IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.90 of 2016 (O&M)
Date of decision: 23.05.2016

Kapoor Singh

……Appellant

vs.

Assistant Commissioner of Income Tax, ACIT, Income Tax Office, City Centre, HUDA Park, Bhiwani, Haryana.

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of 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?

Present: Mr. J.K.Sibal, Sr. Advocate with
Mr. Dhawal Bhandari, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under Section 260A of the Income tax Act, 1961 (in short, "the Act") against the order dated 15.9.2015, Annexure A.7 passed by the Income Tax Appellate Tribunal, Bench Delhi (in short, "the Tribunal") in ITA No.5046/DEL/2011 for the assessment year 2002-03, claiming following substantial questions of law:-

"I. Whether in the facts and circumstances of the case, the learned

Tribunal order dated 15.9.2015 and its finding are legally justified in the eyes of law?

II. Whether in the facts and circumstances of the case, the learned Tribunal order dated 15.9.2015 and its finding are in the eyes of law i.e. the Assessing Officer has rightly added the said amounts in the hands of the appellants and the CIT(A) has also confirmed it with proper reasoning in respect of the assessment year 2000-01 and 2002-03?

III. Whether in the facts and circumstances of the case, the learned Tribunal order dated 15.9.2015 and its finding are in the eyes of law i.e. learned Tribunal was whether justified by rejecting the contentions of the appellant that compilation of the judgments submitted by the appellant will not be applicable in the present case which were relevant to the issues but same was arbitrarily ignored?

IV. Whether in the facts and circumstances of the case, the learned Tribunal order dated 15.9.2015 and its finding are in the eyes of law to the extent in rejecting the contention of the AR that Shri Sube Singh (sic) on the issue of bank account standing in the name of a third party cannot be treated as appellant's account merely because similarity is noticed in the signature of the appellant and that of the said person (***Dr. G.G.Dhir vs. ACIT*** (2010) 129 TTJ 1 (Agra)?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee was employed as Supervisor in the Irrigation Department, Haryana. A search and seizure operation was conducted on 4.3.2005 at the residential premises of the assessee. During the said operation, passbook of Shri Sube Singh, Account No.16860 was found. Statement of the assessee was recorded during the search. After examining the evidence on

record and the statement of the assessee, the Assessing Officer added ₹ 10,15,200/- for the assessment year 2000-01 and ₹ 10,40,265/- for the assessment year 2002-03 in respect of deposits in Sube Singh's account as well as ₹ 2,97,000/- for the assessment year 2003-04 and ₹ 1,18,000/- in respect of accounts mentioned in Code. The assessments relevant to the search period i.e. Assessment years 1999-2000 to 2005-06 were completed by the Assessing Officer under sections 153A/143(3) of the Act vide order dated 19.12.2006, Annexure A.3. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) dismissed the appeal of the assessee for non-prosecution on 22.8.2008 which was restored by the Tribunal, Delhi Bench, vide order dated 31.7.2009. Vide order dated 16.3.2010, the CIT(A) disposed of the said appeal by granting certain reliefs. Against the said order, the assessee approached the Tribunal. The Tribunal restored the appeal to CIT(A) for readjudication vide order dated 25.6.2010. The CIT(A) dismissed the appeal vide order dated 29.8.2011, Annexure A.5. In respect of the assessee's appeal for the assessment years 2000-01 and 2002-03, the CIT(A) held that the assessee could not produce evidence regarding the repayment of alleged loans to Shri Sube Singh. According to Sube Singh, he knew Kapoor Singh i.e. the assessee and his sons but no gift or loan had ever been made by him to them. Further, the bank account of Sube Singh contained huge cash deposits and withdrawals in the name of the assessee. The appellant went in appeal before the Tribunal. The Tribunal dismissed the appeal of the appellant for the assessment years 2000-01 and 2002-03 vide order dated 15.9.2015, Annexure A.7. Hence the instant appeal by the appellant-assessee.

3. Learned counsel for the appellant-assessee submitted that since there were no entries relating to the assessment year 2002-03, so no presumption or addition could be foisted on the assessee during this year. Further, the department proceeded against the pass book holder Sube Singh but no action was taken against him and the additions made in the hands of the assessee were legally not permissible. It was urged that the action of the department in making additions in the case of the assessee lacked bonafides of the revenue.

4. We have heard learned counsel for the appellant-assessee.

5. The Assessing Officer had examined the pass book of Savings Bank Account No.16860 in the name of Shri Sube Singh son of Shri Nathu Ram, Village Bigova. It was concluded by him that this account for all intents was being used by Shri Kapoor Singh or his sons as Shri Sube Singh had no capacity to make big deposits appearing in the said account. Even the introduction to the account had been made by the wife of the assessee- Smt. Prem Kumari. The withdrawals from the said account were either made by Shri Kapoor Singh or his sons Vikas and Rajiv from time to time. Further, the account had been closed on 5.3.2005 i.e., immediately after the search on 4.3.2005, thus, indicating the assessee's interest in the account. In such circumstances, the account was held to be *benami* account of Shri Kapoor Singh and peak amounts in the relevant assessment years were added as income of the assessee which was ₹ 10,40,265/-

in this year. On appeal to CIT(A) by the assessee who after reappraising the entire material on record, affirmed the aforesaid findings with the observations that there was no reason to disagree with the Assessing Officer that the assessee had rotated his undisclosed income through the *benami* account No.16860 in the name of Shri Sube Singh and sustained the addition of ₹ 10,40,265/-.

