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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 35/2016**

PANKAJ MAHAJAN ..... Appellant
Through: Mr Rohit Jain and Mr Vaibhav Kulkarni, Advocates.

versus

COMMISSIONER OF INCOME TAX - XIII, ... Respondent
Through: Mr Ashok K. Manchanda, Senior Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **03.05.2016**

1. The Appellant (hereafter 'the Assessee') has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter ‘ the Act’) impugning an order dated 18th June, 2015 passed by the Income Tax Appellate Tribunal (hereafter ‘ITAT’) in ITA No.4085/Del/2012 pertaining to the Assessment Year (AY) 2008-09. The said appeal, ITA No. 4085/Del/2012, was filed by the Revenue assailing an order dated 31st May, 2012 passed by the Commissioner of Income Tax (Appeals) [hereafter ‘CIT(A)’] allowing the appeal of the Assessee and deleting an addition of Rs.13,01,000/- made by the Assessing Officer (AO) as unexplained cash credit.

2. The controversy involved in the present appeal relates to cash deposits aggregating Rs.13,01,012/- which were made by the Assessee in his bank

accounts on various dates during the Financial Year (FY) 2007-08. The Assessee explained the source of cash to be a bequest from his deceased mother which was not accepted by the AO and, accordingly, taxed as Assessee's income.

3. The Assessee is a practising Chartered Accountant and in addition to the income from his business and profession, he also derives income from other sources. The Assessee filed its return of income for the AY 2008-09 on 26th September, 2008 declaring an income of Rs.1,33,240/-. The said return was picked up for scrutiny. On the basis of the information, the Assessee had made cash deposits in excess of Rs.13,00,000/- in his bank account. During the course of the assessment proceedings, the Assessee was required to explain the source of the cash deposited in his bank account. The Assessee explained that source to be his inheritance of Rs.15,06,800/- from his mother, Late Smt. Saroj Gupta who had expired on 14th August, 2006.

4. In support of this claim, the Assessee produced an unregistered Will of his mother dated 28th February, 2006 which indicated that Late Smt. Saroj Gupta owned and possessed cash - which was described as "Cash of my Istridhan" - amongst her other movable properties and the same was bequeathed to the Assessee. The Assessee asserted that after the demise of his mother, her almirah was opened on 12th February, 2007 in which keys to a locker in the almirah and a small locker inside the main locker was found. On opening the lockers, the Will of Late Smt. Saroj Gupta was found and an inventory of the assets was made. The assets in the locker included cash amounting to Rs.15,06,800 and jewellery. In terms of the Will, the jewellery

was handed over to the Assessee's wife and the cash of Rs.15,06,800/- was handed over to the Assessee.

5. The AO called upon the Assessee to file evidence of Income tax Returns, Balance sheets and Statement of affairs of Late Smt. Saroj Gupta as on 31st March, 2005, 31st March, 2006 and 14th August, 2006. The AO noted that the Assessee did not file the Statement of affairs as on 31st March, 2005 and 31st March, 2006. However, copies of the balance sheet of the proprietorship concerns of Late Smt. Saroj Gupta, namely, M/s Satyam Investments and M/s Mahajan Investments and Financial Services indicated cash in hand as on 31st March, 2005 as Rs. 16,706/- and Rs. 7,754/- respectively. The AO further noted that Late Smt. Saroj Gupta had not filed her wealth tax return which would be mandatory if her assets included specified assets and cash in excess of Rs 15,00,000 as at the end of the relevant year. On the aforesaid facts, the AO did not find the Assessee's explanation to be satisfactory.

6. Aggrieved by the assessment order dated 2nd November, 2010, the Assessee preferred an appeal before the CIT(A) which was allowed. The CIT(A) held that the AO had not doubted the Will or the declaration of the executor on opening of the locker but only the quantum of cash available with the deceased. He reasoned that there was no limit on the quantum of *Stridhan* that could be held by a married woman and the same was also not required to be shown as cash balances in the balance sheet of the proprietorship concerns. He, therefore, concluded that the AO was not

justified in making the addition of Rs.13.01 lacs on account of cash deposited by the Assessee in his bank account.

7. The Revenue successfully appealed against the aforesaid order of the CIT(A). While reversing the decision, the ITAT took note of several facts including the income tax returns filed by Late Smt. Saroj Gupta; the capital of the deceased in the proprietorship concerns; the fact that Late Smt. Saroj Gupta had been earning interest on saving bank account, bonds and other interest bearing instruments; the fact that the almirah where the cash was stated to have been found, was claimed to have been opened after a gap of around six months from the demise of Late Smt. Saroj Gupta. The ITAT further noted that the almirah of Late Smt. Saroj Gupta was stated to have been opened by the executor (who was the husband of the deceased) in the presence of witnesses (which included the daughter of the deceased) and the detailed inventory which was stated to have been made. The ITAT observed that there was no contest as to the bequest of the deceased and in the circumstances, there was no occasion for the executor to take six months to open the almirah located at his residence. Taking all the facts into consideration, the ITAT was of the view that the entire exercise was a subterfuge, only to show that cash was genuinely found in the almirah of the deceased. The ITAT also found the Assessee's explanation as to why Late Smt. Saroj Gupta had not filed her wealth tax return to be not acceptable. In the circumstances, the ITAT concluded that there was no cash available as *Stridhan* with Late Smt. Saroj Gupta on her demise.

