IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 67 of 2015
Date of decision: 10.8.2015

Manish Bansal

……Appellant

Income Tax Officer, ward No.3, Panchkula

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Nitin Kaushal, Advocate for the appellant.
Mr. Yogesh Putney, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee-appellant has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.8.2014, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh in ITA No.953/CHD/2011 for the assessment year 2007-08, claiming following substantial questions of law:-

> "i) Whether the learned authorities below were justified in treating the gift as unexplained income even though the same was a genuine transaction duly supported by relevant documents?
>
> ii) Whether on the facts and circumstances of the case, the

learned Tribunal is justified in upholding the addition of ₹ 1,75,000/- received as gift by the appellant from his sister especially considering the fact that an amount of ₹ 5,00,000/- also received as gift from the same sister was allowed to be deducted by accepting the same Income Tax Return and bank Statement?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Assessment was framed on 4.12.2009 under under 143(3) of the Act for the assessment year 2007-08 wherein inter alia amounts of ₹ 5 lacs and ₹ 1,75,000/- were added as income which were received as NRI gifts from the appellant's sister. The Assessing Officer treated the said amounts as unexplained income vide order dated 4.12.2009, Annexure A.1, as they were not duly supported by relevant documents. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) Panchkula. A copy of the income tax return filed by the donor (appellant's sister) and the bank statement and certificate were filed as fresh evidence by the appellant. The said documents were accepted by the Assessing Officer in his remand report dated 9.6.2011. In the light of the said acceptance, the amount of ₹ 5 lacs was deleted from his income by the CIT(A). However, the amount of ₹ 1,75,000/- which also formed part of the same income tax return and bank statement was still considered as unexplained income and added to the income of the appellant. Thus, the appeal was partly allowed vide order dated 18.7.2011, Annexure A.2. The appellant filed appeal before the Tribunal. Further, an application for placing on record certain additional documents including the gift deed of ₹ 1,75,000/- was filed. The Tribunal vide order dated 28.8.2014, Annexure A.3 partly allowed the appeal and

admitted all the additional evidence except the gift deed. The addition of ₹ 1,75,000/- was confirmed. Hence the instant appeal by the assessee-appellant.

3. We have heard learned counsel for the parties.

4. Learned counsel for the assessee-appellant submitted that the application for additional evidence in the form of gift deed was filed before the Tribunal which has been erroneously declined. It was argued that the assessee-appellant had established that the gift received from his sister Mrs. Rashi Bansal of ₹ 1,75,000/- was genuine. According to the learned counsel, the Tribunal had accepted the gift of ₹ 5 lacs whereas no cogent reasons were given for discarding the gift of ₹ 1,75,000/-.

5. Learned counsel for the respondent on the other hand submitted that inspite of opportunity provided to the appellant, the assessee was unable to give a confirmatory letter or gift deed verifying that the amount was received by him from his sister.

6. The relevant portion of the order dated 28.8.2014, Annexure A.3 passed by the Tribunal reads thus:-

> "20. Ground No.7. After hearing both the parties we find that there was another entry of ₹ 1,75,000/- for which no details were filed and Assessing Officer made addition on account of the same. On appeal before CIT(A), it was stated that this amount was received from the sister of the assessee as gift. However, learned CIT(A) rejected the explanation because no confirmation was filed.
>
> 21. Before us learned counsel for the assessee submitted that CIT(A) has already accepted another gift of ₹ 5 lacs from the sister then he should have accepted this gift also.
>
> 22. On the other hand, learned DR supported the order of Assessing Officer and CIT(A).

> 23. After considering the rival submissions we do not find any force in the submissions of learned counsel for the assessee. First of all, we have already rejected the admission of additional evidence in the form of gift deed in respect of this gift deed because learned counsel could not give any reason why the same was not produced before Assessing Officer or CIT(A). Secondly, wherever the assessee has filed proper certificate, learned CIT(A) has already deleted the addition and if no confirmation is available for a particular gift, then same cannot be allowed simply because the other gifts have been accepted. Therefore, we uphold the order of learned CIT (A) in this respect and confirm the addition of ₹ 1,75,000/-."

7. A perusal of the order passed by the Tribunal shows that no cogent and convincing reasons have been given by the Tribunal for not accepting the additional evidence in the form of gift deed and confirming the addition of ₹ 1,75,000/-. Consequently, the matter is remanded back to the Tribunal for deciding it afresh in accordance with law after hearing learned counsel for the parties and taking into consideration the additional evidence produced by the assessee-appellant before the Tribunal.

8. Appeal stands disposed of.

(Ajay Kumar Mittal)
Judge

August 10, 2015 **(Ramendra Jain)**
'gs' **Judge**