

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

And

* HON'BLE MS. JUSTICE J. UMA DEVI

+ I.T.T.A.No.703 2016

% Date: 26-04-2018

Between:

Pendurthi Chandrasekhar,
Plot No.8-2-696/697,
Apartment S4-S5,
La Creative Heights,
Road No.12, Banjara Hills,
Hyderabad – 500 034.

.... Appellant/ Assessee

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-11, Hyderabad.

.. Respondent

! Counsel for the Appellant : Mr. K. Vasantha Kumar

^ Counsel for Respondent: Mrs. M. Kiranmayee

< GIST:

> HEAD NOTE:

? Cases referred

1. 185 CTR 56
2. 304 ITR 145 (P&H)
3. 290 ITR 306
4. 291 ITR 278

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE MS. JUSTICE J. UMA DEVI

+ I.T.T.A.No.703 2016

JUDGMENT: (per VRS,J)

This is an appeal filed by the assessee under Section 260A of the Income Tax, 1961, challenging an order of the Income Tax Appellate Tribunal in I.T.A.No.2119/H/2011 relating to the Assessment Year 2005-2006.

2. Though the appellant raised about 10 substantial questions of law at the time of filing of the appeal, he came up with a Memo subsequently seeking to reframe the questions of law. Accepting the Memo filed, the following substantial questions of law were framed as arising for consideration in this appeal.

- A. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal while confirming the addition of Rs.11,97,267 as unexplained credit under Section 68 of the Act, is right in law in holding that there should be sufficient reasons for receiving gifts though it is from father-in-law and the gift is covered by the provisions of Section 56 of the Act.
- B. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the conclusion of the Assessing Officer and the learned Commissioner of Income Tax (Appeals) that undisclosed income has been brought in the form of gifts in spite of the fact that there was no income earning activity to the assessee.
- C. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in ignoring the reference made by the Assessing Officer to the Foreign Tax Division of the Central Board of Direct Taxes requesting to verify the genuineness of the amounts received from UK and confirming the addition though no adverse communication is received as per records.

D. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that there is relinquishment of right over the property and the difference between the original consideration of Rs.4,000/- and final consideration of Rs.5000/- is profit to the assessee and confirming the addition of Rs.74,15,000/- though the sale deed is contrary to such conclusion.

E. Whether on the facts and in the circumstance of the case, the Income Tax Appellate Tribunal is right in law in holding that the assessee has not no specific reply has been given to query of why income should not be assessed consequent to the relinquishment though the assessee in the written submissions has categorically stated that neither any income accrued nor received through the execution of sale deed in favour of the .

3. Heard Mr. K. Vasanthakumar, learned counsel for the appellant and Smt. M. Kiranmayee, learned Senior Standing Counsel for the Revenue.

Facts leading to the present appeal:

4. A Search and seizure operation under Section 132 of the Income Tax Act, 1961 was carried out in the premises of M/s. Ambiance Properties Pvt. Ltd., and its sister concerns. The assessee is one of the Directors of M/s. Dakshin Shelters Pvt. Ltd. Therefore, his residential premises was also covered by the search and seizure.

5. Thereafter, notices under Section 153A were issued on 20.10.2008. In response to the notices, the assessee filed his return of income on 02.02.2009, admitting a total income of just Rs.20,024/-.

6. Notices under Section 143(2) and 142(1) were issued on 27.04.2009 and after giving an opportunity, the assessment was completed. Three issues became the focal points in the assessment. They were – (1) a gift of Rs.11,97,267/- allegedly received from the father-in-

law; (2) personal expenditure/withdrawals shown as NIL, despite the fact that the assessee had cash in hand of Rs.40,94,100/-; and (3) the purchase of a land measuring about 7415.19 sq. yards in Banjara Hills, Hyderabad, through sale deeds in the names of three different Companies, at a price of Rs.1000/- per sq. yard over and above that was originally fixed, leading to an inference that to the extent of the said difference, there were business profits.

