

O-103

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/47/2012
COMMISSIONER OF INCOME TAX, KOLKATA-XII, KOLKATA
VS.
SANJEEV JAIN

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th February, 2023

Appearance :
Mr. Amit Sharma, Adv.
... for appellant

The Court : This appeal filed by the revenue under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated September 16, 2011 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No.887/Kol/2010 for the assessment year 2003-04.

The appeal was admitted on 4th April, 2012 on the following substantial questions of law :-

- i) Whether on the facts and in the circumstances of the case, the Learned Tribunal has arrived at a conclusion without considering relevant materials that resulted the findings of the learned Tribunal unreasonable and perverse in law ?

- ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal has arrived at a conclusion by applying wrongly the principle of law laid down in the decision of the Hon'ble Apex Court in the case of Sumati Dayal –vs- CIT reported in 214 ITR 801 (SC) ?
- iii) Whether in the facts and circumstances of the case the Learned Tribunal was justified in holding that the burden of proof lies on the revenue and not on the assessee ?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/revenue.

The short issue which falls for consideration in this appeal is whether the assessee was able to establish the genuineness of the gift received by the assessee. In the earlier round of litigation the learned Tribunal had remanded the matter to the Assessing Officer with a specific direction to consider the documents filed by the assessee which, according to the assessee, is sufficient to show that they have discharged the initial burden of proof on them to show that the gift was genuine. The learned Tribunal notes that the Assessing Officer on remand did not comment upon the documents which were produced before the Tribunal but proceeded to find fault with the assessee on the ground that the return of income of the donor Jatin Mehta was not produced. Therefore, the learned Tribunal was of the view that the revenue has not made out any case for interfering with the order passed by the Commissioner of Income Tax-XX, Kolkata [CIT(A)] dated 19th February, 2010.

Mr. Amit Sharma, learned standing counsel for the appellant, would vehemently contend that the bonafides and genuineness of the gift have not been established and the Court should take into consideration the relationship of the parties which will clearly show that there is no genuinity in the gifts.

The CIT(A) considered the specific issue as to whether the assessee has been able to establish the identity and creditworthiness of the donor. The CIT(A) in his order dated 19th February, 2010 records the fact that the donor had a NRE account in ING Vysya Bank and the said Bank directly addressed to the Assessing Officer confirming about the NRE account maintained by the donor and a cheque for Rs.25 Lacs in favour of the assessee was debited to the NRE account. The CIT(A) also notes that the assessee has furnished his business details directly to the Assessing Officer and on the other hand, the Assessing Officer has failed to bring any positive material on record to show that the gifts are not genuine and there was no material brought on record by the revenue to suggest any nexus between the assessee and the gift received by his wife. Thus, on appreciation of the facts the CIT(A) allowed the appeal.

The learned Tribunal on its part re-appreciated the factual position and noted that the identity of the donor has been well established by the documents produced and thus the assessee has discharged the initial onus cast upon the assessee to establish the identity, genuineness as well as the creditworthiness of the donor. In such circumstances, the burden shifts on the revenue to establish it otherwise. This having not been done by the revenue, we are of the view that the CIT(A) as well as the Tribunal rightly granted relief in favour of the assessee.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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