IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No.2023:PHHC:142470-DB

ITA-25-2023 (O&M)

Pr. Commissioner of Income Tax-I, Jalandhar

……Appellant (s)

Versus

Joginder Singh Chatha

……Respondent(s)

(2)

ITA-31-2023 (O&M)

Pr. Commissioner of Income Tax-I, Jalandhar

……Appellant (s)

Versus

Joginder Singh Chatha

……Respondent(s)

Decided on: 07.11.2023

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present:- Ms. Gauri Neo Rampal Opal, Senior Standing Counsel for the appellant. (Through Video Conferencing).

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G.S. Sandhawalia, J.(Oral)

The present appeals filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') have been directed against the order of the Income Tax Appellate Tribunal, Amritsar (for short 'the Tribunal') dated 13.06.2022 for the Assessment Years 2006-2007 & 2007-2008.

2. The Tribunal had allowed the appeals on 13.06.2022 by a common order of the assessee bearing ITA Nos.54 & 102/ASR/2019 by coming to the conclusion that the amounts deposited in the foreign bank account was by the nephew of the assessee namely Rajinder Singh Chatha, who was residing in U.K who was the beneficiary of the account. It was

noticed that the name of the assessee was closed in the account on 11.06.2004 and the correspondence of the assessee was also blocked from that date. M/s Sauvignon Holdings Ltd. was introduced on 07.04.2004 as beneficial owner and resultantly a finding was recorded that the name of the assessee had been withdrawn prior to the date i.e. 01.04.2005 which is relevant to the assessment year 2005-2006 and no addition could be made in the assessment years under consideration, as he was not owner of the impugned account for the assessment year under consideration. The addition made by the Assessing Officer and confirmed by the Commissioner Income Tax, Jalandhar was held to be not justified as there was no corroborative cogent and concrete evidence to establish either the ownership of the alleged bank account or the alleged disputed deposits in those accounts to be belonging to the assessee and, thus, it was held that there was no violation of the Double Tax Avoidance Convention (DTAC). It was also recorded that nephew had paid all the taxes on the outstanding amount in the impugned bank account to the reveneue authority of U.K under specific disclosure facility of all the irregularities in U.K as per the certificate of C.A i.e. M/s Stonegate Trinity LLP. The certificate had further been verified and confirmed by HM Revenue & Customs (HMRC) Authority of U.K. Resultantly, addition made by the relevant Assessing Officer and confirmed by the Commissioner of Income Tax was deleted while allowing the appeals.

3. The substantial questions of law of which are sought to be determined by the revenue read as under:-

> "(1) Whether on the facts and in the circumstances of the case, the Ld. Income Tax Appellate Tribunal has erred on facts

and in law by holding that the distinction between the USD-denominated account in the name of Sh. Joginder Singh Chatha and the GBP-denominated account No.11276695 being a Swiss (Geneva) Account containing the impugned transactions which have not been disclosed in the disclosure report is insufficient to decide that the amounts transacted are not properly explained or shown to be genuine and therefore to be brought to tax under the statute in the hands of the Respondent.

ii) Whether on the facts and in the circumstances of the case, the Ld. Income Tax Appellate Tribunal has erred on facts and in law wherein multiple factual and legal inconsistencies have occurred, including the lack of any confirmation from Shri Rajinder Singh Chatha and M/s Sauvignon Holdings Ltd and sans any further investigations as to the real ownership of the account and the nature of the impugned transactions therein was not premature without due consideration of all relevant facts on record and has resulted in miscarriage of justice and the non-assessment of incomes taxable under the statute at the hands of the Respondent.

(iii) Whether a decision on the finality of the ownership of the transactions in the Swiss Geneva Account in reference can be taken merely on the unexamined, unverified and uninvestigated statement/ documents stating relinquishing of the holdership of the said account by the Respondent and in the face of any examination, inter alia, of Shri Rajinder Singh Chatha and M/s Sauvignon Holdings Ltd being the purported claimant-owners of the impugned account and the virtual absence of a complete and consistent factual matrix on record."

4. A perusal of the paper-book would go on to show that there were allegations that the assessee had deposited $2496835.89 equivalent to ₹11,13,83,849/- @ ₹44.61 per US$ in the said bank account during the financial year 2005-2006 and relevant to the assessment year 2006-2007. Similarly, there was another deposit of $226509.38 equivalent to ₹1,00,04,919/- @ of ₹44.17 per US$ in the year financial year 2006-2007

and relevant to the assessment year 2007-2008. On account of the return of income not having been filed, notice under Section 148 of the Act was issued on 07.11.2014. The assessee had filed his return of income on 16.12.2014 and declared total income of ₹9,500/- alongwith agricultural income of ₹2,00,000/- for the assessment year 2006-2007. Similarly for the assessment year 2007-2008 he showed his income of ₹11,500/- alongwith agricultural income of ₹2,50,000/-.

