



§ 19 & 20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****ITA 1244/2010**

INDEO AIRWAYS PVT LTD

... Appellant

Through : Sh. Piyush Kaushik, Advocate

versus

DEPUTY COMMISSIONER OF INCOME TAX

.. Respondent

Through : Sh. N.P. Sahni, Sr. Standing Counsel.

ITA 1274/2010

NAVEEN GERA

.... Appellant

Through : Sh. Piyush Kaushik, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through : Sh. N.P. Sahni, Sr. Standing Counsel.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BIHAT****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER****14.08.2012**

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1. The question of law sought to be raised in these appeals is whether the impugned order of the Tribunal, holding that the income/loss from the door-to-door business is not assessable in the hands of Naveen Gera but assessable in the hands of the appellant company, is erroneous.
2. The facts pertaining to this case are that after a search, notice under Section 158 B D was served on the company on 21.09.2000. The company which was the assessee did not declare any income from the door-to-door delivery (road transportation business). It was declared as the income of Sh. Naveen Gera for the concerned block period. In the block assessment order, the AO treated the door-to-door business as that of the Assessee company and not of Sh. Naveen Gera. This was carried in appeal to the Commissioner (A) who confirmed the findings of the Assessing Officer. The further appeal to the Tribunal was rejected. The Tribunal held as follows:

"22. In this regard as to whether the business of road transport for door delivery is belonging to Shri Naveen Gera or the company M/s. Indeo Airways (P) Ltd, it is submitted by the Ld. AR of the assessee that while working in the travel agency of his maternal uncle, Shri Naveen Gera came into contact with Shri Jaideep Mirchandani and both of them started partnership firm known as Sam International for cargo transportation business to Russia in the financial year 1994-95. It is also submitted that in financial year 1995-96, the business of the firm was taken over by a newly incorporated company known as Sam Aviation (P) Ltd. This company also opened an office in Moscow for transportation by cargo by road from airport to the consignee. In financial year 1996-97, due to some difference, Shri Naveen Gera left the company but he continued to do cargo



transportation business on his own. It is submitted that for this reason, he tied up with certain agents and transporters to do job on his behalf. It is also pointed out that the difficulty he faced was that the foreign airlines were reluctant to lease the aircraft to an individual and to overcome this, he floated new company namely Indeo Airways Pvt. Ltd on 28.2.1997. it is a claim of the assessee that to this company, only the business of air transport was transferred. It is also submitted that when a new company is floated, it is for the promoters to decide as to which business should be transferred to the company. It is the submission that since the company was floated with the specific purpose of hiring aircrafts, it carried out the business of air transport of cargo from Delhi Airport to the Airport at Moscow and other CIS countries and the business of road transport continued with Shri Naveen Gera. It is the submission of the Ld AR of the assessee that Shri Naveen Gera used the company to do air transport business like other agents/associates in Russia who were doing road transport business. It is also submitted that Shri Naveen Gera was doing cargo transport business on his own before incorporation of the company M/s. Indeo Airways Pvt Ltd and the income from this business has also been duly declared in the block return in the hands in individual capacity. It is also pointed out that the Assessing Officer has accepted this fact in the remand report which can be seen at page 17, para 7 of the paper book. It is also pointed out that the importers have confirmed that they have imported goods through Shri Naveen Gera. It is submitted that these confirmations were directly sent by the importers to the Assessing Officer and the same can be seen at pages 43-44 of the paper book. It is also pointed out that the agents have confirmed that services were rendered by them in Moscow on behalf of Shri Naveen Gera. It is submitted that none of the importers at Russia or exporters in India were aware of the services being rendered by the company since they all knew only Shri Naveen Gera and handed over the cargo to him for transportation. It is also submitted that the correspondence was with Shri Naveen Gera and not with the company and in this regard our attention was drawn to page 195-197 of the paper book. It is also submitted that for Air transport, the payment was received by cheques while payment for road transportation was received by Shri Naveen Gera in cash but the Assessing Officer has wrongly held that the company received the foreign charges partly by cheque and partly by cash treating the cash received by Shri Naveen Gera as belonging to the company on the ground that both the receipts were against the same airways bills. It is submitted that the air bill has to be same because cargo, importer and exporter remain the same for air transport and road transport. It is also pointed out that in fact, the payment by cheque remains at the same rate irrespective of the fact that whether cash is received or not. It is pointed out that had the company been receiving its cheques partly by cheque and partly in cash, the rate involved in part cheque payment would have been lower as compared to the rate where no cash was received. It is submitted that it is not so indicating that company has nothing to do with cash receipts. It is also pointed out that not only the cash available with the company was utilized by Shri Naveen Gera for his various undisclosed business but also the cash available from his other proprietorship concerns and family concerns was utilized. It is also submitted that since the employees of Shri



