IN THE HIGH COURT OF DELHI

ITC No.35/99

Date of Decision: 8th March, 2001

Commissioner of Income-tax,Delhi-V ......Petitioner

through: Mr.R.C.Pandey with
Ms.Prem Lata Bansal and
Mr.Ajay Jha, Advs.

Versus

Rohit Prakash Goyal ....Respondent

through: Mr.C.S.Aggarwal with
Mr.Salil Aggarwal and
Mr.Prakash Kumar, Advs.

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE
THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes.

ARIJIT PASAYAT,C.J. (Oral)

In this application under Section 256(2) of the Income-tax Act, 1961 (in short the Act) Revenue has proposed the following questions for reference:

> "1. Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that the Assessing Officer was not having any valid reasons, for initiating the proceedings u/s 148 of the Income-tax Act ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that no 'colourful device' was adopted by the assessee with regard to the sale of units of the HUF of which the assessee was a co-parcener ?

...contd/-

> 3. Whether on the facts and in the circumstances of the case the Tribunal was correct in law in setting aside the order of the revenue authorities and directing the Assessing Officer to delete all the additions in the hands of the individual assessee ?"

2. It is to be noted that in respect of three appeals i.e. ITAs No.977, 978 and 979 (Del)/1997 relating to assessment years 1993-94 to 1995-96, Tribunal held in favour of the assessee particularly on the issue relating to the sale of different units of UTI to the HUF M/s.Shankar Lal Ved Prakash. An application under Section 256(1) of the Act was filed before the Tribunal to draw a statement of case and refer the questions, same as noted above, for opinion of the Court. Tribunal rejected the application holding, inter alia, that the findings given by it are purely factual and its order does not give rise to any referable question of law. So far as the first question is concerned Tribunal noted that considering the totality of the facts and circumstances of the evidence on record there was no material on record to assume jurisdiction for initiation of proceedings under Section 148 of the Act and the jurisdiction so assumed was arbitrary and based on no valid material. It was further pointed that it was legitimate tax planning of the assessee and not a colourable device so as to avoid payment of tax. So far as the second question is concerned it was noted that there was no colourable device to avoid any payment of

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tax. Third question was termed to be of abstract nature and vague in character without challenging the findings given by the Tribunal. Therefore, the prayer for reference was rejected.

3. We have heard learned counsel for the parties. Learned counsel for Revenue submitted that though essentially questions appear to be those of fact yet the third question was vide enough to cover the gamut of the controversy. Learned counsel for the assessee on the other hand submitted that Tribunal rightly rejected the prayer for reference as no question of law is involved.

4. We find that the Tribunal has referred to various relevant aspects and has, inter alia, come to a finding that there was no colourable device adopted to reduce the incidence of tax. There are three annexures to the order passed by the Tribunal. When these are read conjointly with the conclusions of the Tribunal, the position is crystal clear that Tribunal's conclusions cannot be termed as perverse. Even if, Revenue's stand that a different view was available to be drawn, is accepted that would not be a ground for holding that a question of law arises which needs adjudication. As to what would constitute a question of law which needs reference has been succinctly stated by the Apex Court in several decisions. The position that emerges from the decisions is as follows:

(1) When the point of determination is a pure question of law such as construction of a statute or document of title;

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2) When the point for determination is a mixed question of law and fact. While the finding of the Tribunal on the facts found is final, its decision as to the legal effect of those findings is a question of law which can be reviewed by the Court.

3) A finding of fact which is erroneous in law when there is no evidence to support it or if it is perverse gives rise to a question of law;

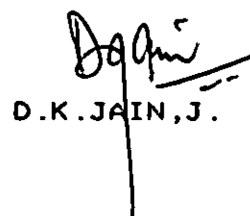
4) When the Tribunal has acted on irrelevant materials or left out of consideration relevant material, a question of law is involved. When Tribunal acts partly on relevant and partly on irrelevant materials and it is not possible to say as to what extent the irrelevant material influenced the mind of the Tribunal, a question of law is involved;

5) When the finding is one of fact, the fact that it itself is an inference from other basic facts will not alter its character as one of facts.(See: <u>Sree Meenakshi Mills Ltd. v. CIT</u> (1957) 31 ITR 28(SC), <u>CIT v. Daulatram Rawatmull</u>, (1964) 53 ITR 574(SC).

5. Above being the position we reject this application under Section 256(2) of the Act.

The application is accordingly dismissed.

CHIEF JUSTICE



8th March, 2001 D.K.JAIN,J.

"v"