

Charanjit Grover Vs. Assistant Commissioner of Income-tax.

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Court : Delhi

Decided On : Dec-15-1989

Reported in : [1990]33ITD50(Delhi)

Appeal No. : IT APPEAL NO. 1955 (DELHI) OF 1989 [ASSESSMENT YEAR 1985-86]

Appellant : Charanjit Grover

Respondent : Assistant Commissioner of Income-tax.

Judgement :

ORDER

Per Agarwal, JM - This is an assesseds second appeal arising out of his assessment for assessment year 1985-86 and the only ground raised is about an addition of Rs. 2,70,000 in respect of unexplained investment in the purchase of an imported Toyota Corolla car No. DIC - 579.

2. We have heard the learned counsel for the assessed and the learned Departmental Representative and have perused the material place before us.

3. On the 5th March, 1986 there was a search at the residential premises of the assessed and the car in question was one of the four cars which were found in possession and control of the assessed and parked at his residence at 4, Ram Kishore Road, Delhi, According to the ITO the assessed had purchased this car from one Smt. Madhu Sethi and paid Rs. 2,70,000 as the price. On the other hand,

the assesseds contention is that he had merely borrowed the car for going to a trip to Hardware and the car had been so borrowed by him only a day or two before the search. At the hearing before us the learned counsel for the assessed stressed that the car had not been purchased by the assessed and no investment was made in this connection and hence the addition could not have been made. On the other hand, the learned Departmental Representative contended that the payment of Rs. 2,70,000 had actually been made by the assessed to Smt. Madhu Sethi for the acquisition of the car and although the car was not yet registered in the name of the assessed for legal reasons, the assessed having made the investment, the sources of which the assessed failed to explain, the addition was properly made.

4. Now admitted by the car was found parked at the residence of the assessed and the key and relevant papers in connection with the car were all in his possession. thereforee, the assessed admits that at the time of the search the car was in his possession and control. The Officer, who led the search party, examined the assessed at 10.00 A. M. on 5-3-1986, the date of the search and asked several question about the car and the following are the questions put to him and the answers given by him :-

'Q. 45. Since when this Toyota Car is with you

A. I do not remember.

Q. 46. Is it for more than one year

A. I do not remember.

Q. 47. Is it for less than one year

A. I do not remember.

Q. 48. Did Mr. Sethi come and handed over the car personally to you

A. I do not remember.

Q. 49. When did you meet Mr. Sethi last

A. I do not remember.

Q. 50. Did you meet him for the last six months

A. I don't remember.

Q. 51. Has he rang you up for the last six months

A. I don't remember.

Q. 52. Did you meet Mr. Sethi directly or to some one

A. I don't remember.

Q. 53. Do you know his Tel. No.

A. I do not know his number.

Q. 54. You have stated that Mr. Sethi is a friend of you and it appears from the above statement that he is kind enough to leave his brand new Toyota Corolla Car for uses and you don't know anything about such a nice benefactor. What you have to say about this

A. I do not have anything to comment upon.

Q. 55. Where are the registration papers of Toyota Car

A. Since it is not my car I don't know.

Q. 56. Are you using the car

A. No.'

5. Mrs. Madhu Sethi to whom the car was said to belong, was immediately approached. Her house was searched and her statement was recorded on 5-3-1986 itself. She stated that she imported this car in May or June 1984 and she sold the same to the assessed the very day; it was delivered to her by the clearing agents. She stated that the price charged was between Rs. 2,50,000 to Rs. 2,70,000 and that her husband knows the exact amount. She stated that she did

not remember whether the sale consideration was received in cash or by cheque. She also stated that the car was sold through a broker and a sum of Rs. 10,000 was paid to him as brokerage. Regarding the utilisation of the money received from the sale of the car, she stated that it was spent for running the house-hold as her husband was without work ever since they came of India in October 1983. Thus, Smt. Madhu Sethi had very frankly and clearly told that the car had been sold to the assessed.

