

K.K. Salgotra vs Commissioner Of Income Tax-I

ID: F2J-C-2663 **Court:** Punjab-Haryana High Court
Case: Income Tax Appeal No. 329 of 2006 1 **Date:** 2010-12-02

Complete searchable public court-text reproduction. This clean reference PDF is generated by Finin2min; the linked public source remains controlling.

[Cites 10, Cited by 0]

Punjab-Haryana High Court K.K. Salgotra vs Commissioner Of Income Tax-I on 2 December, 2010 Bench: Adarsh Kumar Goel, Ajay Kumar Mittal
Income Tax Appeal No. 329 of 2006 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Income Tax Appeal No. 329 of 2006 Date of decision: 2.12.2010.

K.K. Salgotra --- Appellant

Versus

Commissioner of Income Tax-I, Chandigarh. --- Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. S.K. Mukhi, Advocate for the appellant-assessee

Ms. Urvashi Dhugga, Standing Counsel for the respondent-Revenue

AJAY KUMAR MITTAL, J.

This appeal under Section 260A of the Income-Tax Act, 1961 (for short "the Act") has been filed by the assessee against the order dated 30.12.2005, passed by the Income Tax Appellate Tribunal Chandigarh Bench 'B', Chandigarh (in short "the Tribunal") in ITA (SS) A. No.22/CHANDI/2004, for the block period 1.4.1987 to 20.11.1997. Income Tax Appeal No. 329 of 2006 2

The appeal was admitted for determination of the following substantial question of law by this Court:

"Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts and in law in confirming the action of the authorities below by erroneously applying the provisions of section 158BB(c) of the Income Tax, 1961 and thereby treating the salary income as Undisclosed Income which duly stood disclosed before the action u/s 132 was taken?"

The facts of the case necessary for adjudication and as narrated in the appeal, are that pursuant to a search operation carried under Section 132(1) at the residential premises of the assessee on 20.11.1997 and consequent upon issuance of notice under Section 158BC(a) read with Section 142(1), the assessee filed return for the block period 1.4.1987 to 20.11.1997 on 20.8.1999. Thereafter, statutory notices under Sections 143(2) and 142(1) of the Act were issued to the assessee and consequently, the assessment was finalised whereby the assessing officer, by its order dated 29.11.1999, made certain additions and disallowances, which included the addition of Rs.3,47,470/- made under Section 158BB(c) of the Act. On appeal carried by the assessee, the Commissioner of Income-tax (Appeals) [for short "the CIT(A)"] granted partial relief, inasmuch as, out of the addition of Rs. 3,47,470/-, the CIT(A) vide order dated 13.2.2004, sustained the addition of Rs. 1,82,600/- on account of undisclosed amount, i.e. the amount of salary of Rs. 1,41,600/- and rental income of Rs. 41,000/-. Income Tax Appeal No. 329 of 2006 3

The Revenue feeling aggrieved by the order of the CIT (A), preferred appeal before the Tribunal. The assessee also, filed cross appeal and the both were disposed of on 23.12.2005 by the Tribunal. The Tribunal after considering the submissions made on the issues concurred with the approach of the CIT(A), insofar as the question of sustaining the addition of Rs. 1,82,600/- is concerned. We have heard learned counsel for the parties and have perused the record. The sole thrust of the submissions made before this Court by the counsel for the appellant is that addition of Rs. 1,82,600/- made by the assessing officer was legally not sustainable and the same was erroneously affirmed by the CIT(A) and the Tribunal. The counsel submitted that the authorities below failed to appreciate that the assessee had already disclosed the salary amount of Rs. 1,41,600/- to the Income Tax Department through his employer, i.e. the U.T. Administration, and balance of Rs. 41,000/- on account of rental income voluntarily disclosed by the assessee before the ADI. The assessee placed reliance on Dr. Mrs. Alka Goswami v. Commissioner of Income Tax. (2004) 268 ITR 178 (Gauhati), Commissioner of Income Tax v. Jugal Kishore Gupta, (2008) 16 DTR Judgments 85 (Allahabad), Commissioner of Income Tax vs. Ashim Krishna Mondal, (2004) 270 ITR 160 (Calcutta) and Commissioner of Income Tax v. J.K. Narayanan, (2007) 293 ITR 179 (Madras) in support of his submissions. Learned counsel for the Revenue supported the order passed by the Tribunal. It was argued on behalf of the Revenue that the assessee had the taxable income for the assessment years Income Tax Appeal No. 329 of 2006 4 1991-92, 1992-93, 1993-94 and 1994-95 and in spite of that, he had not filed returns. He referred to the following chart showing the income of the assessee during the aforesaid assessment years, as under:

