

Sardar Machhi Singh Vs. Cit

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Court : Madhya Pradesh

Decided On : Oct-28-2004

Reported in : [2005]144TAXMAN8(MP)

Appeal No. : IT Appeal Nos. 73, 75, 76, 77 & 78 of 1999 28 October 2004

Appellant : Sardar Machhi Singh

Respondent : Cit

Advocate for Pet/Ap. : S.K. Jain, *for Assessee* R.L. Jain with Ku. Mandlik, *for the Revenue*

Judgement :
ORDER

A.M. Sapre, J.

The decision rendered in this appeal shall also govern disposal of other connected appeals being ITA Nos. 73, 75, 76 and 78 of 1999 because all these appeals involve identical point and secondly, they arise between the same parties.

2. This is an appeal filed by the assessee under section 260A of the Income Tax Act, against a common order dated 15-1-1999, passed by Tribunal (ITAT) in ITA Nos. 164, 165, 166, 167 and 168/Ind/1991.

3. This appeal came up for hearing on the question of admission on 26-4-2000, when the Division Bench of this court passed following order :

'26-4-2000 :

Shri G.M. Chaphekar, learned counsel for the appellant.

Heard. It is admitted on the question of law set out in the appeal memo. List for hearing along with other cognate matters.

(R.D. Vyas, J.)

(Shambhoo Singh, J.)'

4. Heard Shri S.K. Jain, learned counsel for the appellant and Shri R.L. Jain, learned counsel with Ku. Mandlik for the revenue.

5. In substance, the question arose before the assessing officer as to whether a firm called 'S. Machhi Singh & Family, Bhel, Barkheda, Bhopal' is a genuine firm or a benami concern of assessee (appellant herein). The assessing officer, CIT (A) and Tribunal held against the assessee. In other words, it was held that firm in question was not a genuine firm but it was a benami concern of assessee. The order of Tribunal on this issue in second appeal was passed on 19-7-1996. The appellant then moved an application under section 254(2) of the Act stating therein that in view of one finding recorded in his favour in appeal namely-cash credits in the name of 13 so-called partners amounting to Rs. 1,30,000 was held to be genuine for assessment year 1975-76, the Tribunal should have held the firm to be genuine. The Tribunal entertained this application with a view to re-examine this question in the light of finding recorded and eventually by impugned order while upholding the finding of firm to be not genuine granted partial benefit to assessee in relation to cash credit. This is what is held by Tribunal in paras 18 and 19 while deciding the appeal

'18. Since the material available on record clearly speaks that the essential elements for constitution of a genuine firm were missing in the present case, we do not have any hesitation in holding that there was no genuine firm in existence in

the name of Sardar Machhi Singh & Family, Bhel, Barkheda, Bhopal, and it is nothing but a benami concern of the assessee and the income earned by the firm should be assessed in the hands of the assessee. Since the assessee and the revenue have accepted the findings of the assessing officer for the assessment year 1975-76, whereby it was held that all the 13 so-called partners were the cash creditors of the assessee, we direct the revenue to allow the adjustment of these cash credits while working the income of the assessee from the so-called partnership firm. Accordingly, these appeals are decided in the terms indicated above.

19. In the result, the appeals are partly allowed as indicated above.'

6. Having heard learned counsel for the parties and having perused record of the 'case, we are of considered opinion that the appeal has no merit whatsoever. As a consequence, the appeal deserves to be dismissed.

7. Indeed, in our view, the appeal does not involve any question of law much (less) substantial question of law as is required to be made out under section 260A of the Act. This court can examine this question at the time of final hearing of the appeal by taking recourse to the provisions of section 260A(4) of the Act at the instance of respondent. In other words, the question whether appeal involves any substantial question of law or not can be examined and/or is open for examination even after admission of appeal at the time of final hearing of appeal under section 260A(4) *ibid* at the instance of respondent. It is for the reason that the appeal is admitted for hearing behind the back of respondent.

8. As observed *supra*, the only question involved in this case and now in appeal is, whether a firm in question was rightly held to be a bogus firm or benami firm of assessee (an individual). All the authorities, i.e., assessing officer, CIT (A) and lastly Tribunal went into this question and recorded a categorical finding of fact that the firm in question is not a genuine firm. Indeed, this being a pure question of fact was decided on facts brought on record by the parties. The Tribunal in its long order running in 18 pages examined each and every circumstance on facts and then returned a finding holding the firm to be benami. As a matter of fact, the Tribunal re-examined the finding by taking recourse to the provisions of section

254 of the Act and again upheld it, but while doing so, granted due benefit to assessee so far as the cash credit was concerned.

9. In our opinion, the question, whether a firm is genuine or not or whether a firm is benami of assessee is essentially a question of fact. At least in the facts of this case, we find it to be a question of fact. It was so decided on facts only by assessing officer, CIT (A) and Tribunal. The concurrent finding recorded by these authorities against assessee cannot be assailed in further appeal under section 260A of the Act. Such findings which do not involve any question of law is binding on this court while hearing appeal under section 260A of the Act-a provision akin to section 100 of CPC.

10. We have not been able to see any infirmity in the finding of fact recorded by the Tribunal in the impugned order. The impugned finding cannot be said to be either perverse, or de hors the issue or against any provision of law or is not such that no judicial man can ever give. In this view of the matter, we respectfully uphold the finding of fact recorded by the Tribunal.

11. Learned counsel for the appellant contended that once the cash credit for the assessment year 1975-76 are held genuine then as a necessary corollary, the Tribunal should have held the firm in question to be a genuine one. We do not agree. This contention was dealt with by the Tribunal in para 17 and rightly rejected by assigning following reasoning :

'Para 17. Even the assessee has also accepted the findings of the assessing officer in the assessment year 1975-76 in which the so-called contribution to the partnership firm was treated as cash credit in the names of 13 so-called partners in the hands of the assessee. Once, this stand is accepted by the assessee in the assessment year 1975-76, he is precluded to raise a plea that this amount was not a cash credit but, in fact, a contribution to the partnership firm. Besides this amount, no amount was said to have been contributed towards the capital by the so-called partner.

In these circumstances, it can be held that no capital was contributed by the partners towards the capital of the firm. The contradictory statements of the

outside partners Shri Thomiba and Shri Pratap Singh also suggest that there was no mutual agency among the partners. Since ten partners out of 13 partners are the family members of the assessee and the evidence available on record also suggest that the entire affairs of the so-called partnership firm were conducted by the assessee, it has become all the more necessary for the assessee to prove the genuineness of the firm.'

We concur with this finding and reject this contention.

12. Learned counsel for the appellant then contended that the revenue failed to discharge the burden of proving that the firm in question is a benami. We find no merit in this submission. Firstly, the overwhelming material brought on record and the same having been examined threadbare by the Tribunal completely negatives this submission. We are fully satisfied with the manner in which the Tribunal examined the issue on facts for recording the finding of fact against the assessee.

13. We do not, therefore, wish to examine each and every circumstance on facts which was examined by Tribunal for coming to a conclusion that firm is a bogus firm of assessee and his family members. It is really not necessary nor possible in view of our limited jurisdiction conferred under section 260A of the Act. We can only examine substantial questions of law and not question of facts.

14. In view of aforesaid discussion, we are of the view that appeal has no merit. It fails and is accordingly, dismissed. No costs.