

Cash seized from locker of wife, children added to assessee's income as he failed to prove their earning capacity

Summary – The High Court of Allahabad in a recent case of Dr. G. G. Dhir, (the Assessee) held that where assessee's family members claimed that cash seized from bank lockers of assessee in course of search infact belonged to them, in view of their failure to prove capacity to earn said amount, impugned addition made in hands of assessee was to be confirmed

Facts

- A search was conducted in the case of the assessee during which proceedings a large number of bank lockers in the name of assessee and his family members were also searched resulting in seizure of large amount of hard cash and jewellery.
- During the course of the block assessment proceeding, assessee for the first time produced a computer printed cash book relating to his professional income. However, no corroborative evidence as to existence of such books had been found during the course of the search and survey proceedings.
- Apart from above, family members of assessee, namely his wife 'V' and two sons, claimed that a part of cash seized during search belonged to them.
- The Assessing Officer having rejected aforesaid evidence and explanation offered by family members of assessee, made addition of cash to assessee's undisclosed income.
- The Commissioner (Appeals) confirmed the said addition.
- In the appellate proceedings before the Tribunal, there arose a difference in opinion between two members. While the Accountant Member granted relief to the assessee, the judicial Member had denied the same. Resultantly, the matter was placed before the Third Member who largely agreed with the findings of the Accountant Member. Thereafter, the appeal was decided in terms of the majority view and the Tribunal granted substantial relief to assessee.
- On revenue's appeal:

Held

- The finding recorded by the Third Member and the Accountant Member of the Tribunal that the lack of the capacity to possess cash could not be a reason to discard the ownership, in the facts of the case, is wholly erroneous as in the instant case there was a complete lack of any plausible explanation as to the source of acquisition of money either by the assessee's wife or by his two sons from any source and in any case, the first, and at times the only presumption that may arise upon lack of financial capacity of a person being proven be that such a person was not at all possessed of the money being claimed by him. A very heavy burden would then be on such persons to explain the source of money being claimed by them. It was never discharged in the instant case.

- In fact, to the contrary, the said three persons only sought to explain the source through their own earning and from no other source which issue stood determined against them upon finding of lack of financial capacity recorded by the all Members of the Tribunal. From perusal of their returns as also from their status namely 'V' being a partner in a partnership firm with declared income of Rs.2 lakhs per annum and the assessee's two sons being student at the relevant time, it is clear that they had no means to come in possession of such large amount of cash or jewellery. Clearly they had claimed the money and jewellery only to cover the unexplained income of the assessee. The Judicial Member had rightly rejected the explanation of the claim and Accountant Member and Third Member accepted the claim on no evidence. Their findings to that effect are clearly perverse.
- As regards cash found from lockers, it is an admitted case between the parties that no cash book was found during the course of search and it was not produced in the course of investigation following the search, though again it is a common case between the parties that the search and survey conducted in the case of assessee was quite extensive. The cash book was produced for the first time in the block assessment proceedings itself and it was not the case of the assessee that the cash book had been produced during the search and survey proceedings. This act appears, to be clearly a case of poor afterthought after considerable lapse of time of almost one year or more.
- The assessee had initially offered a shifting stand on this issue inasmuch as during the course of search it has been first claimed by him that the account books were with the lawyer, later however it was stated at the same with the accountant but the cash book that was produced was a print taken from computerized record which belies the stand taken by the assessee during search and survey proceedings. Commonly, computerized accounts are maintained on a computer that stores the data on its hard drive and either prints of the same or copies on storage devices are carried by other users etc. At no stage during the search and survey proceedings was any evidence adduced of existence of cash book on a computer.
- The Assessing Officer was of the view that such books if regularly maintained, some proof or evidence of such accounts being maintained would have been found during the search proceedings itself. It is itself difficult to believe that the assessee was under any difficulty to produce prints of cash book maintained on the computer specially when, the computer on which it later claimed to have maintained such cash book was neither seized nor discovered during the course of search of proceedings. In this regard also the case of the assessee did not inspire any confidence as some of the statements and explanation smacks of intention to evade tax.
- The department has submitted that cash book was not found during search proceedings and it was first produced during the course of assessment proceedings. He has also submitted that none of the entries in the cash book is supported by any voucher and that the entries in the cash book are merely self-serving statements made by the assessee as a mere after thought.
- Alternatively, it is submitted that cash sought to have been explained by the assessee through the production of cash book was found in various bank lockers. The last operation of the bank lockers was admittedly done by the assessee on 27-6-2002 whereas the cash balance of Rs.8,44,294 figured

on 31-3-2003. Therefore, the cash book is even otherwise not related to the cash found in the bank lockers for the reason that the cash earned up to 31-3-2003 could not have been placed in the bank lockers in June, 2002.

- In this regard that the Third Member of the Tribunal has recorded a finding to the effect that the banks allow their premier customers to operate their bank lockers without obtaining their signatures. This finding has been reached in absence of any pleading or evidence of such fact thereby implying, on a mere presumption, unfounded in fact and in law that the assessee must have operated the bank lockers even after 27-6-2002 and would have deposited the cash sought to be explained through entries made in the cash book after date 27-6-2002.
- There is no evidence led by the assessee and it was not even his case that such state of affairs prevails with the banks. The finding of the Third Member of the Tribunal is not only perverse but also a conjecture and a pure figment of imagination.
- While hearing the appeals, the Tribunal being the last fact finding authority can reach the conclusion different from that recorded by the lower authority. However this power does not give a license to the Tribunal to record a finding contrary to the pleadings and evidence and the law itself. There was no pleading or case or evidence that the bankers had allowed or could have allowed the assessee to operate the lockers without making relevant entries in their record. In fact, to the contrary, banks being governed by statute and guidelines by the Reserve Bank of India, it may be safely presumed that the assessee did not operate the bank lockers after the date 27-6-2002 and if the assessee had claimed otherwise then heavy burden would have been on him to prove such an occurrence.
- The Tribunal being quasi judicial authority ought to have confined itself to the facts and pleadings of the case and the law governing the conduct of the parties. The wholly imaginative finding recorded by the third member of the Tribunal is perverse and wholly unsustainable in law and, therefore, set aside.
- For the purpose of decision in the appeal suffice is to say that the explanation offered by the assessee was rightly not accepted by the Assessing Officer and the said finding was rightly sustained by the Commissioner (Appeals) and the Judicial Member of the Tribunal who had taken note of the circumstances of the cash book having not been found during the search; of it having been produced belatedly during the assessment proceedings; of the entries in the cash book being not supported by any voucher and of the lockers having been last operated date 27-6-2002.
- In view of the above, it is held the findings recorded by the Third Member of the Tribunal and the Accountant Member are perverse and unsustainable, there are accordingly set aside. On the other hand, the findings recorded by the Judicial Member are based on appraisal of evidence and material on record. The said finding is affirmed and the order of the Commissioner (Appeals) is restored on that count.