Naveen Gera did not know about his undisclosed business activities, his clerk at the warehouse on receiving the cash of Rs.30000/- from Shri Naveen Gera mentioned that it as received from the head office. It is also submitted that the statement of Shri Naveen Gera was mis-interpreted and the income tax authorities had wrong impression that since Sam Aviation (P) Ltd. was doing consolidated activity, M/s Indeo Airways Pvt Ltd must also be doing the consolidated activity without appreciating the fact that the former company had an office in Moscow while the later company did not have any such office Regarding the word "we" used by Shri Naveen Gera in his statement, it is submitted that Shri Naveen Gera was a non matriculate and could not understand the implication of various words used in the statement. It is submitted that the word "We" was used by him for both the directors including himself while the income tax authorities took it as a reference to the company. It is also submitted that no evidence was found during search and thereafter to indicate that the business of road transportation belonged to the company and hence the income from road transportation business should be assessed in the hands of Shri Naveen Gera and not in the hands of the company. Our attention was drawn to page No.195 of the paper book and it is submitted that this is a letter addressed to Shri Naveen Gera as per which it has been intimated that any amount which is collected in excess to the agreed rate of US Dollars 3.10 per kg. will be returned. It is submitted that this letter is addressed to Shri Naveen Gera and hence the road transport business is belonging to Shri Naveen Gera. Our attention was also drawn to page No.192 of the paper book and it is pointed out that on this page, there is an entry of Rs.7,58,625/- on account of credit balance and in this paper, Heading is "Shri Naveen Ji's account" and hence it belongs to Shri Naveen Gera and it goes to show that road transport business was belonging to Shri Naveen Gera. It was submitted that under these facts, it cannot be said that door delivery business was belonging to the company."

3 The Tribunal after a detailed discussion of the facts and after going into the evidence, held that the findings of the CIT (Appeals) were supported by the facts on the record. In doing so, the Tribunal looked into the statements of Sh. Naveen Gera as well as other documentary evidence placed on the record. It concluded as follows:

"24. We have heard the rival submissions and have gone through the material available on record Regarding various contentions raised by the Id. AR of the assessee, we find that as per the assessee, Shri Naveen Gera left Sam Aviation (P) Ltd. in financial year 1996-97 due to some differences and the new company M/s. indeo Airways Pvt. Ltd was formed on 28.2.1997 i.e. within the same financial year. Our attention was drawn to page no. 192 of the paper book showing an entry of Rs. 7,58,625/- on account of freight charges This seized paper is having the heading of "Shri Naveen Ji's account" and against this entry of Rs 7,58,625/- the date mentioned is 3.5.1996. It shows that this date is much prior to the formation of new company M/s. Indeo Airways Pvt. Ltd. which was formed on 28.2.1997 and hence, this entry in this seized paper cannot be a basis to decide as



to whether the door delivery business after 28.2.1997 was belonging to Shri Naveen Gera or to M/s. Indeo Airways Pvt. Ltd. In the facts sheet file dby the Ld. AR of the assessee with regard to Income Tax Appeal No.48/D/01, in para 4, it has been mentioned that in financial year 1996-97, Shri Naveen Gera left Sam Aviation Pvt. Ltd. But whether he has left that company before 3.5.1996 or after 3.5.1996 is not known to us. But this is a fact that this date of 3.5.1996 is prior to formation of M/s. Indeo Airways Pvt. Ltd. And hence this document is not relevant for us to decide the issue before us.

25. *Our attention was also drawn to a letter addressed to Shri Naveen Gera and to Mr. Anil Kumar which is available on page no. 195 of the paper book. The contents of this letter are reproduced below.*

*"MR. Anil Khatri -- Sharjah
Mr. Naveen Gera - Delhi*

Dear Sir,

Further to our various telephonic discussion, we agree to carry your transshipment cargo from Delhi to Moscow via UAE.

