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ITA No.264/2003**HIGH COURT OF DELHI : NEW DELHI**+ **ITA No.264/2003**% Date of Hearing & Decision : **12 November 2003**# **COMMISSIONER OF INCOME TAX DELAPPELLANT**! **Through: Mrs. Prem Lata Bansal, Adv.****Versus**\$ **R.S. SIBAL****...RESPONDENT**

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Through: Mr. S.K. Khurana, Adv.**CORAM:**

- * **THE HON'BLE MR.JUSTICE D.K. JAIN**
- * **THE HON'BLE MR.JUSTICE MADAN B. LOKUR**

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

* **D.K. JAIN, J. (ORAL)**

This appeal by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short 'the Act') is directed against order dated 30 January 2003, passed by the



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Income-tax Appellate Tribunal Delhi Bench 'B', New Delhi (for short 'the Tribunal') in ITA No.114/Del/1998, pertaining to the assessment year 1994-95.

Briefly stated, the material facts giving rise to the present appeal are as follows:

During the course of assessment proceedings for the afore-mentioned assessment year, the Assessing Officer noticed two deposits of Rs.7 lacs and Rs.2.25 lacs on 8 July 1993 and 12 August 1993 respectively in assessee's bank account. The assessee was required to explain the sources of the said two amounts. It was stated by the assessee that these amounts were received by way of gifts from two NRIs, namely, Sh.Subhash Kumar Thati and Mrs.Manjeet Kaur Ahluwalia. In support, copies of the gift deeds, affidavits of the donors, extracts from their bank accounts and bank certificate with re-confirmation letters were filed by the assessee. Observing that in spite of various opportunities the assessee could not establish any relationship, natural or man-made, with the so-called donors, the Assessing Officer added the said amounts to the total income of the assessee



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by taking recourse to Section 68 of the Act. The Assessing Officer also observed that the assessee was trying to convert the black money earned in real estate business through the medium of gifts from NRI accounts, which could be arranged on payment of premium of 10% to 25%.

Aggrieved, the assessee preferred appeal to the Commissioner of Income-tax (Appeals). While observing that in case of cash credits, particularly, cash credits on account of gifts, the onus of establishing the identity of the donor and the capacity of the donor to make the gift lay on the assessee, the Commissioner came to the conclusion that in the present case the said onus had been discharged by the assessee, in as much as he had filed copies of the gift deeds, stating that the gifts had been given by the donors to the assessee out of natural love and affection; the affidavits disclosed their names and complete addresses, passport numbers, NRE bank account numbers and the sources of income. Taking note of the contents of the said documents, the Commissioner concluded that the assessee had fully discharged the onus and there was no evidence on record to



dispute the genuineness of the afore-noted gifts.

Not being satisfied with the decision of the Commissioner, the Revenue carried the matter in further appeal to the Tribunal. Inter-alia, observing that the afore-mentioned evidence adduced by the assessee was neither controverted nor was it proved to be false, and the assessing officer had treated the gifts as not genuine merely on suspicion, the Tribunal affirmed the view taken by the Commissioner. Accordingly, Revenue's appeal was dismissed. Hence the present appeal.

According to the Revenue, the impugned order involves the following substantial questions of law:

- a) Whether ITAT was correct in law in deleting the addition of Rs.9,25,000/- made by the A.O. under section 68 of the Income Tax Act being the alleged gifts of Rs.7,00,000/- and Rs.2,25,000/- received from the NRI's?
- b) Whether ITAT was correct in holding that the assessee had filed the necessary evidence in support of the genuineness of the alleged gifts when the assessee had not established the relationship between the alleged donors and the donee?
- c) Whether ITAT was correct in holding that the A.O. was not justified in not treating



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the gifts as genuine merely on suspicion conjecture and surmises?

- d) Whether ITAT was correct in law in holding that the assessee had discharged the onus in establishing the nature of the transaction?"

We have heard learned counsel for the parties.

Assailing the appellate orders, Mrs. Premlata Bansal, learned senior standing counsel for the Revenue, has vehemently urged that both the authorities have failed to appreciate that the assessee had not established the credit worthiness of the donors and their relationship with the assessee. It is asserted that there was no reason why two strangers would make gifts of heavy amounts to the assessee, who has failed to prove donors' love and affection for him. In support of the proposition that mere production of statements of account or identification of a donor is not sufficient to prove the genuineness of the gift, learned counsel has placed reliance on a decision of this Court in Sajan Dass & Sons Vs. Commissioner of Income-tax, 2003

(128) Taxman 621.



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We are unable to agree with learned counsel for the appellant. There is no quarrel with the proposition that a mere identification of the donor and movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift and since the claim of the amount having been received as a gift is made by the assessee, onus lies on him not only to establish the identity of the donor but his capacity to make such a gift. But in the instant case, we find from the record that though the assessee had admittedly produced the bank statements, the Assessing Officer did not raise any query with regard to the capacity of the donors to make the gift. From the assessment order, we find that the only ground on which the genuineness of the gifts had been doubted was the alleged failure on the part of the assessee to establish his relationship with the donors. Admittedly, there is no blood relationship between the assessee and the donors. No such case was even pleaded by the assessee. The donors had stated in their declarations that they had gifted the amounts to the assessee on account of their love and affections for



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him. Both the lower appellate authorities have recorded a categorical finding that by producing the afore-mentioned documents the assessee has discharged the onus which lay on him with regard to the genuineness of the gifts. The inference drawn by the appellate authorities, on appreciation of evidence is factual, giving rise to no question of law much less a substantial question of law.

Accordingly, we decline to entertain the appeal.

Dismissed.



D.K. JAIN, J



MADAN B. LOKUR, J

NOVEMBER 12, 2003

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