



HIGH COURT OF DELHI

ITR No. 221 of 1982

Date of Decision : February 28, 2001

The Commissioner of Income-tax, Delhi-IV, New Delhi.....Petitioner
through : Shri Sanjiv Khanna
 with Shri Ajay Jha,
 Advocates.

- versus -

Shri Sat Pal Khanna Proprietor of M/s. Behari Lal Sat Pal, Ishwar Bhawan, New
 Delhi.....Respondent
through : Nemo.

Coram

THE HON'BLE Mr. JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE
THE HON'BLE Mr. JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

ARIJIT PASAYAT, C.J. (Oral)

All these seven (7) cases involve identical issue. Hence, this judgment will govern all these cases.

2. Pursuant to the directions given by this Court under Section 256 (2) of the Income Tax Act, 1961 (in short, 'the Act'), following question has been referred for opinion of this Court by Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi (in short, 'the Tribunal').

"Whether, on the facts and circumstances in the circumstances of the case, the ITAT was correct in law in deleting the additions of Rs.20,000/- for assessment year 1953-54, Rs.25,000/- for assessment year 1954-55, Rs.11,000/- for assessment year 1955-56, Rs.3,500/- for assessment year 1956-57, Rs.10,000/- for assessment year 1959-60, Rs.8,000/- for assessment year 1960-61 and Rs.11,500/- for assessment year 1961-62 made by the ITO as income from other sources?"



Dispute relates to assessment years 1953-54 to 1956-57 and 1959-60 to 1961-62.

2. Factual position, as indicated in the statement of the case, is as follows:-

Assessee, an individual, was originally a refugee from Pakistan and came to India towards the end of 1947. He joined a partnership, which was being carried on in the name of M/s. Sat Pal Mahadeo Prasad w.e.f. 01.01.1948. Thereafter, he started his own business in the name of M/s. Beharilal Satpal. The accounting year for each of the assessment years ended on 30th April. Assessments were completed for various years. Subsequently except for the assessment year 1961-62, the assessments were re-opened under Section 34 (1) (a) of Indian Income Tax Act, 1922 (in short, 'the old Act'). Assessment for assessment year 1961-62 was originally completed on 14.03.1966 under Section 144 of the Act. It was re-opened under Section 146 of the Act and was completed afresh on 28.12.1973 on a total income of Rs.26,000/-, which included Rs.11,500/- as income from other sources. Income Tax Officer (in short, 'ITO') re-opened the assessments as stated above being of the view that certain payments had been made by assessee to his business constituents outside the books of accounts. Additions were made for each of the concerned assessment years. Matter was carried in appeals before Appellate Assistant Commissioner (in short, 'AAC'), who dismissed the appeals. Further appeals were preferred before the Tribunal. It was urged that the initial sum of Rs.10,000/- even if not properly explained, was available for adjustment on the logic of peak credits for the subsequent periods. The plea found acceptance by the Tribunal. The prayer made under Section 256 (1) of the Act was turned down and, as indicated above, on being moved under Section 256 (2) of the Act, the question, as set out above, was directed to be referred for opinion of this Court.

3. We have heard learned counsel for Revenue. There is no appearance on behalf of assessee in spite of notice. According to learned counsel for Revenue, the concept of peak credit has been wrongly applied to the facts of the case.



4. We find that in paragraph 9 of its order, the Tribunal observed as follows :-

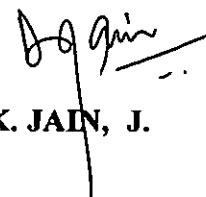
"On a consideration of the facts and circumstances of the case, I am firstly of the view that the assessee has no satisfactory explanation for owning a sum of Rs.10,000/- outside the books for the first assessment year. The assessee has admitted the ownership of such fund and there being no satisfactory explanation for the same as addition of RS.10,000/- is sustained for the first assessment year. As regards the subsequent payments peak statement was filed before me. For none of these years, the peak credit exceeds Rs.10,000/-. In fact, this is the finding of the Appellate Assistant Commissioner also. Hence following with respect the ratio of the Delhi High Court's decision in *Bawa Jagjit Singh's* case, I hold that no addition is called for, as income from undisclosed sources for the subsequent years and the additions so made (Noted specifically in paragraph 3 supra) are deleted. The assessment shall be modified accordingly."

A mere reading of the aforesaid portion would show that findings based on material have been recorded on factual questions.

5. Above being the position, no question of law arises out of the order of the Tribunal. Hence, we decline to answer the question referred.

These references are accordingly disposed of.


CHIEF JUSTICE


D.K. JAIN, J.

February 28, 2001
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