We agree to accept the cargo at the rate of USD 2.10 per kg including all expenses at UAE for the transportation from UAE to MOW. This price includes transportation charges and custom charges at MOW.

We agree to return any amount which is collected excess to the above rate as all the shipments are on to collect basis as mentioned in your house airway bill. The refund will be made after fifteen days of delivery of cargo. Any claims of losses or delay will be 20 US\$ per kg. payable in UAE."

26. *Simply because this letter is addressed to Shri Naveen Gera, it cannot be concluded that door delivery business was belonging to Shri Naveen Gera and not to the company M/s. Indeo Airways Pvt. Ltd. This has to be kept in mind that Shri Naveen Gera is not a stranger to the company M/s. Indeo Airways Pvt. Ltd. In fact, Shri Naveen Gera is a director of this company. The company acts only through its directors and hence if a letter is addressed in the name of the director of the company without mentioning the name of the company, it may create some doubt as to whether the said letter is addressed to the person in his individual capacity or in his capacity as a director of the company but then the matter has to be examined after considering all the surrounding circumstances and simply because only the name of the director is mentioned without mentioning the name of the company, it cannot be concluded on the basis of one letter that the entire business of door delivery is belonging to the director in his individual capacity and not bringing to the company.*

27. *When we talk of surrounding circumstances, we have to consider that*



admittedly the business is a complete business because the consignment is handed over in India to be delivered at the door of the consignee in Russia or other CIS countries. How it can be expected that when a cargo is handed over to a person, the responsibility for carrying up to Airport of Moscow is resting with the company and thereafter from the Airport to the door of the consignee, the responsibility is resting on a different person, i.e. the director of that company in his individual capacity.

28. *It is the submission of the assessee before us that since the company was not having any office in Moscow, it cannot do the business of door delivery, i.e. transportation from Airport in Moscow to the door of the consignee but at the same time, the AR of the assessee could not show us that Shri Naveen Gera was having such an office in Moscow. Regarding Shri Naveen Gera, it has been submitted that he has tied up with certain agents and transporters to do the job on his behalf but nothing has been shown that such tie up with agents and transporters were on behalf of Shri Naveen Gera in his individual capacity and not on behalf of the company. Ld. DR of the revenue has shown us various examples in his written submission that the company was charging Rs.60/- per kg. for air transport as per the entry in the regular books of accounts of the company and against the same invoice, cash receipts are accounted for in the seized papers and the rate of such cash realization is working out to Rs.93/- per kg. in the case of D. Sandhu and Rs 88/- per kg in the case of Leather House, Rs.68.75 per kg in the case of Hina International about Rs.70/- per kg. in the case of Airways Bill No. 6973. These figures show that cash receipt per kg. was more than the amount of cheque receipt accounted for by the company M/s. Indeo Airways Pvt. Ltd. and it does not show that the cash receipt was on account of door delivery only from the Airport to the door of the consignee against the rate of Rs 60/- per kg from India to Moscow, it is not acceptable that charges in the door delivery Russia itself from the Moscow Airport to the door of the consignee @ Rs 88/- per kg or Rs.99/- per kg. In view of these facts, we find force in the stand of the Department that the cash receipt was not on account of door delivery business only but it is partly on account of door delivery business and in fact, the composite activity is being undertaken by the company for which a part is accounted for in the regular books of the company to the extent of cheque receipt and the balance is received in cash which is found in the seized books.*

29. *Regarding the contention of the Ld. AR of the assessee that the income from door delivery business has been duly declared in the block return of Shri Naveen Gera, we are of the considered opinion that only because income is declared by Shri Naveen Gera, it cannot be held that the same is belonging to him and not to the company. We are dealing with the appeals of both of them, i.e. Shri Naveen Gera and of the company M/s. Indeo Airways Pvt Ltd and the income will be taxable in the hands of that person who is found to be doing this business irrespective of the fact as to whether the income is declared by the assessee in the hands of Shri Naveen Gera or in the hands of the company because it is settled legal position that income should be assessed in correct hands.*



