

Gurbax Singh
2017.04.03 16:19

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

**ITA No. 288 of 2016
Date of decision: February 08, 2017**

Basant Singh, Prop. Basant General Store

.....Appellant

Vs.

Commissioner of Income Tax, Ludhiana (Punjab)

.....Respondent

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

Present: Mr. Divya Suri, Advocate for the appellant.
Mr. Rajesh Katoch, Advocate for the revenue.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.288 and 289 of 2016 as learned counsel for the parties are agreed that both the appeals are against the common order dated 15.1.2016 in quantum and penalty proceedings. However, the facts are being extracted from ITA No.288 of 2016.
2. ITA No.288 of 2016 has been preferred by the appellant- assessee against the order dated 15.1.2016 passed by the Income Tax Appellate Tribunal, Chandigarh Division Bench in ITA No.121/CHD/2012 for the assessment year 2006-07, claiming following substantial question of law:-

“Whether under the facts and circumstances of the case, the action for penalty under section 271(1) (c) is unreasonable, while imposing the levy mechanically influenced by the quantum proceedings, hence not in accordance with the ratio of *CIT vs. Bimal Kumar Damani* (2003) 261 ITR 87 (Calcutta)?”

3. In ITA No.289 of 2016 filed by the appellant-assessee, the following substantial questions of law have been claimed:-

i) Whether under the facts and circumstances of the case, while examining Section 27 of the Hindu Marriage Act, 1955, Section 14 of Hindu Succession Act, 1956 the Stridhan is the absolute ownership, control and possession of the lady inspite of being placed in the custody of husband resultantly not chargeable to tax under section 5 of the Income Tax Act, 1961 pursuant to *Pratibha Rani vs. Suraj Kumar*, (1985) 2 SCC 370 and *Rashmi Kumar vs. Mahesh Kumar Bhada*, (1997) 2 SCC 397?

ii) Whether under the facts and circumstances of the case, the inference of facts can be utilized for presuming the chargeability of income under section 5 of the Income Tax Act, 1961 while the exchange of dasti money amongst the relatives has been proved beyond doubt qua the source, creditworthiness and the veracity of the transaction?"

4. A few facts relevant for the decision of the controversy involved as narrated in ITA No.288 of 2016 may be noticed. The appellant-assessee is an individual and a resident of Moga (Punjab). He is engaged in the business of money changer at Pattiwali Gali, Moga having licence issued under the Banking Regulation Act, 1949 in the name and style of 'Basant General Store since 1.1.2005. Additionally, he is running a gift centre. The return of income was filed by him on 31.10.2006 at an income of ₹ 3,21,460/-. Statutory notices were issued to the appellant under sections 142(1) and 143(2) of the Act. The appellant pleaded that amount of ₹ 3,30,000/- was out of the savings (Stridhan) of his wife and interest free loan of ₹ 10 lacs had been received by Shri Gurdiwan Singh which had been credited in the books of account. Not satisfied, the Assessing officer made an addition of ₹ 3,30,000/- qua cash credits under section 68 of the Act and

₹ 10,00,000/- qua unsecured loans and various other additions. Aggrieved by the order, the appellant filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 30.10.2009, Annexure A.5, the CIT(A) partly allowed the appeal. The appellant filed appeal before the Tribunal. Thereafter, show cause notice dated 1.4.2010 was issued to the appellant under section 274 read with Section 271(1)(c) of the Act for the purposes of levy of penalty. The appellant raised various pleas before the Assessing officer during penalty proceedings. Vide order dated 18.1.2011, Annexure P.7, the Assessing officer imposed penalty of ₹ 19,97,384/- qua the addition of ₹ 59,34,000/-. Not satisfied with the order, the appellant filed appeal before the CIT(A). Vide order dated 17.11.2010, the CIT(A) upheld the penalty in consequence to the additions made by the Assessing officer and dismissed the appeal. Aggrieved by the order, the assessee filed appeal before the Tribunal. Vide order dated 15.1.2016, Annexure A.11, the Tribunal upheld the penalty in consequence to the addition of ₹ 3,30,000/- and ₹ 10 lacs and partly allowed the appeals. Hence the instant appeals by the appellant-assessee.