6. The Tribunal after examining the entire evidence on record has inter alia recorded that the assessee had not disputed the presence of the pass book of Sube Singh at his residence during search and seizure operation. He had also not controverted the findings recorded by the Assessing Officer with regard to the statement of the Bank Manager that most of the payments had been made/taken by the assessee and his sons. It was further not disputed by the assessee that the said account was closed on 5.3.2005 i.e. immediately after the search on 4.3.2005. During assessment proceedings, it was also found that introduction to the account of Sube Singh had been made by Smt.Prem Kumari, wife of the assessee. The withdrawals and the deposits had been made by the assessee and his sons from time to time. Thus, it was clearly established that the account of Sube Singh was being operated by the assessee and affirmed the orders of the Assessing Officer and the CIT(A). The relevant findings recorded by the Tribunal read thus:-

> "10. We have gone through the records and proceedings as well as heard the submissions made by both the sides. It is pertinent to note that the bank pass book was found in the custody of assessee. The assessee at

no point of time stated that he has not received the amounts from Shri Sube Singh. It can be seen from the entries in the bank account that Shri Sube Singh has issued various cheques to the assessee as well to the assessee's sons and this fact has not been denied by the assessee at any stage. Only the version of his explanation changed during the search and during the assessment proceedings. The assessee could not establish that the loan was repaid at particular time from any records. The assessee though has given details of his salary, the same also indicates that there are certain amounts in the accounts of assessee which were found exorbitant. Infact the statement recorded during the search was also not sufficient to prove that the assessee has not received any amount from the said Shri Sube Singh. The proceedings against Shri Sube Singh were time barred and though the assessee's sons were assessed separately, there was no addition made in their income. The fact that the pass book was found in the custody of the assessee and from the above discussion it can be found that the bank account of Shri Sube Singh was operated by assessee and on regular basis as Shri Sube Singh was not staying nearby either to the Bank or to the residence of the assessee which shows that the assessee was operating the bank account of Shri Sube Singh and the amounts were received by the assessee and his sons on regular basis for dealing in purchase and sale of properties. The assessee has also failed to give any evidence as to which properties he purchased and which properties were sold and also about repayment of loan to Shri Sube Singh. The assessee has not disputed the bank pass book of Shri Sube Singh which was found at his residence during search and seizure operation, neither has he challenged/controverted the AO's finding to the statement of the Bank Manager given in writing that most of the payments have been made/taken by Shri Kapoor Singh and his sons. The assessee has also not disputed the AO's noting that the account was closed on 5.3.2005 that is immediately after the search on 4.3.2005. This shows that the account was fully operated by the assessee. The copy of the details of the said bank account from 18.11.1999 to 13.7.2004 has bene submitted before the Assessing Officer. However, from the assessment records, it can be perused that the bank account of Shri Sube Singh was operated right from 4.4.1978. Since 1978 to November 1999, the amounts were meager and in regular intervals indicating that they pertain to the pension received by him from Army. During the assessment proceedings enquiries were made from the bank and it was found that the introduction to the said account had been made by Smt.Prem Kumari wife of the assessee and the withdrawals and the deposits have been made by Shri Kapoor Singh and his sons Vikas and Rajiv from time to time. The Bank Manager has given in writing that accounts statement shows that most of the payments have been made to Shri Kapoor Singh and his sons. Thus, Section 132 (4A) of the Act is very much attracted in the present case as the pass book was in the custody of the assessee and not that of in the custody of assessee's sons. Thus, it is clearly established that the account of Shri Sube Singh was operated by the assessee and not by assessee's sons. Therefore, the Assessing Officer has rightly added the said amounts in the hands of the assessee and the CIT(A) has also confirmed it with proper reasoning in respect of the assessment years 2000-01 and 2002-03."

7. The concurrent findings recorded by the Assessing Officer, CIT(A) and the Tribunal that the savings account No.16860 in the name of Shri Sube Singh was infact benami account of the assessee and the additions made on the

basis of peak amounts therein for the relevant assessment years were totally justified. The contention of the assessee in the facts and circumstances as noticed hereinabove cannot be accepted as the view taken by the Assessing Officer, CIT(A) and the Tribunal is based on appreciation of evidence on record. Learned counsel for the appellant has not been able to produce any material to controvert the well-reasoned findings recorded by the authorities below. Thus, no substantial question of law arises. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 23, 2016 **(Raj Rahul Garg)**
'gs' **Judge**