6. After examining Mrs. Madhu Sethi and obtaining her statement to the aforesaid effect the raiding party again examined the assessed at 4.00 P. M. on 5-3-1986 and the following are the statements made by the assessed :-

'Q. 14. Is the wife of your friend Mr. Sethi

A. I have already clarified. I don't think it needs further clarification.

Q. 15. Do you know a car broker who is having a shop at Malcha Marg Shopping Centre near Carmal Convent School, New Delhi

A. I do not recollect.

Q. 16. Have you purchased the car from Mrs. Madhu Sethi through the broker as stated in question No. 15 ?

A. No.

Q. 17. Since when you having this car with you

A. I don't recollect.

Q. 18. Are you having this car with you since 1-1-1985

A. I have earlier told you and again and again you are putting the same question.

Q. 19. Are you using the car for you ?

A. No.

Q. 20. Are you any expenses for this car in any concerns books of account.

A. I don't know.

Q. 21. Who knows it

A. I don't know.

Q. 22. On whose instructions books of a/cs of M/s Grover Leasing Ltd. are maintained

A. Mr. K. K. Arora the Manager, Finance.

Q. 23. Are you aware whether any expenses on Car No. DIC 579 are debited in books of Grover Leasing Co.

A. I am not aware.

Q. 24. In books of accounts GLL ledger folio 39 dated 4-1-1985 a sum of Rs. 200 has been detected to vehicle maintenance a/c as petrol for Car No. DIC 579. How do you explain that

A. I am not aware.

Q. 25. On the same page there are similar entry showing expenses incurred for maintenance of Car No. DIC 579. How do you explain ?

A. I do not know.

Q. 26. Who knows it

A. Mr. K. K. Arora, the Finance Manager, I have already told.

Q. 27. I understand this car was brought by you for a sum of Rs. 2.5 lacs or 2.75 lacs

A. I don't think what you are saying is correct. You are using your imagination.

Q. 28. Mrs. Madhu Sethi in her statement recorded u/s 131 of the IT Act, 61 has stated this car DIC 579 was sold by her to you for a consideration of Rs. 2.5 lacs of Rs. 2.75 lacs in the year 1984. Is it correct

A. I don't think what you are saying is correct.

Q. 29. Do you mean to say that Mrs. Madhu Sethi has stated lie in her statement

A. I cant say.'

7. Later in the course of proceedings under sec. 132 the assessed stated that the car was borrowed by him from Mr. Sethi for taking his mother to Hardwar for a bath in the Ganga and that the car was borrowed by him a day before the search Mrs. Madhu Sethi was also examined on 7-4-1986. On the same date she moved an application for the release of the car to her. In her statement recorded on 7-4-1986 Smt. Madhu Sethi stated that the car was given to the assessed for use about two days prior to the 4th or 5th of March for going out of station and that the car was not sold or agreed to be sold. Shri Kapil Sethi, the husband of Smt. Sethi was examined on 8-4-1986 and he also stated the same thing, adding further that what was stated by Smt. Madhu Sethi in her statement dated 5-3-1986 was stated under undue influence and intimidation and threat or harsh action against her. Mrs. Madhu Sethi in her statement recorded on 7-4-1986, however did not allege any duress, intimidation etc.

8. Patently, the subsequent statements made by the assessed, Mrs. Madhu Sethi and her husband Mr. Kapil Sethi were made after all of them had ample time to consider the pros and cons of the thins. On the other hand, the statements made on the date of search were made at a time when they were not prepared and Mrs. Madhu Set his statement is spontaneous and very natural. On the other hand, the statements made by the assessed in his two statements recorded at 10.00 a. m. and 4.00 p. m. on 5-3-86 clearly indicate that he is not coming out with truth and is patently trying to conceal the truth. It may be that during the course of the search the assessed was in a state of stock. But that does not mean that he could not have told the officers as to the time since when this car was with him and whether it was him for more than a year. If it was a fact that the car had been borrowed by

him for a temporary use of a few days, he could have certainly told this fact even in the worst stages of shock. He did not even remember when he met Mr. Sethi last and whether he had met him any time in the preceding six months or had a telephonic talk with him. If he had borrowed the car from Mr. Sethi he could not have done this without meeting and talking to him and then he fails to state that the car was borrowed for a short time for going to Hardwar, etc. Even when he was examined in the evening of 5th March, 1986 he could not say since when the car was with him. He could not deny if the car was with him from 1-1-1985. That means that even in the evening he was not ready to say how the car came into his possession. The reason is apparent. He had not been able to contact the Set his so as to devise a common stand that they would set up in the proceedings and he did not know whether the Set his would support him on any stand proposed to be taken by him.

9. As already stated it was on the 7th of April, 1986 that an application for the release of the car purports to have been made by Mrs. Madhu Sethi. A copy of that applications has been produced by the assessed before us and is at page 1 of the supplementary paper book. A perusal of this application would show that Mrs. Sethi was not serious about the release of the car to her and she merely put this application to help the assessed. Firstly this application is quite belated, the car having been seized on the 5th of March, 1986, an application for its release should have been moved by Set his immediately thereafter if they were really interested in the car. The application was however, moved more than a month later. Then the application does not explain how the car reached the premises of the assessed at 4, Ram Kishore Road, from when it was seized. She does not say that Chiranjit Grover had borrowed the car from her or her husband for a short-term use and although she had stated on 5th March, 1986 that the car had been sold she does not explain in that statement in her application dated 7-4-1986 or even in her statement on oath made before the ITO.

