

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 25 of 2015 (O&M)

Date of decision: 17.9.2015

Vikrant Dutt Chaudhary

.....Appellant

Commissioner of Income Tax, Panchkula (Haryana)

.....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. Divya Suri, Advocate with
Mr. Madhur Sharma, Advocate, Mr. Deepanshu Jain, Advocate
and Mr. Sachin Bhardwaj, Advocate for the appellant.

Mr. Yogesh Putney, Advocate for the revenue.

Ajay Kumar Mittal,J.

1. There is a delay of 1214 days in filing the appeal. The ground narrated in the application seeking condonation of delay is that against the impugned order dated 29.4.2011, an application under Section 254(2) of the Act was filed on 12.9.2011 which was rejected by the Tribunal on 30.6.2014. It was in these circumstances that delay in filing the present appeal impugning order dated 29.4.2011 has occurred. For the reasons stated in the application and after hearing learned counsel for the parties, the delay in filing the appeal is condoned.

2. This order shall dispose of ITA Nos.25, 38 and 83 of 2015 as learned counsel for the parties are agreed that the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.25 of 2015.

3. ITA No.25 of 2015 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 29.4.2011, Annexure A.11 passed by the Income Tax Appellate Tribunal Chandigarh 'A' Bench (in short, “the Tribunal”) in ITA No.978/CHD/2009 for the assessment year 2001-02, claiming following substantial questions of law:-

“i) Whether under the facts and circumstances of the case, the signatory of the document can be a 'witness of himself', under Article 20(3) of the Constitution, as the 'morphed/photocopy' document never produced for examination in adjudication proceedings, hence the action is contrary to 'chargeability of income under section 5 of the Income Tax Act, 1961?

ii) Whether the 'hypothetical income' can be brought to charge under section 5 of Income Tax Act, 1961 dehors the provisions of section 2(c) read with section 10 (Indian Contract Act, 1872), Section 5 (Transfer of Property Act, 1882), Section 17 (The Registration Act, 1908) and the provisions of Indian Stamp Act, 1899?”

4. A few facts relevant for the decision of the controversy involved as available on the record of ITA No.25 of 2015 may be noticed. The property in dispute i.e. H.No.146, Sector 8 Chandigarh was sold by Vijay Dutt Chaudhary (mother), Prashant Dut Chaudhary (son) and Vikrant Dutt Chaudhary(son) through registered sale deeds dated 29.9.2000 for an amount of ₹ 39 lacs (₹ 13 lacs each) vide receipt dated 15.9.2000, Annexure

A.1. Report of ADI (Inv.) dated 11.3.2004 Annexure A.4 was forwarded to the DIT(Inv.) which formed the basis of initiation of reassessment proceedings. Notice dated 19.7.2006 was issued and served on the assessee under section 148 of the Act for initiation of re-assessment proceedings and on the basis of the reasons recorded, the appellant filed his income tax return on 5.11.2007. On 5.11.2007 and 15.11.2007, the appellant furnished written pleadings before the Assessing Officer stating that he, his brother and mother never signed any receipt/document qua ₹ 55,00,000/-; signatures were either forged/morphed from some other document; ₹ 9,90,000/- were received through Account payee cheques in June 2000 and ₹ 28,10,000/- were received in October 2000; the appellant was only a witness in the alleged receipt of ₹ 55,00,000/-; mere photo copy of any document could not be taken as admissible evidence under section 102 of the Indian Evidence Act, 1872; the appellant purchased new H.No.162, Sector 2, Panchkula within one month after the sale of house in question. Not satisfied with the contentions raised by the appellant, the reassessment proceedings were concluded by the Assessing Officer on 22.11.2007 and long term capital gain on sale of House No.146, Sector 18A, Chandigarh was determined at ₹ 12,23,334/-. Aggrieved by the order, the appellant went in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 24.8.2009, Annexure A.8, the CIT(A) dismissed the appeal relying on the forged/morphed receipt of ₹ 55,00,000/-. The assessee went in appeal before the Tribunal. Vide order dated 29.4.2011, Annexure A.11, the Tribunal dismissed the appeal inter alia on the ground that the receipt in dispute was not produced in original and no material was produced to

contend that the receipt was forged. Aggrieved by the order, the appellant filed an application under Section 254(2) of the Act before the Tribunal for rectification of the order dated 29.4.2011. Vide order dated 30.6.2014, Annexure A.14, the said application was dismissed. Hence the instant appeals by the appellant-assessees.