7. Holding that the existence of the donor, his source of income, the occasion for the gift, etc., were not verifiable and the genuineness of the gift was also not established by the donee, the Assessing Officer included the entire amount of Rs.11,97,267/- that was allegedly received as a gift by the assessee from his father-in-law, as unexplained cash credit. The first issue was so dealt with by the Assessing Officer.

8. On the second issue relating to NIL personal drawings, the Assessing Officer rejected the explanation offered by the assessee in relation to another Assessment Year, viz., 2002-2003 and consequently took Rs.3,00,000/- as income from other sources.

9. On the third issue, the Assessing Officer found that the total consideration involved in the purchase of the land of the extent of 7415.19 sq. yards was Rs.5,58,20,000/- and that since only a sum of Rs.3,70,75,950/- was accounted for in the sale deeds, the balance amount of Rs.1,87,44,050/- must have been paid to the vendor in black through unaccounted sources. Therefore, the Assessing Officer included the said amount of Rs.1,87,44,050/-, as undisclosed income for the Assessment Year 2005-2006.

10. The assessee filed an appeal before the C.I.T (Appeals). On the first issue relating to the alleged gift of money from the father-in-law, the

C.I.T. (Appeals) held that it was not the first occasion when the assessee received money from his father-in-law as gift and that he had earlier received a sum of Rs.50,00,000/- in the year 1998, a sum of Rs.3,40,000/- during the Assessment Year 2007-2008, a sum of Rs.92,000/- in the Assessment Year 2002-2003 and a sum of Rs.4,22,368/- in the Assessment Year 2003-2004. Since the gift made in the year 1998 was at the time when the appellant started a business venture in India, the C.I.T (Appeals) held that the gift made on the said occasion alone could be considered as genuine. Therefore, citing a decision of the High Court of Rajasthan in Chain Sukh Rathi v. C.I.T.¹, the C.I.T (Appeals) decided the first issue against the assessee. On the second issue, the C.I.T. (Appeals) partly allowed the claim and restricted the addition to Rs.1,50,000/-. On the third issue, the C.I.T (Appeals) found that the entire addition could not be sustained, as the same was made on hypothetical grounds. However, the C.I.T (Appeals) gave an opportunity to the assessee in the course of appeal proceedings to explain why income was not assessed consequent upon the relinquishment of rights over the property in favour of the newly floated Companies. The assessee offered an explanation. After considering the explanation, the C.I.T (Appeals) found that the difference between the consideration of Rs.5000/- per sq. yard shown in the sale deed of the year 2005 and the consideration of Rs.4000/- per sq. yard shown as the original consideration in the year 2000, viz., a sum of Rs.1000/- per sq. yard could be taken to be the business profits. Accordingly the C.I.T (Appeals) multiplied the total extent of land of 7415 sq. yards by Rs.1000/- and arrived at the addition to be

¹ 185 CTR 56

made at Rs.74,15,000/-, instead of Rs.1,87,44,050/- as fixed by the Assessing Officer.

11. Not satisfied with the partial relief granted by the C.I.T (Appeals), the assessee filed I.T.A.No.2119/H/2011. The revenue also filed an appeal in I.T.A.No.105/H/2012 challenging the partial relief granted to the assessee by the C.I.T. (Appeals). By an order dated 22.03.2013, the Income Tax Appellate Tribunal dismissed both I.T.A.No.2119/H/2011 filed by the assessee and I.T.A.No.105/H/2012 filed by the revenue. Therefore, the assessee is before us, though the revenue has not challenged the dismissal of I.T.A.No.105/H/2012.

The Substantial Questions of Law:

12. Though there are five reframed substantial questions of law, they actually revolve only around two issues, viz., (1) the gift of Rs.11,97,267/- allegedly received by the assessee from his father-in-law; and (2) the addition of Rs.74,15,000/- as business profits, on account of the difference between the final consideration and original consideration. Therefore, we shall take up the substantial questions of law 1 to 3 together and the substantial questions of law 4 and 5 together.