10. The car was ultimately released to the assessed after he furnished a bank guarantee for Rs. 2,70,000. The release took place on the 30th July, 1986. In case the car really belonged to the Set his the assessed should have got the car released to the real owners instead to himself taking the possession of the car.

And never during the proceedings so far, it has been shown that after the release the car in fact went into the possession and use of the Set his. The car was seized from the possession of the assessed and after it was released to him, it was his duty to restore the same to the Set his in spite of the fact that he had submitted a bank guarantee of the income-tax Department. Release of the car to him restored the possession in relation to the car as it existed prior to the search and in case the story of temporary lending of the car was true, the assessed was legally bound to return the car to the Set his. This, however, is not shown to have been done.

11. The mere fact that the car continued to be registered with transport authorities in the name of Mrs. Sethi is not very material. It was a car that was imported by Mrs. Sethi under a import license issued to her and admittedly she, under the law, could not transfer it to anyone for a period of 5 years. thereforee, if she sells the car to anyone, the car will have to continue to be registered in her name in order that some defense may be set up in case any proceedings are taken for violation of the terms of import permit. Since by the transfer of the car the terms of the import permit have been violated the Set his have to support the assessed in his contention that the car was only lent for a short term and had actually not been sold.

12. During the course of the search the raiding party had also come into possession of documents showing that on 4-1-1985 expenditure of Rs. 200 on the purchase of petrol for the car in question (DIC-579) is recorded in the books of M/s Grover Leasing Ltd. - a company of which the assessed is a Managing Director. This also shown that the car in question had been in possession and use of the assessed even on 4-1-1985 and the story that it was borrowed for short-term, a day or two before 5-3-1986, has no substance. This circumstance, on the other hand, strongly corroborates the statement of Smt. Madhu Sethi that she made on 5-3-1986 to the effect that the car had been sold to the assessed in May or June 1984 after it was delivered to her. The statements of Mrs. Sethi and Mr. Kapil Sethi purchased a fiat car in May 1985, i. e., after the imported car had already been sold. If they had this imported car with them a new Indian Fiat car should not have been purchased when they were facing financial stringencies.

13. For the above reasons we uphold the findings of the authorities below that the assessed had purchased the car from Mrs. Sethi somewhere in May-June 1984 and had paid the entire sale consideration. As regards the price paid by the assessed for the purchase of the car, the statement of Smt. Madhu Sethi was that it was something between Rs. 2,50,000 to Rs. 2,70,000. The ITO has made an addition of Rs. 2,70,000 but since there is no other evidence on the point, we are of the view that it would be proper to take the sale consideration at the minimum, i. e., Rs. 2,50,000. thereforee we would reduce the addition from Rs. 2,70,000 to Rs. 2,50,000. Ordered accordingly.

14. The assessed has raised the following additional ground and prayed for its admission :-

That on the facts and in the circumstances of the case the Assessing Officer erred in fact and in law in levying interest under sec. 217 of the Income-tax Act, 1961.'

This ground was taken before the CIT (A) as well and has somehow missed to be incorporated in the Memorandum of Appeal. thereforee, the assessed is allowed to raise the same.

15. The assesseds contention is that the last completed assessment of the assessed was in respect of assessment year 1983-84 and the income determined was a loss. A copy of the assessment order under sec. 143(1) dated 28-1-1984 has been placed at page 63 of the paper book and it shows that the income was determined at a loss of Rs. 15,607. The assessment for assessment year 1984-85 was completed on 25-3-1987, i. e., after the period for the payment of advance tax had expired and even in this assessment the income determined was only Rs. 5,146, i. e., below the taxable limit. The learned counsel for the assessed contended that since the last assessed income of the assessed was a loss, he was not obliged to file a statement or estimate of advance tax as required under sec. 209A (1). This contention is correct and it was so held by the Honorable Bombay High Court in Patel Aluminium (P.) Ltd. v. Miss K. M. Tawadia, ITO : [1987]165ITR99(Bom) . thereforee, the assessed could not be penalised by the levy of interest under sec. 217. ITO's order levying interest under sec. 217 is, thereforee, set aside.

16. In the result, the assesseds appeal stand partly allowed.

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