5. The defence as such in response to the notice dated 22.12.2014 issued under Section 142 (1) of the Act was that he had visited U.K three times in the year 1985, 2006 and 2012 and had not opened any type of account in the U.K or any other country. He was an agriculturist and totally illiterate and permanent resident of village Dhandowal, Tehsil Shahkot. The bank account in HSBC Bank, Geneva was not his and he had not visited the bank for opening of any type of account. He alleged that his nephew was residing in U.K and he had got his signatures on some papers when he was in India and he is having 10 acres of land and had no other source of income. He had enclosed copies of the bank account maintained with the Jalandhar Central Cooperative Bank and KCC limit with Indian Overseas Bank, Shahkot. The Assessing Officer as such rejected the affidavit dated 22.08.2014 regarding this aspect that he has no bank account or any property abroad and that he was never involved in such bank transactions and came to the conclusion that the bank accounts belong to the assessee and the transactions therein had been made by the assessee. The finding recorded was that the assessee had failed to offer any explanation about the nature and source of investment of the deposits. While relying upon the provisions of Section 69 of the Act penalty

proceedings were initiated under Section 271(1)(c) of the Act and income was accordingly assessed for the requisite amounts of the deposits, vide order dated 29.04.2015.

6. The Commissioner of Income Tax had dismissed the appeals on 26.12.2018, on the ground that an information was received from the competent authority under DTAC that the assessee was maintaining bank account with HSBC Bank, Geneva. The deposits as such had been made in the financial year 2005-2006 and 2006-2007 and return had not been filed. The assessee being a permanent resident of village Dhandowal, Tehsil Shahkot had visited U.K on tourist visa three times for stay period ranging from 1 month to 2 months. A finding was recorded that defence had not been substantiated with evidence and he was unable to produce his nephew or any other evidence to prove the source of deposits in the bank account. Accordingly, income was held to be income from unexplained sources.

7. The claim of the assessee regarding closure of the profile w.e.f. 11.06.2004 was rejected on the ground that closure of profile does not mean closure of bank account, since the said modification was made on 31.07.2004 and therefore, the contention that account having been closed on 11.06.2004 was held to be incorrect. The onus lay upon the appellant under the provisions of Section 69/69A of the Act, which apparently had not been discharged even in the course of appellate proceedings. The fact that nephew had paid all the taxes on the amount outstanding in the impugned bank account to the Revenue Authority of U.K and the certificate of C.A was rejected on the ground that the said certificate does not qualify as a legal certificate or document under any

law and, therefore, did not have any legal or evidentiary value. The fact that whether the tax advisors of the nephew were competent to issue such certificate was also questioned. It was also noticed that cash and investments were transferred through Sauvingnon Holdings Ltd. to the India Trust whose settler is again the assessee. Therefore, transactions in Account No.11276695 having not been confirmed was held to be the amounts belonging to the assessee and he had failed to discharge the onus both at the stage of assessment as well as in the course of present proceedings. Another reason which weighed with the appellate authority was that the appellant was bound to produce the confirmation from his nephew alongwith his sources of income, copy of the ITRs filed to substantiate his claim with regard to sources of deposits in the bank account.

8. Counsel for the appellant has submitted that substantial questions of law are made out in the above facts and circumstances.

9. We are of the considered opinion that these are question of facts which have been adjudicated upon by the Tribunal regarding the deposits in the said accounts. Apparently, there is no material on record to show that the amounts were deposited by the assessee, as the account was opened on 25.03.2003. Apparently the first visit of the assessee was in the year 1985 was to U.K. and there was nothing on record that at the time of his visit abroad he had opened the said account in Geneva. It is the case of the assessee that his nephew had got his signatures on some papers. The second visit was in the year 2006 and third visit was in the year 2012. The profile of the bank as such would go on to show that name of the assessee was struck off from the said account on 11.06.2004, even prior to his visit

in the year 2006 and notice was issued in the year 2014. We are of the considered opinion that the explanation offered by the assessee regarding the amounts belonging to his nephew was justified. It is not disputed that the documents as such which were filed showing the certificate of the C.A. whereby the said person had paid taxes on the outstanding amount in this impugned bank account to the revenue authority of U.K under specific disclosure facility.

Sections 68 & 69 of the Act read as under:-

> "**68. Cash credits**.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the sum so credited may be charged to income-tax as the income of theassessee of that previous year:
>
> Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory: Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.
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> **69.Unexplained investments.**—Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of

> account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

10. A perusal of the same would go on to show that only in the absence of explanation about the nature and source of income, the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory and the sum so credited may be charged to income-tax as the income of the assessee of the previous year. The assessee had given the explanation about the nature and source of the investments and the explanation offered by him was wrongly not accepted by the Assessing Officer and the Commissioner of Income Tax. Once the Tribunal as such noticed the said background and had rightly come to the conclusion that the name of the assessee was withdrawn even prior to the notice being served upon him, the addition could not be made by the Assessing Officer. The factual matrix could not be disputed regarding this aspect by the counsel for the revenue. The justifiable explanation as such is given that the nephew had got his signatures. Sufficient explanation has been given regarding this fact by filing an affidavit, which has not been taken into consideration by the Assessing Officer or by the Commissioner of Income Tax. The assessee being an agriculturist and only having a small holding of land apparently could not be in possession of such huge amounts, which were also in foreign currency. Nothing as such was produced on record that the same was transferred from India where he was doing some business. It is neither the case of the revenue that the amounts were

credited from his income while doing business at abroad and neither he was based abroad for such long periods to generate that kind of income.

11. In such circumstances, we are of the considered opinion that the question of law which is sought to be framed is, thus, not made out in the facts and circumstances of the case. Resultantly, there is no merit in the present appeals and the same are hereby dismissed in limine. All pending civil miscellaneous applications also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

07.11.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	