Substantial Question Nos.1, 2 & 3:

13. As we have indicated in the previous portion of this order, there was admittedly an unexplained credit of Rs.11,97,267/-. The assessee claimed the same to be a gift from his father-in-law. The Assessing Officer rejected the same as not genuine, on the ground that the existence of the Donor, his source of income and the occasion for the gift were not verifiable. Therefore, the Assessing Officer concluded that the assessee must have routed his undisclosed income to his father-in-law and brought it back.

14. The C.I.T. (Appeals) found that gifts had been received by the assessee on several occasions in the past and that except the gift received at the time when the assessee started his business operations, the other gifts could not be treated as genuine. The C.I.T. (Appeals) also relied upon the decision of the Rajasthan High Court in this regard.

15. The Income Tax Appellate Tribunal concurred with the C.I.T (Appeals) and held that the mere submission of confirmation, the identity of the Donor, his financial soundness etc., may not prove the genuineness of the transaction. The Tribunal relied upon two decisions of the Punjab & Haryana High Court, one in Tirath Ram Gupta v. C.I.T.² and another in Jaspal Singh v. C.I.T.³ to come to the conclusion that the mere identification of the Donor and the movement of the gift through banking channel were not enough to prove the genuineness of the gift. The Tribunal also referred to the decision of the Supreme Court in C.I.T v. K. Mohanakala⁴, to hold that the burden was heavily cast upon the assessee.

16. Assailing the orders of all the authorities, it is contended by Mr. K. Vasantha Kumar, learned counsel for the appellant/assessee that the authorities failed to look into – (1) a letter of confirmation from the assessee's father-in-law; (2) a confirmation from the bank; and (3) the passport of the father-in-law. According to the learned counsel, the father-in-law of the petitioner is a British citizen working as a consultant Psychiatrist for the British National Health Services and the amount in question had actually come through banking channels. Therefore, when the assessee has no source of income, the focus made by all the three

² 304 ITR 145 (P&H)

³ 290 ITR 306

⁴ 291 ITR 278

authorities on the issue of “occasion for making the gift” was completely illegal. Drawing our attention to Section 56 of the Income Tax Act, 1961, the learned counsel for the assessee also contended that with effect from 01.04.2005, any sum of money received from any relative is not to be included under the heading “Income from other sources” in view of the proviso to clause (v) of sub-section (2) of Section 56. Though this proviso was inserted only by Finance (No.2) Act, 2004 with effect from 01.04.2005, the learned counsel for the appellant contended that the spirit behind the introduction of such a proviso ought to have been considered by the respondent.

17. We have carefully considered the above submissions.

18. As we have pointed out above, the assessing authority relied upon the decision of the Punjab & Haryana High Court in *Tirath Ram Gupta*, cited supra. The C.I.T (Appeals) relied upon the decision of the Rajasthan High Court in *Chain Sukh Rathi*, cited supra. The Tribunal not only relied upon the decision in *Tirath Ram Gupta* but also relied upon the decision in *Jaspal Singh* cited supra.

19. The appellant could not cite any decision which has taken the contra view. However, the appellant relies upon the judgment of another Bench of this Court dated 23.02.2018 in I.T.T.A.Nos.701 & 702 of 2016, in his own case. The only difference between the said case and the case on hand (though both of them relate to the very same assessee) is that in that case a Bench of this Court was concerned with a gift of Rs.73,00,000/- allegedly made to the assessee by maternal Aunt.

20. We have carefully considered the decision in I.T.T.A Nos.701 & 702 of 2016 dated 23.02.2018 in the assessee's own case. The reframed substantial question of law No.1 in I.T.T.A.No.701 of 2016 was as follows:

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal while confirming the addition of Rs.73,00,000/- as unexplained credit under Section 68 of the Act, is right in law in holding that there should be sufficient reasons for receiving gifts though it is from mother's sister and the gift is covered by the provisions of Section 56 of the Act?”

