

Ram Kumar Dhanuka Vs. Union of India (Uoi) and ors.

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Court : Rajasthan

Decided On : Feb-23-2001

Reported in : [2002]112CompCas637(Raj); 2001(2)WLC282; 2001(4)WLN85

Judge : V.S. Kokje and; Khem Chand Sharma, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 132, 132(1) and 144

Appeal No. : D.B. Income Tax Appeal No. 2 of 2001

Appellant : Ram Kumar Dhanuka

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : Anant Kasliwal, Adv.

Disposition : Appeal dismissed

Judgement :

Kokje, J.

1. This is an appeal Under Section 260-A of the [Income Tax Act, 1961](#) (hereinafter referred to as the Act).

2. The facis giving rise to this appeal briefly stated, are as under:

On 16.1.97, search and seizure operations were carried out by the officers of the Income Tax Department at the business premises of M/s. H.P. Dhanuka Plastic Chem Private Limited, M.I. Road, Jaipur and the residential premises of Plot No. 361, Mahaveer Nagar, Tonk Road, Jaipur as also at the residential premises of Shri Prem Kumar Gupta, an Associate of the appellant. Various documents and valuables in the form of cash, foreign exchange, silver and gold jewellery were found and seized during the search operations. As a result of search and seizure, the tax liability of Rs. 3.42 Crores was raised vide assessment order dated 29.1.1999. This was an ex parte assessment Under Section 144 of the Act computing the total undisclosed income of Rs. 4,25,66,587/-. The appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Rajasthan-III, Jaipur which was registered as Appeal No. 639/98-99. It was heard and disposed of vide order dated 24.9.99. The Commissioner of Income Tax (Appeals), rejected the contention that the appellant was a Non Resident Indian, residing and carrying on business in Nepal and therefore, not amenable to assessment and payment of income tax in India. However, the assessment of undisclosed income of the appellant was scaled down to Rs. 58,72,939.00. Against the order of the Commissioner Income Tax (Appeals), the appellant preferred an appeal before the Income Tax Appellate Tribunal (in short I.T.A.T.). An appeal was also filed against the order of the Commissioner of Income Tax (Appeals) by the revenue authorities. The two appeals were heard and disposed of together. Aggrieved by the order of the I.T.A.T. this appeal has been preferred by Shri Ram Kumar Dhanuka.

3. Having heard learned counsel for the appellant at length, we do not find any substantial question of law involved in the case. The main contention of the appellant is that he was a Non Resident Indian, residing and carrying on business in Nepal where he has been assessed to Income Tax. According to the learned counsel for the appellant, the Income Tax authorities had no right or jurisdiction to proceed against the appellant for the aforesaid reason. According to the learned counsel search and seizure operations carried on against the appeal were all illegal and without authority of law. The contention is devoid of any force. Section 132(1) (c) of the Act authorizes search and seizure if there is reason to believe that any person is in possession of any money, bullion, jewellery or other valuable

article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property, which has not been, or would not be disclosed for the purpose of Indian Income Tax Act. Thus any person, including a Non Resident Indian, assuming the appellant to be one, would be amenable to search and seizure under Section 132 of the Act.

4. The next contention of the learned counsel was that there was no question of having reason to believe that the income was liable to be taxed and would not be disclosed because according to the learned counsel, a person who was a Non Resident Indian, would not be liable to tax in India and was, therefore, not liable to disclose any income for the purpose of Indian Income Tax Act. This argument is also fallacious because even a Non Resident Indian can have income earned in Indian which may be taxable under the Indian Income Tax Act and which might not have been disclosed or would not be declared.

5. The other questions raised were about the addition of certain income, allegedly of some other persons, as undisclosed income of the appellant. These are purely factual questions and not questions of law. The question as to whether the appellant was a Non Resident Indian or not, is also essentially a question of fact. Only because there is open border between India and Nepal and as Passport is not required to travel to and fro between India and Nepal, it cannot be presumed that anyone who claims to be Indian National residing in Nepal, is a Non Resident Indian. Simply because it is difficult to prove in such a case whether a person was residing for a particular period in Nepal or in India, it does not mean that the claim of a person who claims to be residing in Nepal that he is a Non Resident Indian, has to be accepted by the authorities.

6. We find no substantial question of law involved in this appeal. The appeal is therefore, dismissed.