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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 103/2017, C.M. APPL.4643/2017**

\+ **ITA 104/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-1 ..... Appellant

versus

SHRI ARVIND KHANNA ..... Respondent

Through: Sh. Dileep Shivpuri, Sr. Standing Counsel with Sh. Sanjay Kumar, Jr. Standing Counsel and Sh. Vikrant

Sh. Salil Agarwal and Sh. Shailesh Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **22.02.2017**

In these two appeals, the Revenue is aggrieved by the common order of the Income Tax Appellate Tribunal (ITAT) which upheld the a reassessment notice dated 13.07.2009 issued in the circumstances of the case, involving AY 2004-05, in respect of the assessee.

The assessee had *inter alia,* in the return, claimed that some gifts had been made by his father, Sh. Vipin Khanna from overseas sources. The original return was finalized. This became subject matter of reassessment notice dated 31.12.2007. The additions were directed to be deleted. However, this Court, by an order dated 15.04.2016 directed as follows:

> *"3. This order was confirmed by the ITAT. We have considered the submissions of the parties. Both the CIT (Appeals) and ITAT took into account notarized statements and such like materials placed on record for*

> *satisfaction about the genuineness of the transaction. We are of the opinion that given the nature of the onus placed upon the assessees, under Section 68 of the Act - as elaborated in CIT vs. Lovely Exports Pvt. Ltd. 216 CTR 195, the CIT (Appeals) could not have arrived at the satisfaction in the manner that was done in the present case. Whilst, entities' certificate and notarized statements of the entities by themselves indicate, prima facie, the identity of such entities who have granted credit to Vipin Khanna, the creditworthiness of Sh. Vipin Khanna has to be independently established by other materials such as bank statement and other supporting evidence to say that he had the economic capacity to enter into such transaction. It was stated that Mr.Khanna had in fact mortgaged some properties in order to avail of the credit so as to settle amounts by way of gift to his children. If so, the copies of such related documents duly certified by the bank ought to have been produced.*

In the meanwhile, on 13.07.2009, the very same issue, i.e. gifts made by the assessee's father became the subject matter of reassessment – through second notice under Section 147 of the Income Tax Act, 1961. In addition to the gifts itself, ostensibly, fresh ground sought in the notice was that the assessee had gifted some amounts to his wife, Ms. Shagun Khanna, who in turn had purchased shares from M/s. Trojan Developers Private Limited. That, in the opinion of the Court, constituted "relevant material" to justify reassessment. Additions – which were originally proposed in the first reassessment notice were made in the second reassessment proceedings. The second reassessment proceedings were challenged both as to the reopening of the assessment as well as on the merits.

Whilst the CIT(A) upheld the reopening, he directed the amounts added to be deleted pursuant to the explanation of the assessee and a thorough examination of the source of the gift. This time round the CIT(A)'s order dated 31.01.2012 was challenged by the Revenue. The assessee cross-objected, contending that the reassessment was unjustified. It is in these circumstances that the ITAT rendered the impugned order.

This Court has carefully considered the materials on the record. The rationale for the reassessment in this case is similar to the rationale for the first reassessment – which had not worked itself out as is apparent from this Court's remit in *CIT v. Arvind Khanna & connected cases* [ITA 180/2015, decided on 15.04.2015]. That apart, the other basis was the addition made under Section 55A read with Section 69 on account of the purchase of shares by the assessee's wife - Ms. Shagun Khanna. That *per se* did not constitute a "justifiable reason" or rationale for a reassessment given that the first reassessment itself had not been worked out fully. Furthermore and perhaps more crucially, the merits of the reassessment notice, i.e. the gift made by the assessee to his wife, and valuation thereof, was subject matter of a substantive appeal, i.e. ITA 1104/2011 by the said third party assessee. This is what the Court observed while dismissing the appeal in that case:

*"**ITA 1104/2011***

The Assessee had filed income tax return for the assessment year 2006-07 in which assessment order was *passed. In this assessment the Assessee had also shown that he had purchased shares in a Company called M/s Trozen Developers Pvt. Ltd. The return filed was accepted. However, thereafter assessment was reopened by issuing notice under Section 148 of the Income Tax Act on the ground that the said Company was holding one property and the value of the said property which came to be acquired by the Assessee and his wife Ms. Shagun Khanna, was much more than the consideration paid by the Assessee and his wife for purchase of the shares. During the reassessment proceedings matter was referred to the DVO under Section 55 of the Income Tax Act who determined the market value of the asset as ₹9,78,08,000/-. On that basis difference between the said value and the consideration paid by the Assessee and his wife for purchase of shares was added as undisclosed investment under Section 69 of the Income Tax Act. The CIT(A), however, deleted the addition which order has been upheld by the ITAT as well. It is inter alia observed by the ITAT that this was not a case where the Assessing Officer found any document or adverse material suggesting any extra payment by the Assessee over and above declared amount of consideration for purchase of shares in question. In the absence of any such material, no additions could be made. For arriving at this conclusion the Tribunal has relied upon two Judgements of this court rendered in the case of CIT vs. Shankuntala Devi, 316 ITR 46 and CIT vs. Suraj Devi, 328 ITR 604. Having regard to the above we are of the opinion that no question of law arises.*

Dismissed."

In view of the above circumstances, the Court is of the opinion that no substantial question of law arises in this appeal. At the same time, it is clarified that the remit in ITA 180/2015 (supra) dated 15.04.2015 shall be examined. It is open to the assessee to urge all contentions, including the findings of the CIT(A) dated 31.01.2012 as to the same subject matter which is subject matter of this appeal. All rights and contentions of the parties are reserved.

The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 22, 2017/AJK