21. The discussion on the above question of law is to be found from paragraphs 12 to 25 of the decision in I.T.T.A.Nos.701 & 702 of 2016. We have carefully perused the discussion from paragraphs 12 to 25 of the aforesaid decision.

22. At the out set we have to point out that this is not a case where we can import the principle “what is sauce for the goose is sauce for the gander”. In other words we cannot simply say that what applies to a gift from the aunt would equally apply to a gift from the father-in-law, irrespective of the circumstances, suspicious or otherwise, surrounding the gift. The following are the crucial distinctions between the gift from the aunt that formed the subject matter of I.T.T.A.Nos.701 & 702 of 2016 and the gift from the father-in-law that forms the subject matter of this appeal:-

- (i) The gift from the father-in-law, which forms the subject matter of the present appeal, was received on 03.02.2005. The amendment to Section 56 came into force on 01.04.2005. The gift from the aunt that formed the subject matter of I.T.T.A.Nos.701 & 702 of 2016 was received after the amendment, on 16.07.2005. It is on account of this fact that the other Bench of this Court was able to go to the rescue of the assessee by applying Section 56 (2) (v).
- (ii) In fact in paragraph 25 of its decision in I.T.T.A.Nos.701 & 702 of 2016, the other Bench of this Court distinguished the decisions of the Punjab & Haryana High Court in *Tirath Ram Gupta* and *Jaspal Singh* specifically on the ground that those cases arose in relation

to the Assessment Years 1997-1998 and 1998-1999, before the insertion of clause (v) of sub-section (2) of Section 56.

23. Therefore, the appellant cannot rely upon the decision dated 23.02.2018 in I.T.T.A.Nos.701 & 702 of 2016. There is no question of invoking the spirit of the amendment to grant relief. Whenever the revenue raises a similar argument that an item is taxable on account of an amendment that subsequently came into force, Courts do not invoke the spirit behind such amendments. We have to apply the very same yardstick to the appellant.

24. The Assessing Officer, the First Appellate Authority as well as the Tribunal have given cogent reasons as to why the genuineness of the transaction could not be believed. In fact, the C.I.T. (Appeals) was fair enough to concede that the first gift made in the year 1998, which was of the highest value, could be accepted as genuine, in view of the fact that the assessee was starting a business venture at that time. The subsequent gifts cast a shadow upon the genuineness, and hence, we do not think that the authorities erred in law.

25. The contention that the genuineness cannot be questioned when the identity of the Donor is established, when the payment is made through banking channels and when a letter of confirmation is also issued, cannot be accepted. These three facts go to establish the truth of the transaction, but not its genuineness. Truth is different from genuineness. If somebody has made payment to someone else, a statement regarding the same will be true. But the payment need not be genuine.

26. The Assessing Officer, C.I.T (Appeals) as well as the Tribunal suspected that the undisclosed income earned by the assessee could have been used for round tripping, namely routed through the father-in-law and

brought back in the form of gift. The answer sought to be provided by the assessee is that he has no source of income. But the very reason why a raid was conducted in his residence was that he was one of the Directors of a real estate Company, viz., M/s. Dakshin Shelters Pvt. Ltd. Therefore, the first three substantial questions of law are answered against the assessee.

Substantial Questions of Law Nos.4 & 5:

27. The substantial questions of law 4 & 5 revolve around the addition of a sum of Rs.74,15,000/- towards business profits.

28. As we have pointed out above, the Assessing Officer concluded that the total sale consideration for the deal was Rs.5,58,20,000/- and that the accounted payment was Rs.3,70,75,950/-, leaving a balance of Rs.1,87,44,050/-.