30. Regarding two letters from Ladyap-M & ZAO Russo available on page No. 43-44 of the paper book, we are of the considered opinion that on the basis of these two letters, it cannot be decided as to whether this business is belonging to Shri Naveen Gera or to the company because admittedly Shri Naveen Gera is a director of this company and even if Shri Naveen Gera is doing the business as a director of the company M/s. Indeo Airways Pvt Ltd., the person will deal with Shri Naveen Gera only because the company has to deal through its director only. Only because the name of Shri Naveen Gera is mentioned in these two letters without mentioning anything regarding his capacity, i.e. the director of that company or individual, it cannot be decided as to whether Shri Naveen Gera was dealing with those persons on his own behalf in the individual capacity or as a director of this company and hence these two letters are not relevant for the issue in hand before us.

31. In para 12 of the fact sheet it is stated by Ld. AR of the assessee that the employees of Shri Naveen Gera did not know about his undisclosed activity and for this reason, his clerk at the time of receiving the cash of Rs.30,000/- from Shri Naveen Gera, mentioned it as receipt from the head office. This contention is also not relevant because it is not necessary that the employee should know about all the business activities whether disclosed or undisclosed but it is reasonable that the employee who has received the cash will know the name of the person from whom the money was received, i.e. whether he has received the money from Shri Naveen Gera or from the head office of the company. Since the employee is mentioning that he has received the money from head office, it has to be accepted that the money was received by him from the head office of the company.

32. In the facts sheet filed by the Ld AR of the assessee in para no. 15, it has been stated that the statement of Shri Naveen Gera was mis-interpreted. Our attention was invited to pages 145-147 of the paper book Relevant portion of the statement of Shri Naveen Gera recorded on 4.3.1999 are reproduced below:

"We are two directors in the company myself and Mr I. D. Gera We started this company for cargo consolidation and transportation from Delhi to various destinations We have operated approximate 65 flights on charter basis. We have mainly operated flights of M/s. Eastline Aviation Ltd, Cyprus, Nicosia. As they were our parents for the supply of charter aircrafts on route Delhi-Moscow. We started this company Indeo Airways (P) Ltd. in the month of February 1997 and entered into an agreement with Eastline Aviation, Cyprus. This agreement is for the supply of aircraft on charter basis for Sector Delhi to Moscow Our main job was to collect cargo from exporter and to transport and deliver the same to the consignee at the destination. We book cargo through agents or exporters directly and they are issued airways bills from our office. They type the airways bill and bring the cargo to the airport for carting and custom clearance and they finally handover the cargo to the airport authority



warehouse after custom clearance further, which is transported on charter flight.

In regard to the business carried on earlier with Jaideep Mischandani at question no. 2, the appellant has stated as under:-

While my association with Mr. Jaideep Mirchandani and Sam Aviation Group we were collecting cargo transporting it to various destinations. We provided warehousing facility to the exporters. The main job was to control the warehousing at Rangpuri which covered the management and the handling of cargo and I was also controlling the airport office where I used to monitor the flight handling, loading and other operation jobs. Jaideep Mirchandani was controlling the main office at Hotel Janpath and the Moscow operation. He was controlling the complete management from the main office, which covered the management, the account division, sales division and co-ordination was done by me from time to time "

33 *From the above extract of the statement of Shri Naveen Gera, we find that it has been stated by him that the main job was to collect cargo from the exporters and to transport and deliver the same to the consignee at the door or destination. This goes to show that the entire activity was a composite activity undertaken by the company and Shri Naveen Gera was looking after the entire business in his capacity as a director of the company and hence the entire income of this composite activity is assessable in the hands of company M/s. Indeo Airways Pvt. Ltd. and no part of the same is assessable in the hands of Shri Naveen Gera. On this basis, the first question is decided against the assessee and it is held that entire income or loss from composite activity including air transport and door delivery business is assessable in the hands of the company M/s Indeo Airways Pvt. Ltd "*

4. We have heard the learned counsel for the parties and are of the opinion that no substantial question of law arises in this case. The Tribunal as well as the lower authorities merely appreciated the facts. The record would also show that concurrently three authorities, i.e. the AO, the Appellate Commissioner and the Tribunal have rendered findings against the appellant. In these circumstances, no substantial question of law can be said to arise. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

AUGUST 14, 2012/ajk/