

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ITA No. 401 of 2009
Date of decision 10.2.2010

Paramjit Singh ...Appellant

Versus

Income Tax Officer, Phagwara 2, Phagwara ... Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Ravish Sood ,Advocate
for the appellant

- 1.To be referred to the Reporter or not ?
- 2.Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

The assessee has approached this Court by invoking the provisions of Section 260 A of the Income Tax Act, 1961 (for brevity 'the Act')challenging order dated 17.12.2008 (A.6) passed by the Income Tax Appellate Tribunal, Amritsar (for brevity 'The Tribunal') in ITA No. 373 ASR -2007 in respect of assessment year 2003-04. The Tribunal while accepting the appeal of the Revenue has expressed the view that ostensible sale consideration of the land disclosed in the registered sale deed dated 24.9.2002 deserves to be added to the income of the assessee- appellant. The Tribunal has dis-regarded the statement made on affidavit by the vendor S/Shri Tirath Singh and Surmukh Singh, who are the real uncles of the assessee- appellant. They have stated in the affidavits that infact no sale consideration had passed hands and they had relinquished their share in the landed property. The object of executing sale deed was only to handover landed property to the assessee- appellant as they are well settled in United

Kingdom since 1960's and 1970's. After the case was remanded back to the CIT(A), a report was obtained by the CIT(A) in respect of the aforesaid affidavits filed by the vendor. The Assessing Officer asked Tirath Singh son of Pakhar Singh certain questions. The answer to question Nos. 5 and 6 are extracted below for ready reference:

“ Q.No.5 . As per Regd. Deed a sum of Rs. 24,65,000/- was given to both the sellers by Sh. Paramjit Singh who purchased land.

Ans. I have not received any amount from Sh. Paramjit Singh for selling the piece of land (1/2 share)at the time of registration and not even before registration. The value of land mentioned in the Deed i.e. Rs. 24,65,000/- is only the reserve price fixed by the Govt. for charging stamp duty. No amount was passed to the sellers by the purchaser.

Q.6. Why did you not receive any amount as sale consideration ?

Ans. My brother Tarlochan Singh f/o Sh. Paramjit Singh rendered financial help to me as well as Sh. Tirath Singh in settling abroad. As such in lieu of the same we have given up our share in ancestral property in favour of our brother Sh. Tarlochan Singh with liberty to get the sale deed executed in the name of any one at any time. Keeping in view of above the property mentioned above has been transferred to Sh. Paramjit Singh son of Sh. Tarlochan Singh. A sum of Rs. 1.5 lakh was given by Sh. Tarlochan Singh as help for settling us in abroad about 45-48 years back.”

Likewise, identical questions were asked to Surmukh Singh who has given the same answers. The CIT(A) had accepted the version of the assessee- appellant as is evident from the order dated 17.2.2006 (A.11). However, on appeal to the Tribunal the views expressed by the CIT(A) has not been accepted. The view of the Tribunal is discernible from the following extracts of its order which reads thus:

“ 4.1..... In our opinion, in this case, the sale deed reflect the payment of sale consideration of Rs. 24,65,000/-. The sale deed executed was duly registered before the Registration Authority. The assessee's past record is not upto the mark..... The Ld. CIT(A) relied on the affidavit made by the vendors, who were close relative of the assessee. In our opinion, the affidavit filed by the assessee from the vendors is merely a self servicing document. No credence can be made to it. In our opinion, the Ld. CIT(A) has not properly arrived at the findings of the fact..... . In the present case, the Ld. CIT(A) relied on the affidavit from the two vendors and he has lost sight of the fact of stating sale consideration at Rs. 24,65,000/- in sale deed. It is an admitted fact that the assessee became owner of the impugned agricultural property by virtue of sale deed and not by Gift Deed. Since, it is a sale deed. It should be considered as sale deed only and not as a Gift deed. When we consider sale deed as sale deed, the consideration reflected in the sale deed which is accepted by the Registration Authority for the purpose of Stamp Duty, the value mentioned therein is relevant. In the

present case, sale deed reflected consideration of Rs. 24,65,00/-. This is the document on which the Ld. CIT(A) placed reliance. The story of the assessee is that the relative of the assessee has executed sale deed without any consideration Hence, the AO has reason to believe that consideration reflected is not explained, to be treated as unexplained investment. We are of the opinion that there is nothing wrong in business being done in such a way as to escape taxation. Every person is entitled so as to arrange his affairs as to avoid taxation but the arrangement must be real and genuine..... Hence, the real intention of the party different from the apparent intention and that affidavit cannot give effect, though the affidavit legally correct or valid. Further the assessee's sale deed cannot be executed between the vendor and the assessee without consideration and there is no dispute regarding genuineness of the agreement. The AO has not made any attempt to interpret agreement in favour of the Department to enable him to collect more tax. The sale deed was entered between the vendors and the assessee at their free will and at their choice. Now the assessee is telling that there is no passing of consideration of Rs. 24,65,000/- and consideration noted in the sale deed have no value. The argument of the assessee is absurdly wrong argument for which no credence should be given and AO have not right to vary the terms of the contract between the parties and in the same way, the assessee has no right to change the contents of the sale deed, which are already

executed and reached finality with the intention to reduce its tax liability. Hence, in our opinion, the consideration mentioned in the sale deed to be considered as sale consideration passed between these two parties and to be assessed as unexplained investment of the assessee, since the assessee has not explained the source of investment. “

Mr. Ravish Sood, learned counsel for the appellant has vehemently submitted that the arrangement made between the father of the assessee-appellant and both his uncles should have been given due credence as was rightly done by the CIT(A) and once his uncles have stated on oath that no consideration has passed to them then it should not be imagined that the amount has passed hands which is hidden income of the assessee- appellant and therefore liable to be added. The learned counsel has pointed out that in the account of the assessee- appellant the amount remained deposited is not more than few thousands at any time and such a huge amount of over 24 Lacs could not have been paid by him.

We have thoughtfully considered the submissions made by the learned counsel and are of the view that they do not warrant acceptance. There is well known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to Section 91 of the Act when terms of a contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to Section 92

of the 1872 Act once the document is tendered in evidence and proved as per the requirements of Section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to Section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/ varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24.9.2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserves to be added to the gross income of the assessee- appellant.

For the reasons afore mentioned this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Jitendra Chauhan)
Judge

10.2.2010

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