

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 369 of 2013

Date of Decision: 14.7.2014

Kamal Kant Jain

...Appellant

Versus

Commissioner of Income Tax, Chandigarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE JASPAL SINGH.**

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.8.2013 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 178/Chd/2013 for the assessment year 2003-04, claiming the following substantial questions of law:-

- i) Whether, on the facts and circumstances of the case, the Tribunal was justified in confirming the penalty so levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 on account of gifts by family friends duly confirmed by affidavits/gift deeds and Bank transfers and thereby proving the identity through family function photographs,

credit worthiness and genuineness of the transaction simply on presumptions?

- ii) Whether the order of the Tribunal is perverse and against the provisions of law?

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The assessee is engaged in the business as partner of M/s Nikka Mal Babbu Ram & Sons, Chandigarh. The search and seizure operation was conducted on 27.10.2006 at the residential and business premises of M/s Nikka Mal Babbu Ram & Sons. The appellant filed return for the assessment year 2003-04 showing income at ₹ 2,09,444/-. Accordingly, notice under Section 153A of the Act was issued to the assessee on 24.6.2007 for the assessment years 2001-02 to 2006-07. During the year in question, the assessee received gift of ₹ 1,00,000/- from Shri Amrit Dilawari and ₹ 5,46,575/- from Shri Charanjeet P. Singh, both NRIs through proper banking channel. The Assessing Officer treated the said gifts as income from other sources and framed the assessment at ₹ 11,84,860/- vide order dated 31.12.2008 (Annexure A-1). Penalty proceedings were also initiated against the assessee under Section 271(1)(c) of the Act for concealment of particulars of income. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 25.1.2010 dismissed the appeal. Against the order dated 25.1.2010, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 29.9.2010 dismissed the appeal. Thereafter, notice under Section 271(1)(c) of the Act was issued to the assessee to show cause as to why the penalty be not imposed for concealment of income. The Assessing Officer vide order

dated 25.3.2011 (Annexure A-2) imposed penalty of ₹ 2,03,671/- under Section 271(1)(c) of the Act. Against the penalty order, the assessee filed an appeal before the CIT(A) who vide order dated 1.11.2012 (Annexure A-3) confirmed the penalty order and dismissed the appeal. Feeling aggrieved by the order dated 1.11.2012 (Annexure A-3) passed by the CIT(A), the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 26.8.2013 (Annexure A-4) dismissed the appeal. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the amount of gift received was shown in the books of account and, therefore, there was no concealment. It was also argued that the assessee had received the amount through banking channel and the affidavit of the donor had also been produced. It was urged that in such circumstances, the levy of penalty merely on the basis of addition made which had attained finality was unsustainable in view of judgment in **Commissioner of Income-Tax v. Balbir Singh (2008) 304 ITR 125 (P&H)**.

4. After hearing learned counsel for the appellant, we do not find any merit in the aforesaid contention.

5. The Tribunal while upholding the levy of penalty had concluded that the assessee had failed to substantiate that the gift received was genuine. The plea of the assessee that the gift was received due to his financial difficulty was also negated on appreciation of material on record. The gifts were held to be bogus and explanation of the assessee was held to be false. It was observed as under:-

“Now coming to the facts in case before us, the assessee has received two gifts amounting to Rs.1 lakh from Amrit Dilawari and Rs.5,46,575/- from Shri

Charanjeet P. Singh. During the assessment proceedings the statement of the assessee was recorded in which the assessee was asked to give the addresses of such donees. It may be true that the assessee may not remember the full addresses but at least the persons who is giving a sum of Rs.1 lakh and Rs.5,46,575/-, he should have known the State or City of USA where such donees were living. This clearly shows that the gifts are bogus. Further a question was asked that on what occasion the gifts were given. The assessee had stated that the gifts were received because the assessee was in a great financial difficulty. This is totally wrong. Before us, copy of bank statement has been filed by the assessee. First gift is shown to have received on 29.10.2002. On that date balance in the Saving Bank account was Rs.42,17,965/- and in fact statement has been filed from period 10.8.2002 before us throughout August to October, 2002 there has been a balance ranging from Rs.40 lakhs to Rs.58.95 lakhs. The second gift was received on 16.1.2003 and before receipt of gift, bank balance in same account is Rs.12,33,939/-. In our opinion huge bank balance in the Saving Bank Account in the Financial Year 2002-03 clearly show that the assessee was not in any financial difficulty and therefore, it is clear that these are bogus gifts. Therefore, the explanation given by

the assessee is totally false and accordingly explanation (1) to Section 271(1)(c) would not be attracted. In our opinion, this is a fit case for levy of penalty and we uphold the order of the Id. CIT(A).”

6. In view of the above, under the circumstances noticed hereinabove, it could not be said that there was no concealment. The issue before this Court in **Balbir Singh's case (supra)** was against the finding recorded by the Tribunal, wherein it was held that there was no concealment against the assessee. However, in the present case, the Tribunal has come to the conclusion that the assessee had concealed the furnishing of current particulars of income. The judgment in **Balbir Singh's case (supra)** relied upon by the learned counsel for the appellant being based on individual fact situation does not come to the rescue of the appellant.

7. In view of the above, no substantial question of law arises in this appeal. Consequently, finding no merit, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 14, 2014
gbs

(JASPAL SINGH)
JUDGE