

Shri Sukh Ram Vs. Acit

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Court : Delhi

Decided On : Jun-02-2006

Reported in : (2006)204CTR(Del)336; [2006]285ITR256(Delhi)

Judge : Madan B. Lokur and; Vipin Sanghi, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 69A, 132(4A) and 260A; Evidence Act - Sections 110

Appeal No. : ITA No. 658 of 2006

Appellant : Shri Sukh Ram

Respondent : Acit

Advocate for Def. : R.D. Jolly and ; Vishnu Sharma, Advs.

Advocate for Pet/Ap. : R.K. Sampath,; T.R. Talwar and; R.K. Raghvan, Advs

Disposition : Appeal dismissed

Judgement :

Madan B. Lokur, J.

1. In this appeal under Section 260A of the [Income Tax Act, 1961](#) (the Act), the Appellant is aggrieved by an order dated 27th January, 2006 passed by the Income Tax Appellate Tribunal.

2. There is only one issue urged by learned Counsel for the Appellant and that is with regard to the addition made under Section 69A of the Act on account of cash found during the course of search.

3. It appears that the residential premises of the assessed in New Delhi and Mandi (Himachal Pradesh) were searched and during that search a large amount of cash was recovered.

4. Initially, the assessed denied possession of the cash but later on he admitted his possession in a statement recorded on oath. The statement was not retracted and, therefore, the Tribunal proceeded on the basis that the cash amount was under the control and in possession of the assessed.

5. Under Section 132(4A) of the Act, the Revenue was entitled to draw a presumption against the assessed in respect of the cash found but since the presumption is rebuttable, an opportunity was given to the assessed to rebut the statutory presumption.

6. Seeking to rebut the presumption, the assessed stated that the cash belonged to the Congress (I) party and did not belong to him. The assessed did not bring any material on record to substantiate his allegation. On the other hand, the Revenue recorded the statements of Shri Sita Ram Kesari and Shri Ahmad Patel who were the then President and Treasurer respectively of the Congress (I) party. These two gentlemen denied any concern with the cash found in possession of the assessed.

7. The Tribunal has noted, and we think quite rightly, that the statements of Shri Sita Ram Kesari and Shri Ahmad Patel were recorded only for the purposes of verifying the Explanation given by the assessed and not for the purposes of foisting the amount on the assessed. In that sense, these two gentlemen were not witnesses against the assessed. Nevertheless, a copy of their statement was made available to the assessed but despite this, he made no efforts to substantiate his Explanation in any manner whatsoever.

8. The Tribunal has noted that the books of accounts of the Congress (I) party were also verified but these also did not show any connection with the cash recovered from the assessed.

9. On these broad facts, it was held that the assessed had not been able to rebut the statutory presumption under Section 132(4A) of the Act and, therefore, the addition was made under Section 69A of the Act.

10. In this appeal before us, it is not possible to re-appreciate the evidence, particularly when the assessed has not been able to show any perversity in the order passed by the Tribunal. The issue having been decided purely on facts, we are of the view that no substantial question of law arises for our consideration.

11. In *Ashok Kumar v. CIT* : [1986]160ITR497(MP) , the question that arose for decision was whether the Tribunal was justified in refusing to accept the assessed's Explanationn given in respect of cash amounting to Rs. 16,000/-. The Rajasthan High Court was of the view that the question whether the assessed's Explanationn was acceptable or not was purely one of fact since it did not involve the application of any principle of law.

12. Even otherwise, on the merits of the case, the Court held that possession is evidence of ownership and the strength of the presumption of ownership is the strongest in case of cash found in possession of a person, since cash is one of the properties of which title is transferable by mere delivery of possession. The Court said:-

It is settled that possession is evidence of ownership and the strength of the presumption of ownership arising from the fact of possession depends on the nature of property involved. This presumption is one of the strongest in case of cash found in the possession of a person since cash is one of the properties of which title is transferable by mere delivery of possession. In such a situation, unless any cogent Explanationn is given by the person in the possession of cash to explain his possession and show that someone else was the owner of that amount of money, it is reasonable to assume that the cash belonged to the person from whose possession it was found as its owner.

13. In CIT v. KTMS Mohamood : [1997]228ITR113(Mad) , some currency was recovered from the premises of the assessed. On the question of onus regarding ownership, the Madras High Court held as follows:-

In order to make the assessment under Section 69A of the Act for undisclosed income, the assessed must not only be a person, who is in possession of the undisclosed income, but he should also be the owner of the same. The assessed himself has admitted that he is in possession of Rs. 4,28,713. The point for consideration is whether the Department has established that the assessed is also the owner of Rs. 4,28,713. In a matter like this, under the provisions of Section 110 of the Evidence Act, the onus is on the person, who is in possession of the money to show that he is not the owner of the same. thereforee, the burden is not on the Department to prove that the assessed is the owner of the amount found in the possession of the assessed.

14. It was reiterated a little later in the judgment that in a matter like this, when an assessed is found in possession of currency, it is for him to prove that he is not the owner of the currency and it is not for the Revenue to prove that the assessed is the owner of the currency found in his possession.

15. In Chuhamal v. CIT : [1988]172ITR250(SC) , some wrist watches were seized from the bedroom of the assessed. The Department found that the assessed was the owner of the wrist watches and the High Court relied upon Section 110 of the Evidence Act which stipulates that when the question is whether any person is the owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner is on the person who affirms that he is not the owner.

16. With reference to Section 69A of the Act, the Supreme Court upheld the view taken by the High Court and observed as follows:-

The High Court has rightly held that the expression 'income' as used in Section 69A of the Act, has wide meaning which meant anything which came in or resulted in gain. Hence, in the facts of this case a legitimate inference could be drawn that the assessed had income which he had invested in purchasing the wrist- watches and, as such, that income was subject to tax. In the view the High Court was

justified in justifying the Tribunal's holding that the assessed was the owner of the wrist-watches and thus including the value in the assessment of the income of the assessed as his wealth and so deemed to be the income of the assessed by virtue of Section 69A of the Act coupled with surrounding circumstances. thereforee, inclusion of the money in purchasing the wrist- watches, that is to say, Rs. 87,455 was correct and proper for the assessment year under reference.

17. Under the circumstances of the case, we find no merit in the contentions put forward by learned Counsel for the Appellant. No substantial question of law arises for consideration. The appeal is dismissed.

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