A.Y. Salary Rental Total Rebate u/s Taxable Tax Limit after income 80C income standa after

-rd repairs deduct

-ions 1991-92 25243 9666 34909 Nil 34910 - 22000 1992-93= 30879 10208 41087 Nil 41080 - 22000 F.Y.1991- 92 1993-94= 37690 11520 49210 Nil 49210 - 28000 F.Y.1992- 93 1994-95= 47788 9600 57388 Nil 57390 - 30000 F.Y.1993- 94

TOTAL: 1,82,590 The point for determination in this appeal is, whether in the absence of any return having been filed by the assessee, especially when he had taxable income in terms of salary and rental taken together, the benefit of disclosed income in respect of such income could be allowed to

the assessee.

We are unable to accept the submissions made by the counsel for the assessee. A perusal of order of the Tribunal clearly depicts that the assessee had already been allowed benefit as claimed by him in respect of assessment years 1988-89, 1989-90, 1990-91 where the income of the assessee was below taxable limit. The benefit was also extended to the assessee for the assessment years 1995-96 and 1996-97 where after allowing tax rebate admissible to the assessee, he had not filed the return as there existed no tax liability. However, the assessee was not held entitled to similar benefit in respect of assessment years 1991-92 to 1994-95 Income Tax Appeal No. 329 of 2006 5 as in spite of having taxable income and tax payable, no income tax return was filed by the assessee.

Learned counsel for the assessee was unable to controvert that after having the addition of the rental income in the salary the assessee had the taxable income for the assessment years 1991-92 to 1994-95, but he did not file return. Further, the relevant findings recorded by the Tribunal in that behalf are as under:

"38. For assessment years 1991-92, 1992-93, 1993-94 and 1994-95, the salary and rent received by the assessee the maximum limit not chargeable to tax. The Commissioner of Income Tax (Appeals) has upheld the addition on the ground that the words "undisclosed income" would represent that the income which has not been or would not have been declared for the purpose of the Act.

39. In our considered view, since the assessee has not filed the return of income for the respective assessment years notwithstanding the fact that there was an obligation upon him to file the return of income, the income for the respective assessment years falls within the definition of undisclosed income. Section 158BB(c) also provides for nil deduction in respect of the assessment years in which no return has been filed. The said section reads as under:

"158BB(c) Where the due date for filing a return of income has expired, the return of income has not been filed at nil." Income Tax Appeal No. 329 of 2006 6

40. From clause (c), it is evident that the assessee who has failed to file the return of income for any assessment year included in the block period, the Assessing Officer is bound to assess the income not disclosed by the assessee as undisclosed income and deduction permissible to the assessee as provided under the Statute is nil. Therefore, the addition of Rs. 1,82,600/- sustained by the Commissioner of Income Tax (Appeals), in our view, is in order. The ground raised by the assessee in this regard is accordingly dismissed. Learned counsel for the assessee was unable to pin-point any fault in the approach of the Tribunal which may warrant interference by this Court. The assessee had already been granted benefit by treating the income for the assessment years 1988-89, 1989-90, 1990-91, 1995-96 and 1996-97 as disclosed income. However, the counsel for the assessee was not able to demonstrate as to how the judgments relied upon by him help the assessee, especially when it was not controverted that in spite of having taxable income, the assessee had not filed the returns of income for the assessment years 1991-92 to 1994-95. Finding no merit in the appeal, the substantial question of law is answered against the assessee and in favour of the Revenue. The appeal is accordingly dismissed.

(AJAY KUMAR MITTAL) JUDGE Income Tax Appeal No. 329 of 2006 7

(ADARSH KUMAR GOEL) December 2, 2010 JUDGE *rkmalik*