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I.T.A. No.478/2003**HIGH COURT OF DELHI : NEW DELHI**+ **ITA No. 478 of 2003**% **Decided on: December 02, 2003**# **M/S PREM NATH GOEL & CO. ...Appellant**! **Through: Mr. Salil Aggarwal, Adv.****Versus**\$ **COMMISSIONER OF INCOME TAX ...Respondent**^ **Through: Mr. R.D. Jolly, Adv. with  
Mr. Ajay Jha, Adv.****Coram:**\* **HON'BLE MR. JUSTICE D.K. JAIN**\* **HON'BLE MR. JUSTICE MADAN B. LOKUR**

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



\* D.K. JAIN, J. (Oral)

This appeal by the assessee under Section 260-A of the Income-tax Act, 1961 ("the Act" for short), is directed against order, dated 13 December 2002, passed by the Income-tax Appellate Tribunal, Delhi Bench, New Delhi (for short "the Tribunal), in I.T.A Nos.3157, 3371 & 3550/D/97, pertaining to the Assessment Years 1991-92 to 1993-94. By the impugned order, the Tribunal has upheld the addition made by the Assessing Officer in the hands of the assessee under Section 68 of the Act, for failure on their part to prove satisfactorily the genuineness of the cash credits of Rs.1.00 lakh each found credited in their books of account in the names of Mahavir Prasad, Banwari Lal and Subhash Kumar Parekh.

According to the appellant, the order of the Tribunal involves the following substantial questions of law:

- "1. Whether the Income Tax Appellant Tribunal was correct in law and on facts in sustaining the addition of Rs.3,00,000 made by the AO u/s 68 of the I.T. Act on account of alleged unexplained loan of Rs.1 lakh each in the name of S/Shri Mahabir Prasad, Banwari Lal and Subhash Kumar Parekh and sustaining the disallowance of Rs.41,200 being the interest on the aforesaid loans?
2. Whether the order of the Income Tax Appellate Tribunal dated 13.12.2002 is not vitiated for ignoring the relevant submissions/material while sustaining the impugned addition and disallowance of interest?"



Assailing the order, Mr. Salil Aggarwal, learned counsel for the appellant, has vehemently submitted that the finding of the Tribunal that the assessee has failed to prove the capacity of the creditors is vitiated because the Tribunal has disregarded the relevant material placed on record by the assessee. It is urged that though the statements of the three creditors were recorded but even on repeated requests of the assessee, statements of those who had provided funds to the creditors, had not been recorded.

We are unable to persuade ourselves to agree with learned counsel. Section 68 of the Act requires an assessee to prove the credits appearing in his books of account, as to the nature and source of such amounts, so that if the explanation furnished is not satisfactory, the assessing officer can treat it as assessee's income. The assessee is required to prove three important conditions, namely, (i) the identity of the creditor; (ii) the capacity of the creditor to advance the money and (iii) the genuineness of the transaction. What evidence would be sufficient to establish the said conditions or what material would be relevant in a particular case, would depend on the facts of each case. There cannot be one general guiding yardstick in the matter. Therefore, the question for consideration is whether the finding of the Tribunal that the assessee has failed to prove the capacity of the three creditors to advance the money to



them is vitiated because the same has been arrived at after improperly rejecting the evidence adduced by the assessee.

In the present case, on consideration of the material placed on record by the assessee, which included the statements of the said three creditors, the Tribunal has come to the conclusion that the explanation furnished by the assessee is not satisfactory, in as much as, the three creditors were persons of small means; there was no evidence of the availability of the amount of Rs.3.00 lakhs with them on the dates of the deposit with the assessee; and the drafts for the money purportedly given by the creditors in cash were obtained by the assessee. Though an inference as to whether the explanation is satisfactory or not is one of fact and cannot ordinarily be interfered with by this Court but since learned counsel for the appellant has labelled the findings of the Tribunal as perverse, being based on no evidence, we have glanced through the statements of the three creditors, placed on record. It is evident from the said statements that all the three creditors were drawing salaries between Rs.2,800/- to Rs.3,250/- p.m.; they were living with their families in small houses; they had no bank accounts and substantial part of the amounts in question had come in their hands by way of gifts from some other persons.

In the light of these statements, we are unable to hold that the



afore-noted findings, recorded by the Tribunal, are based on no evidence or are based on partly relevant and partly irrelevant evidence or that no reasonable person could have drawn the same conclusion, and are, therefore, perverse, giving rise to a question of law. In our opinion, the findings of the Tribunal being based on cogent material, no question of law, much less a substantial question of law arises from the impugned order. Accordingly, we decline to entertain the appeal. Dismissed.

  
D.K. JAIN, J

  
MADAN B. LOKUR, J

DECEMBER 02, 2003

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