IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 96 of 1999
Date of decision 8 .2.2007

CIT Jalandhar .. Appellant

Versus

Shri Rakesh Kumar .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant
Mr. Pankaj Jain, Advocate for the assessee .

M.M.Kumar, J.

On directions issued by this court under Section 256(2) of the Income Tax Act, 1961 (for brevity 'the Act'), the Income Tax Appellate Tribunal , Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') has referred the following question of law which emerges from its decision dated October 19, 1995 rendered in ITA No. 429/ Chandi/ 90 in respect of the assessment year 1986-87:

> " Whether, on the facts and in the circumstances of the case, the learned ITAT is right in law in deleting an addition of Rs. 1,18,650/- confirmed by the learned CIT (A) on account of unexplained investment in jewellery ?"

The facts, as noticed in the order of the Tribunal are that some jewellery was recovered from the locker of the assessee after search by the Income Tax authorities at his premises despite the fact that he had expressly denied the possession of any locker during regular assessment. He had set up the defence that infact the jewellery in the locker belonged to his mother-in-law Nagina Devi and Smt. Shobha Jain who was her daughter-in

law. He substantiated his defence by pointing out that both the ladies had filed their returns under the Wealth Tax Act disclosing the same jewellery and assessment had been completed for the years 1981-82 to 1985-86. The ladies were found to have their own lockers but nothing was discovered in those lockers. The Assessing Officer rejected the explanation of the assessee and made addition of Rs. 1,85,650/- in his income. The appeal of the assessee was dismissed by the Commissioner of Income Tax (Appeals) (for brevity 'CIT (A)'). However, the Tribunal accepted the explanation of the assessee and set aside the order of the Assessing Officer and CIT (A) by observing as under:

> "…. Since the assessee is a close relative of the two ladies, the jewellery had been kept by him in his own locker and those did not belong to him nor to his wife. If the ownership was established by any definite evidence or material, the plea of the revenue could be accepted that an assessment should be made only in the real hands. But, as already seen, there is no material to prove the ownership of the jewellery, except the factum that the jewellery was found in the locker belonging to the assessee and his wife. Since the ownership has been asserted by the two ladies by affidavits and since jewellery had been subjected to assessments in their hands, there is no escape from the conclusion that the assessee cannot be subjected to assessment in respect of the same jewellery ..... Looking to the entire facts, we are of the view that after the assessments had been made in the hands of the two ladies, there is no justification to treat the assessee as the owner of the jewellery.

> The denial made by the assessee at the time of search cannot be said to be fatal so far as question of ownership is concerned. It is true that the real owner has to be assessed both in the present case, there is no evidence on record, except negative evidence to hold that it is the assessee who is the real owner of the gold jewellery found in the locker. The negative evidence in the form of denial, cannot be held to be sufficient to decide the question of ownership. Presence of ornaments in the locker would also not be sufficient to hold the assessee as the owner, in the light of the explanation submitted at the time of search..... the assessee cannot be held to be the owner and cannot be assessed to tax. Ground no.1 succeeds and the addition of Rs. 1,18,650/- is deleted."

We have heard learned counsel for the parties and perused various orders with their able assistance. It could not be disputed that the jewellery found in the locker belonging to the assessee and his wife was already subjected to assessment under the Wealth Tax Act for the years 1981-82 to 1985-86 in the hands of Mrs. Nagina Dcevi and Shobha Jain. Both these ladies did not have any jewellery in their own lockers. Moreover, the Tribunal had rightly taken the view that the penalty levied under Section 271(1)(c) of the Act has already been deleted by the CIT (A) and no appeal appears to have been filed against that order which has attained finality. Therefore, we do not find any reason to set aside the order passed by the Tribunal. It is to be noticed that there is unexplained investment in jewellery made by the assessee and a plausible explanation tendered by him has been duly accepted. The approach adopted by the Tribunal is in keeping

with the norms and explanation of the assessee has been rightly accepted.

In view of our above discussion, we answer the question referred against the revenue and in favour of the assessee. The reference is disposed of accordingly.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

8.2.2007
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