5. We have heard learned counsel for the parties.

6. A perusal of the findings recorded by the authorities below shows that three co-owners i.e. two brothers - Prashant Dutt Chaudhary & Vikrant Dutt Chaudhary and their mother – Smt.Vijay Dutt Chaudhary had sold House No.146, Sector 8A, Chandigarh for consideration of ₹ 39 lacs in September 2000 in which share of each co-owner was shown at ₹ 13 lacs. The mother and the two sons had failed to furnish return of income on the ground that the income was below the taxable limit. However, Investigation Wing of the Income Tax Department received tax evasion petition and enquiries were initiated against the three applicants. During the course of enquiries, the applicants were confronted with the photo copy of the receipt duly issued and signed by Smt.Vijay Dutt Chaudhary and her two sons Prashant Dutt Chaudhary and Vikrant Dutt Chaudhary as witnesses. As per the receipt, sum of ₹ 55 lacs was received as part payment towards sale of the house. The said receipt was dated 15.9.2000 and carried the signatures of Smt.Vijay Dutt Chaudhary on the revenue stamp affixed thereon and signatures of both the sons as witnesses. The Assessing Officer in the assessment order observed that in the return of income the assessee claimed to have received ₹ 13 lacs as 1/3rd share of the sale consideration on the sale of the house in question. However, the ADIT(Inv.) was in possession of

receipt dated 15.9.2000 which had been signed by assessee's mother and witnessed by Vikrant Dutt Chaudhary and Prashant Chaudhary. The said receipt is relevant to the fact in issue and establishes in unambiguous terms the receipt of ₹ 55 lakhs in cash over the apparent consideration. The ADIT (Inv.) recorded the statements of Vijay Chaudhary and Prashant Chaduahry who confirmed the receipt of ₹ 55 lacs by them in cash for the sale of the property in question. In so far as retraction of statement of Prashant Chaudhary and Vijay Chaudhary is concerned as not having signed the receipt, a close examination of the handwriting on the revenue stamp showed similarity between the signatures on the revenue stamp and that of Smt.Vijay Chaudary and they were one and the same. After taking into consideration ₹ 55 lakhs received by the assessee in cash on 15.9.2000, it was concluded by the Assessing Officer that the house in question had been sold for a total consideration of ₹ 93 lacs and share of each assessee came to 1/3rd of total of ₹ 93 lakhs i.e. ₹ 31 lakhs. The CIT(A) upheld the findings recorded by the Assessing Officer.

7. The Tribunal in its order dated 29.4.2011 had affirmed the findings recorded by the Assessing Officer and the CIT(A). The Tribunal in para 9 of its order noticed the plea of the assessee as under:-

“9. At this stage, it may be relevant to reproduce the letter dated 1.12.2003 written by Smt.Vijay Dutt Chaudhary to the ADIT(Inv.) by which she is reported to have retracted her statement as given before the ADIT(Inv.) on 4.11.2003. A copy of the said letter has been filed before us. It reads as under:-

“With respect to my statement recorded by you on 4.11.2003 at my residence and in relation to the receipt of ₹

55,00,000/- purportedly signed by me and by my mother and brother, I hereby submit as follows:

I had not received ₹ 55,00,000/- or any amount as mentioned in that receipt in cash from Mr. Joginder Singh and Mrs. Harjinder Kaur on 15.9.2000.

I or my sons Parshant and Vikrant have never signed any such receipt/document. The said document is a forged and frivolous document and signatures on such receipt are either forged or scanned from some other documents etc. and created just to harass me and my family members.

As per that receipt the total consideration of sale of the H.No.146, Sector 8, Chandigarh is ₹ 93,00,000/-, ₹ 55,00,000/- were received on 15.9.2000 and ₹ 38,00,000/- shall be paid at the time of registry. Whereas I would like to point out that ₹ 9,90,000/- was received through Account payees cheques in June 2000/- as part payment and only ₹ 28,10,000/- were pending to be received on 15.9.2000 and that was received in October 2000. This shows that the said receipt is just a false document created without full knowledge of facts. Photo copy of such receipt does not define the status of Mrs. Vijay Chaudhary, Mr. Vikrant Chaudhary and Mr. Parshant Chaudhary. It shows that only Mrs. Vijay Chaudhary has taken the whole payment as seller and Mr. Parshant and Vikram Chaudhary are just witnesses. It nowhere shows them as co-owners. Sir, how is this possible that the proposed buyer would make such a heavy payment without taking the consent of two other co-owners? This does not show that other co owners have taken any amount. This further cements the facts that this very receipt is just a figment of imagination and just created to harass us and waste the precious time of Income tax department.

The receipt is incomplete and imaginary is further confirmed by the fact that proposed buyers and sellers have not identified fully as to their father's name and address. There is

also no reference to any agreement to sell made for that purpose. This proves that the fact is just a crude receipt created by some childish brain and even the spelling of word receipt are shown as receipt in that.

I request that original document should be shown to me for my verification and signature verification from forensic laboratory should please be carried out to confirm that signatures on that receipt are a forged one. Ageing of handwriting, Ageing of paper used for such receipt and Ageing of revenue stamp affixed on this should also be done to confirm that the document was signed on 15.9.2000.

I request you to fully investigate the matter. Matter may further be investigated as to who had sent the wrong complaint to waste the precious time of IT department and mislead the senior officers. Proper action may please be taken against the sender of the receipt so that no one should dare to mislead the IT department.”

I further confirm that this statement taken from me on 4.11.2003 at my residence was taken forcibly and under coercion and I totally disown my statement given on 4.11.2003.

