Section 148 of the Act and was served on the appellant on 9.3.2005 stating that the appellant had concealed the income of ₹ 10 lacs in the garb of alleged gift which was chargeable to tax and which income had escaped assessment. In reply to the notice, the appellant stated that the original return filed by him may be treated as return filed in response to the notice. Subsequently, a notice dated 9.1.2006 was issued to the assessee under sections 142(1) and 143(2) of the Act. In reply to the notice, the appellant pleaded that the gift of ₹ 10 lacs was received from Abinashi Lal

Bajaj through pay order dated 21.11.1999 supported by gift deed by the donor. The aforesaid amount was stated to be out of NRE account and credited in Saving Bank account of Punjab National Bank. Copies of bank statement, gift deed duly signed by the donor and affidavit executed by the donor were submitted. Since the donor was not cooperating and to avoid litigation, the appellant surrendered ₹ 10 lacs subject to no penal action under the Act. The Assessing Officer not satisfied with the reply made addition of ₹ 10 lacs treating the gifts as undisclosed income vide order dated 28.2.2006, Annexure A.4. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 23.1.2009, Annexure A.7, the appeal was dismissed holding that the appellant failed to establish the genuineness of the transactions during the course of assessment/penalty proceedings. The assessee went in appeal before the Tribunal. Vide order dated 21.4.2014, Annexure A.10, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

4. We have heard learned counsel for the parties.

5. After considering the matter in detail, it has been categorically recorded by the Tribunal that the assessee has not been able to show any relationship with the donor and therefore there could not be any love and affection with the non relative. The assessee had not produced any evidence to show close relationship between him and Abinashi Lal Bajaj. In his statement, Mr. Bajaj also stated that he had not made any gift to any person. Only pay order had been given in lieu of cash. It was thus clear that the gift was not genuine. The gift requires a close association between the donor and the donee except where gifts are made for charity and

philanthropic purpose. Mere fact that the amount paid had emanated from bank account of donor would not be sufficient to prove genuineness of gift. The relevant findings recorded by the Tribunal read thus:-

> “8. As far as issue regarding merit is concerned it is not correct that the statement of the donor was recorded behind the back of the assessee. Infact the statement of the donor Shri Abinashi Lal Bajaj was recorded by Investigating Wing and same was confronted to the assessee which fact becomes clear from the letter written by the Assessing Officer on 9.1.2006 which is as under:-
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> > 'You have received a gift amounting to ₹ 10 lakhs from Abinashi Lal Bajaj. The statement of Bajaj was recorded by the ADIT (Inv.) II, Chandigarh. In his statement Shri Bajaj has stated that he has not made any gift to any person; only pay order has been given in lieu of cash. It is quite clear from the above facts that the gift is not genuine. You are requested to furnish the complete postal address of the person from whom gift has been received or produce the donor to verify the genuineness of the gift on the date of hearing i.e.18.1.2006.'
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> Therefore it is clear that the assessee was confronted with the statement given by Shri Abinashi Lal Bajaj before the Investigation Wing. Thereafter the assessee vide letter dated 20.2.2006 stated as under:-
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> > '1. That during the period relevant to Assessment year 2000-01, I received a gift for ₹.10 lacs from Abinashi Lal Bajaj son of Shri B.D.Bajaj r/o H.No.3046, Sector 20D, Chandigarh through pay order which was credited to my saving account No.1127 with PNB Manimajra. Copy of the said bank statement gift deed duly signed by the donor and copy of the affidavit executed by the said donor to this effect has already been submitted.

2. That unfortunately now the donor is not cooperating with us in the income tax proceedings. Therefore to avoid litigation and purchase peace I hereby surrender ₹ .10 lacs as my income for the assessment year 2000-01 subject to no penal action under the provisions of the Income Tax Act. In view of the above discussion and also facts of the case, the amount of ₹ 10 lacs shown as gifts is treated as undisclosed income, which the assessee failed to prove the genuineness of the gifts and added towards the taxable income.'

From the above, it becomes clear that the assessee has surrendered the amount after being fully cornered and therefore once the addition has been made on the basis of admission no appeal is maintainable. In any case, the assessee has not been able to show any relationship with the donor and therefore there cannot be any love and affection with the non relative and the assessee has not produced any evidence to show close relationship between the assessee and Abinashi Lal Bajaj. Therefore, the decision of the Hon'ble Supreme Court in the case of CIT vs. P.Mohankala (supra) and Hon'ble Punjab and Haryana High Court in case of Smt.Usha Rani vs. CIT(supra) are clearly applicable to the facts of the case. In view of this, we find nothing wrong with the order of the learned CIT(A) and confirm the same."

6. The findings recorded by the Tribunal are pure findings of fact which have not been shown to be illegal or perverse in any manner. No substantial question of law thus arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 1, 2015 **(Ramendra Jain)**
'gs' **Judge**