



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

ITA No. 248/2002

Judgment delivered on: 22.03.2004

**COMMISSIONER OF INCOME TAX, DELHI CENTRAL - II,  
NEW DELHI** ...Appellant

- versus -

**SMT NADIRA FARAZ HAMID** ...Respondent

Advocates who appeared in this case:

For the Appellant : Mr R.D. Jolly with Ms Rashmi Chopra  
For Respondents : Mr S.R. Wadhwa

**CORAM:-**

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE  
HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

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 Digest?

**CHIEF JUSTICE (ORAL)**

1. Admit.

The following question of law is required to be determined by the Court:-

Whether in absence of original document, the Tribunal was justified in setting aside the assessment despite the fact that the assessing officer called upon the assessee to produce the original document?



2. At the request of learned counsel for the parties, we are taking up this matter for final disposal today itself. The paper book is dispensed with. For the block period from 01.04.1986 to 06.11.1996, the Assessing Officer made an order of assessment on 28.11.1996 under Section 158 B & C of the Income Tax Act, 1961. The Assessing Officer raised specific queries as under:-

"Therefore, regarding NRE gift of Rs.16,92,127/- from Sh. Omar Imam, the assessee could furnish photocopies only of passport, confirmation, relationship of real uncle without any documentary evidence and no knowledge about his activities prior to 1975 in India. Photocopies do not have any evidentiary value. Even the confirmation was not in original. In the said photocopy of confirmation, nowhere it is mentioned that gift has been made out of natural love and affection without any consideration. There is not even a single word about the genuineness and creditworthiness of Sh. Omar Imam. The assessee was required to furnish specific documents in this regard as mentioned above. The assessee has also failed to produce him for cross examination. It was very clearly held by their lordships that primary onus of establishing the identity, genuineness and creditworthiness in upon the assessee."

3. The assessing Officer further noted in para XI at page 28 as under:-

"In this case, the assessee could not even furnish an original confirmation production of various documents and personal presence of creditor was not done though specifically called for as narrated above. The assessee has therefore completely failed to establish the identity, genuineness & creditworthiness of alleged NRE donor Sh. Omar Imam. The amount of Rs.16,92,127/- is therefore treated as undisclosed income of the assessee for A. Yr. 93.94 of the block period.

However, the Tribunal has not examined these aspects and has decided



the case relying upon photocopies of the documents.

4. When a burden is cast on the assessee, it is his duty to produce the evidence--oral or documentary. So far as documentary evidence is concerned, ordinarily it is primary evidence that is required to be adduced. Thus, the original documents themselves must be produced. A photocopy of a document cannot even be treated as secondary evidence, much less primary evidence. Moreover, secondary evidence can be accepted provided primary evidence is not available and, by and large, the procedure as required is followed as per The Indian Evidence Act, 1872 in such a case, unless the parties have admitted the documentary evidence. The respondent/assessee states that he has got the original. Then, in such a case, he ought to have produced it before the Assessing Officer or at least before the Tribunal. The question of adducing primary evidence has not been examined by the Tribunal. We are of the view that the Tribunal has committed an error in arriving at a conclusion on the basis of photocopies. We are of the opinion that the authority which is required to consider the evidence on record or is authorised to record evidence should rely upon primary evidence and in the case of secondary evidence, it should follow the procedure laid down in the Indian Evidence Act and, thereafter, should arrive at a conclusion.

5. In the instant case, however, the photocopies alone have been produced on record. However, the learned counsel for the assessee states



that the originals are available. These ought to have been produced and examined by the authorities below. Therefore, we feel that it would be proper to direct the Tribunal to give an opportunity to the assessee to produce the original documents and, thereafter, to record its findings. The appeal stands remanded to the Tribunal for this purpose. The exercise shall be completed by the Tribunal within a period of eight weeks from the receipt of the order.

*Bopari*  
CHIEF JUSTICE

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

March 22, 2004

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