8. At the outset, it is necessary to refer to Section 68 of the Act as it existed during the relevant AY, which reads as under:-

> "68. 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 the assessee of that previous year."

9. A plain reading of the aforesaid Section indicates that where the Assessee offers no explanation as to the nature and the source of any sum found credited in its books or the explanation offered by him is not satisfactory in the opinion of the AO, the sum so credited may be charged to tax as an income of the Assessee. In the present case, the ITAT has not found the Assessee's explanation as to the source of the cash deposited in his bank account to be satisfactory. Thus, the only issue to be considered is whether the ITAT's opinion in not accepting the Assessee's explanation is palpably erroneous or perverse.

10. At this stage, it may be relevant to note certain undisputed facts and the explanations furnished by the Assessee. First of all, it is not disputed that Late Smt. Saroj Gupta had not filed a wealth tax return in respect of her net wealth as on 31st March, 2006 which would be mandatory if she possessed cash to the extent as claimed by the AO. The Assessee had sought to explain non-filing of the wealth tax return by asserting that the cash available with Late Smt. Saroj Gupta on 31st March, 2006 was only Rs.13,31,800/- and the remaining amount of Rs.1.75 lacs was received by her after 1st April, 2006 and before the date of her demise (that is, 14th August, 2006). Apart from the fact that the Assessee provided no material to substantiate the aforesaid contention, it is also relevant to note that the cash

was claimed to be Late Smt. Saroj Gupta's "*Cash of my Istridhan*" and thus unless invested would not increase with efflux of time. The ITAT described the explanation provided by the Assessee as “fantastic”. We concur with the view that the aforesaid explanation is wholly unsustainable and was rightly rejected by the ITAT.

11. Secondly, it is relevant to note that cash was deposited by the Assessee in various tranches during the FY 2007-08. There is no explanation as to why deposits were made in tranches and that too much after the Assessee is stated to have come into possession of such cash.

12. Thirdly, Late Smt. Saroj Gupta had filed her return of income for AY 2005-06 declaring a total income of Rs.1,42,710/- which included income from her two proprietorship concerns, namely, M/s Satyam Investments and M/s Mahajan Investments and Financial Services. The final accounts of M/s Mahajan Investments and Financial Services indicated gross revenue from operations at Rs.5,050/- and late Smt .Saroj Gupta's capital balance as on 31st March, 2005 at Rs.1,14,243/-. The gross income from M/s Satyam Investments was reflected as Rs.1.73 lacs and the capital balance was reflected at Rs.3.56 lacs as on 31st March, 2005. The same indicated that the proprietorship concerns of Late Smt. Saroj Gupta did not have sufficient cash-in-hand. Admittedly, Late Smt. Saroj Gupta had also not disclosed any cash-in-hand other than under her proprietorship concerns. The Assessee's contention that Late Smt Saroj Gupta was not required to disclose her cash-in-hand is difficult to accept. It is relevant to note that a proprietorship concern does not have a separate legal identity other than its sole proprietor

and an assessee carrying on business is required to maintain books of accounts necessary for his/her assessment. Be that as it may, the ITAT noted that there was no evidence of Late Smt. Saroj Gupta owning and possessing any cash-in-hand and the self serving documents could not be relied upon.

13. Fourthly, the return of income also indicated that Late Smt. Saroj Gupta had earned interest from bank on saving bank account, tax saving bonds, Fixed Deposit Receipts (FDRs) and National Saving Certificates and obviously had invested her liquid fund with banks and other interest bearing instruments. There was no possible explanation why Late Smt. Saroj Gupta would keep a sum of Rs.15.06 lacs in her almirah. The ITAT had rightly taken the same into account while considering the explanation canvassed by the Assessee.

14. Fifthly, Sh. Avinash Gupta was stated to be the executor of the unregistered Will which is stated to have been found in the almirah of Late Smt. Saroj Gupta. Sh. Avinash Gupta was the husband of Late Smt. Saroj Gupta and is the father of the Assessee. There is no explanation at all as to why he had waited for around six months to open the almirah of his deceased wife -assuming that she had a separate almirah - located at his residence. There is also no explanation as why other witnesses were required at the time of opening the almirah. There is also no explanation as to why a detailed inventory was required to be made in presence of witnesses where there seems to be no contest as to Late Smt. Saroj Gupta's alleged bequest.

15. Lastly, it is relevant to note that out of Rs.15.06 lacs stated to have been found in the almirah of Late Smt. Saroj Gupta, a sum of Rs.5 lacs was

in currency notes in the denomination of Rs.1,000/- and Rs.8,51,500/- was in the denomination of Rs.500/-. Clearly, such currency could not have been acquired by Late Smt. Saroj Gupta as her *Stridhan* during the time of her marriage as currency in such denomination was not available at that time.

16. We concur with the view of the ITAT that the entire explanation of bequest of *Stridhan* and discovery of currency is an elaborate subterfuge to attempt to explain the aggregate cash deposited by the Assessee in the subsequent financial year (that is, Financial Year 2007-08).

17. In our view, no substantial question of law arises. Accordingly, the appeal is dismissed with costs of Rs.5,000/-. The costs shall be deposited by the Assessee with the Income Tax Authorities within a period of four weeks from today.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 03, 2016
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