I further want to ask as for what reasons summons were issued to me for 10.11.2003 when no statement of mine was supposed to be taken. Was it just to mark my attendance in the IT office.”

However, the Tribunal after examining the facts of the case rejected the contention of the assessee and dismissed the appeal, observing as under:-

“18. We have heard both the parties and carefully considered their submissions including the authorities referred to by them. The case of the AO in making the impugned addition is built on the photo copy of the receipt evidencing payment of ₹ 55 lacs in cash and the statements of the assessees as recorded by ADIT (Inv.) on oath in which they have confirmed the

authenticity of the said receipt including its contents as well as their signatures appearing on it. It is however, the case of the assessee that photostat copy of the receipt in the possession of the income tax department has no evidentiary value as the Assessing Officer is not in the possession of the said receipt in original. Therefore, the crucial issue that needs adjudication at the outset is whether photo copies of the relevant documents like the receipt in the present case can at all be taken into account, in the absence of the original documents, by the AO for making the assessment. It is true that photostat copies of the documents, in the absence of their original have little evidentiary value under the law of evidence. However, the relevant question is not whether photostat copies, in the absence of their original, have any evidentiary value under the Indian Evidence Act. The relevant question is whether the AO is at all required by the provisions of the IT Act to act on the basis of what is technically called “evidence” under the Indian Evidence Act. In our view, the issue is fairly well established. While making as assessment, the AO does not act merely on what is technically described as “evidence” in the Indian Evidence Act. It can well be seen from sections 142 and 143 of the IT Act that the AO may also act on “the relevant material which he has gathered” for the purpose of making assessment. In common parlance, the expression “material” would cover anything that may have influence or effect on the decision or the merits of the case. The very use of the word “material” in section 143(3) clearly shows that the AO is not fettered by the technical rules of evidence and the like and that he may act on material which may not, strictly speaking, be accepted as evidence in a court of law. Though the aforesaid proposition is well brought out by sections 142 and 143 and therefore no authority is needed to support them, there is nevertheless series of authorities laying down the proposition that an Assessing Officer can act on such materials and information, which are

not strictly “evidence” under the Evidence Act. They are e.g. Vimal Chandra Golecha vs. ITO, 134 ITR 119, 130, 131 (Raj.), Additional CIT vs. Jay Engineering Works, 113 ITR 389, 391-2 (Del.) and Seth Gurmukh Singh vs. CIYT, Punjab, 12 ITR 393, 425 (Lah.). However, the material proposed to be used by the AO should be relevant to the fact in issue before the AO can use them for making the assessment. We therefore hold that photostat copies of documents, in the absence of their original constitute material in the hands of the AO if they are relevant for the purpose of assessment and if they are not successfully rebutted by the assessee. What is the value of the photo copy of a document as “material” for the purpose of assessment depends essentially upon the nature of documents, contents of the document and the facts surrounding the case. It cannot be laid down as a general proposition that the photo copy of a document will always constitute relevant “material” for the purpose of assessment or that it will never constitute relevant material for assessment. In this view of the matter, the submission of the assessee that the AO cannot take into account photo copy of the receipt for the purpose of assessment is rejected.

19. Turning to the facts of the case before us, the photocopy of the receipt is specific in that it evidence receipt of ₹ 55 lakhs is cash from Shri Joginder Singh and Mrs. Harjinder Kaur, being the purchasers, on 15.9.2000. It is duly signed by all the assessees in token of having received the aforesaid sum of money in cash. The name of the purchasers as also the date of receipt of the aforesaid sum of money are also mentioned in the receipt in unambiguous terms. The fact that the receipt carries signature of the recipient of the aforesaid money on the revenue stamp affixed on the receipt further establishes the genuineness of the contents of the receipt. If the AO had the original of the receipt in his possession and shown the same to the assessees, the assessees could have done no better than what they have

done by seeing the photo copy of the receipt. Besides, the receipt is relevant to the fact in issue and establishes in unambiguous terms the receipt of ₹ 55 lakhs in cash over the apparent consideration. Secondly, the authenticity of the receipt, the authenticity of the signatures of the assesseees on the receipt, and the fact that a sum of ₹ 55 lakhs was actually received by them in cash have been confirmed by the assesseees in their respective statements recorded on oath by the ADIT (Inv.). In other words, the genuineness of the receipt and also the contents thereof are duly corroborated by all the assesseees in their respective statements. It is not a case where the departmental authorities are acting merely on the basis of photo copy of the receipt. Thirdly, and more importantly, the assesseees have not placed any evidence on record to rebut the contents of the receipt or even the contents of their statements. In this factual setting, we are unable to hold that the said receipt is irrelevant material for the purpose of making assessment. We therefore hold that the Assessing Officer has rightly acted upon the contents of the receipts which are duly corroborated by the assesseees in their respective statements, for making the assessment under challenge before us.”

8. The findings recorded by the authorities below are pure findings of fact which have not been shown to be illegal or perverse in any manner which may call for interference by this Court. Consequently, no substantial question of law arises. The appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

September 17, 2015
'gs'

(Ramendra Jain)
Judge