5. We have heard learned counsel for the parties.

6. A perusal of the findings recorded by the authorities below shows that the Assessing officer noticed that the assessee made addition to his capital account by ₹ 3,30,000/-. The assessee submitted that the addition was out of savings (Stridhan) of his wife. The Assessing officer observed that it was not believable that such heavy amount was kept at home by the wife of the assessee. Accordingly, the Assessing Officer treated the same as unexplained and made addition under Section 68 of the Act. On appeal before the CIT(A), it was pleaded by the assessee that he was married about 35 years ago and saving of ₹ 3,30,000/- out of Stridhan by his wife was on

account of receipts on social and other customary occasions. The CIT(A) dismissed the appeal on the ground that source of the amount kept by the wife of the appellant was not supported by any evidence. It was categorically recorded by the Tribunal that the burden was on the assessee to prove the source of the amount of ₹ 3,30,000/-. The assessee explained that this amount was received from his wife and filed her affidavit in which she had merely stated that ₹ 10,000/- had been saved annually out of the money given by her husband but the counsel for the assessee pleaded before the CIT(A) that such amount was accumulated by wife of the assessee on different occasions by way of gift etc. from their parent and in-laws side at different regular occasions. Thus, the affidavit was held to be contradictory. The Tribunal upheld the addition of ₹ 3,30,000/-. The relevant findings recorded by the Tribunal read thus:-

“4. On ground No.1, assessee challenged the addition of ₹ 3,30,000/- on account of Stridhan under section 68 of the Income Tax Act. The Assessing Officer noticed that assessee made addition to his capital account by ₹ 3,30,000/-. The Assessing Officer asked the assessee to produce documentary in support of the explanation of source of this deposit. The assessee submitted that addition of ₹ 3,30,000/- was out of savings (Stridhan) of his wife. The Assessing Officer, however, observed that explanation of the assessee is not convincing and not supported by any documentary evidence. The Assessing Officer further observed that it was not believable that such heavy amount was kept at home by wife of the assessee. The Assessing officer accordingly treated the same as unexplained and made addition under Section 68 of the Income Tax Act.

5. The assessee challenged the addition before learned CIT(Appeals) and it was explained that assessee was married about 35 years ago and savings of ₹ 3,30,000/- out of Stridhan by his wife was on account of receipts on social and other

customary occasions. The learned CIT(Appeals) however did not accept contention of the assessee and dismissed this ground of appeal of assessee because the source of the amount kept by the assessee's wife was not supported by any evidence.

6. On consideration of the rival submissions, we do not find any merit in this ground of appeal of the assessee. It is not in dispute that assessee has added ₹ 3,30,000/- in his capital account, therefore, burden was upon assessee to prove source of the same. The assessee explained that this amount was received from his wife and filed affidavit of Smt. Mukhtiar Kaur, wife of Shri Basant Singh (assessee) (PB-117) in which she has merely stated that ₹ 10,000/- have been saved annually out of the money given by her husband i.e. by the assessee but the counsel for assessee pleaded before the learned CIT(appeals) that such amount was accumulated by wife of the assessee on different occasions by way of gift etc. from their parent and in-laws side at different regular occasions. The affidavit of wife of the assessee is thus, contradictory as against submission made by the assessee before learned CIT(Appeals). Further, the affidavit of wife of the assessee is not supported by any evidence or material on record. Thus, assessee failed to prove credit worthiness of his wife and the genuineness of the transaction in the matter. The authorities below were, therefore, justified in making and confirming the addition of ₹ 3,30,000/-. This ground of appeal of assessee is accordingly dismissed.”