29. But the C.I.T. (Appeals) found that the difference between the original sale consideration of Rs.4000/- per sq. yard fixed in the year 2000 and the consideration of Rs.5000/- per sq yard paid in the year 2005 (namely Rs.1,000/- per sq.yard) alone should be added. The Tribunal confirmed the same by dismissing the appeals filed both by the assessee and by the revenue. The revenue has not challenged the order of the Tribunal. Keeping this in mind let us go into these questions of law. There is no dispute about the fact that the assessee and another person by name K. Srinivasa Rao entered into an agreement with one Smt. Naheed Bagum for purchasing a property in Banjara Hills, way back in the year 2000. As per the agreement, the sale consideration was Rs.4000/- per sq. yard and the total extent of land was 7415 sq. yards. The C.I.T. (Appeals) recorded a finding that after entering into the agreement of sale the assessee stayed in the property. Subsequently in the year 2005 the

assessee floated three different Companies, of which he and K. Srinivasa Rao were the Directors. Eventually when sale deeds were executed in favour of these Companies, the consideration paid was Rs.5000/- per sq. yard. Therefore, C.I.T Appeals came to the conclusion that there was relinquishment of his rights in favour of the three Companies floated by him.

30. But it is seen from the agreement entered into between the assessee and one K. Srinivasa Rao on the one hand and Smt. Naheed Begum on the other hand that even on the date of the agreement, the agreement purchasers had paid to the vendor a sum of Rs.1.08 crores. Therefore, the assessee and the other agreement purchaser were put in possession, but since the vendor was a lady, she was allowed to stay in the property for a period of eight months free of cost to enable her to find an alternative accommodation.

31. Eventually, three sale deeds dated 30.08.2004, 14.02.2005 and 14.02.2005 came to be executed by Smt. Naheed Begum in favour of a Company by name S & CS Hotels Pvt. Ltd. In the first sale deed, the purchaser was represented by the assessee herein and one K. Srinivasa Rao both described as Directors. In the next two sale deeds, two ladies represented the purchaser as its Directors. These two ladies, who represented the purchaser-company as its Directors in the second and third sale deeds are not found to be the wives of the assessee herein and K. Srinivasa Rao. One of the ladies by name Smt. M. Anuradha is described as the wife of one M.S. Raju. And the other lady by name Smt. Padmaja Rani is described as the wife of one R. Anil Kumar.

32. But it is found from the recitals contained in the sale deed that the property was involved in a series of litigation from 1989. It is also seen

from the recitals contained in the sale deeds that the vendor had to pay a huge amount to the State of Andhra Pradesh pursuant to a judgment dated 18.11.2000 in W.P.No.22430 of 1996.

33. In other words, the vendor appears to have incurred a huge liability after entering into an agreement of sale with the assessee and K. Srinivasa Rao. It is not known whether this liability was passed on to the assessee, by increasing the rate per square yard from Rs.4000/- fixed in the year 2000 to Rs.5000/- paid in the year 2005. Without looking into these aspects, the C.I.T. (Appeals) came to the conclusion that there was a relinquishment by the assessee and that too in favour of a Private Limited Company of which he was one of the Directors and that through such relinquishment, a business profit of Rs.1000/- per sq. yard arose.

34. The aforesaid conclusion has been reached without looking into – (1) who were the Directors of the Company, which ultimately got three sale deeds registered in their favour; (2) the circumstances under which the sale consideration was enhanced during the period 2000 to 2005; and (3) whether any relinquishment was actually made by the individual, in favour of a Company floated by him.

35. As rightly pointed out by Mr. K. Vasantha Kumar, learned counsel for the petitioner, when two persons, viz., the assessee herein as well as one K. Srinivasa Rao were involved, it is not known as to how one person can make relinquishment. In any case, the books of accounts of those private limited Companies were not examined to find out the flow of consideration. Therefore, the addition of an imaginary amount as business profit to the income of the assessee is contrary to law. Hence the questions of law 4 and 5 are answered in favour of the appellant/assessee.

36. In fine, the appeal is partly allowed answering the reframed substantial questions of law 1 to 3 against the assessee and answering reframed substantial questions of law 4 and 5 in favour of the assessee. There shall be no order as to costs.

37. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANI AN, J

J. UMA DEVI, J.

26th April, 2018

Js



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE MS. JUSTICE J. UMA DEVI



26th April, 2018.

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