7. With regard to the credit in the name of Shri Gurdiwan Singh in the sum for ₹ 10 lacs, his statement was recorded in which he denied to have given any loan to the assessee. He stated that he had not taken any loan or given any loan for the last six years. He had given about ₹ 10,000/- to ₹ 20,000/- to his brother and sister as loan. Thus, the assessee failed to prove the source of the credit and genuineness of the transaction in the matter. Further, the addition of ₹ 29,000/- shown to have been given by Shri Iqbal

Singh, in the absence of any evidence was upheld by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

“15. As regards the credit in the name of Shri Gurdiwan Singh in a sum of ₹ 10 lacs, his statement was recorded at assessment stage by Assessing officer, copy of which is filed at page 53 of the paper book in which he has categorically denied to have given any loan to the assessee. He has explained that he has not taken any loan or given any loan for the last six years. He has given about ₹ 10,000/- to ₹ 20,000/- of loan to his brother and sister. Since Shri Gurdiwan Singh was witness of the assessee who has deposed against the assessee therefore, assessee failed to prove the source of the credit and genuineness of the transaction in the matter. The learned counsel of the assessee, however, submitted that subsequent to the statement recorded on 6.11.2008, Shri Gurdiwan Singh filed his affidavit before learned CIT(Appeals) on 16.5.2009 confirming giving of loan to the assessee. Such an affidavit filed at the subsequent stage without making retraction to the earlier statement given to Assessing Officer would not serve any purpose. Further, affidavit of Shri Gurdiwan Singh has not been supported by any evidence or material on record, therefore, authorities below were justified in making and confirming the addition of ₹10 lacs. Thus, assessee failed to explain genuineness of the credits in respect of ₹ 10 lacs. This ground of appeal of the assessee is accordingly dismissed.

16. In respect of addition of ₹ 29,000/-, shown to have been given by Shri Iqbal Singh, assessee has not produced any evidence before authorities below to explain even his identity, what to say of creditworthiness and genuineness of the transaction in the matter. He was also to produce before Assessing Officer for examination. Therefore, in the absence of any evidence or material on record, authorities below were justified in making and confirming addition of ₹ 29,000/-. This ground of appeal of the assessee is accordingly dismissed.”

8. With regard to the credit of ₹ 25,75,000/- received from Shri Jeet Singh, Hari Singh in his statement before the Assessing officer that he along with his two brothers Jeet Singh and Balbir Singh had struck a deal of joint land. They had sold the land and had struck a deal for purchase of another land. The land was to be purchased in proportionate share of $\frac{1}{2}$ with the assessee. Jeet Singh in his statement stated that he had given the said amount to the assessee for purchase of land as advance. It was held that since these persons were agriculturists and living in village, therefore, the contention of the assessee was probable that they might not have maintained any bank account and thus had kept cash with them after selling their properties. Thus, the addition of ₹ 25,75,000/- was deleted.

9. With regard to the addition of ₹ 20,00,000/- on account of unexplained cash credit, the assessee explained that the said amount was advanced by Sh. Pritam Singh against mortgage of house, which did not relate to any business transaction. The Assessing Officer asked the assessee to produce Sh. Pritam Singh to verify genuineness of the transaction in the matter. Sh. Pritam Singh in his statement stated that he had kept the money at his house after selling the land because he was not having any bank account. He had sold the land to Sh. Darshan Singh and thereafter he had not purchased any land. Thus, the assessee was able to prove identity of Sh. Pritam Singh, his credit worthiness and genuineness of the transaction. Thus, the Tribunal did not find any justification for the authorities below to make and sustain the addition of ₹ 20,00,000/-. Thus, the addition of ₹ 20,00,000/- was deleted.

10. The Assessing officer imposed the penalty under section 271(1) (C) of the Act on the additions made as under:-

i) Cash introduced in capital account ₹ 3,30,000/-

ii) Shri Jeet Singh s/o Shri Balbir Singh	₹ 25,75,000/-
iii) Shri Gurdiwan Singh	₹ 10,00,000/-
iv) Shri Iqbal Singh	₹ 29,000/-
v) Agreement account	₹ 20,00,000/-

As already noticed above, the Tribunal deleted the additions of ₹ 25,75,000/- in respect of amount received from Shri Jeet Singh and ₹ 20 lacs on account of amount received from Shri Pritam Singh on account of mortgage agreement. Thus, the Tribunal set aside the order of the authorities below and cancelled the penalty on the additions of ₹ 25,75,000/- and ₹ 20 lacs totaling ₹ 45,75,000/-. Further, in the absence of any documentary evidence on record, the additions of ₹ 3,30,000/- to the capital account, ₹ 10 lacs in respect of amount received from Shri Gurdiwan Singh and ₹ 29000/- from Shri Iqbal Singh were held to be justified and penalty was levied on the said additions. The relevant findings of the Tribunal read thus:-

“30. We have considered the rival submissions. The Assessing Officer imposed the penalty under section 271(1) (c) of the act on the additions made as under:-

i) Cash introduced in capital account	₹ 3,30,000/-
ii) Shri Jeet Singh s/o Shri Balbir Singh	₹ 25,75,000/-
iii) Shri Gurdiwan Singh	₹ 10,00,000/-
iv) Shri Iqbal Singh	₹ 29,000/-
v) Agreement account	₹ 20,00,000/-
Total;	₹ 59,34,000/-

31. In ITA 1256/2009, we have decided the appeal of the assessee on quantum in which we have deleted the additions of ₹ 25,75,000/- in respect of amount received from Shri Jeet Singh and also deleted addition of ₹ 20 lacs on account of amount received from Shri Pritam Singh on account of mortgage agreement, therefore, nothing survives in favour of the revenue to levy penalty on these amounts. We, accordingly, set aside the

orders of authorities below and cancel the penalty on the additions of ₹ 25,75,000/- and ₹ 20,00,000/- totaling to ₹ 45,75,000/-. This part of ground of appeal of the assessee is allowed.

31.(i) As regards the addition of ₹ 3,30,000/-, assessee did not produce any evidence before the authorities below to explain the addition to the capital account. On the addition for ₹ 10 lacs in respect of amount received from Shri Gurdiwan Singh, he has denied to have given any loan to the assessee. In his statement recorded under section 131 of the Income Tax Act, further no evidence has been filed in respect of amount received of ₹ 29,000/- from Shri Iqbal Singh. No explanation has been given at any stage to explain genuineness on receipt of these amounts. Therefore, the assessee failed to substantiate any explanation filed before authorities below. The assessee has thus, filed inaccurate particulars of income so as to attract levy of the penalty under section 271(1) (c) of the Act. The penalty was levied by the Assessing Officer because appeal of the assessee was dismissed by the learned CIT (Appeals). On this issue, we have also confirmed the additions in the absence of any evidence on record. Therefore, no interference is called for in the matter and authorities below are justified in levying penalty on these three additions. These grounds of appeal of the assessee are dismissed. The Assessing officer shall re-compute the levy of penalty as is directed above.”

11. The findings recorded by the Tribunal have not been shown to be illegal or erroneous by the learned counsel for the appellant warranting interference by this Court. The proposition of law enunciated in ***Pratibha Rani's Vs. Suraj Kumar and another***, (1985) 2 SCC 370 relied upon by the learned counsel for the appellant is unexceptionable. It was held by the Apex Court that a Hindu married woman is the absolute owner of her Stridhan property and can deal with it in any manner she likes. She may spend the

whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in terms of extreme distress as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. This right is purely personal to the husband. The property so received by him in marriage cannot be proceeded against even in execution of a decree for debt. However, in the present case, the appellant was unable to substantiate that the amount which was treated to be unexplained money was the Stridhan of the appellant's wife.

12. In view of the above, once the additions have been held to be sustained, no substantial question of law arises. Thus, finding no merit in the appeals, the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 08, 2017
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes