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\* **IN THE HIGH COURT OF DELHI**

+ **I.T.A. NO. 66 OF 2002**

**Judgment Reserved on : February 17, 2005**

% **Date of Decision: March 3<sup>rd</sup>, 2005**

Commissioner of Income Tax Delhi-VIII,  
New Delhi

... Petitioner

Through  
Mr. Jagdish R. Goel,  
Advocate

Versus

Lalit Bhasin

... Respondent

Through  
Mr. S.K. Aggarwal,  
Advocate.

CORAM:

**HON'BLE MR. JUSTICE SWATANTER KUMAR**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**

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

**SWATANTER KUMAR, J.**

The Commissioner of Income-tax is aggrieved from the order dated 3<sup>rd</sup> August, 2001 passed by the Income-tax Appellate Tribunal wherein it was held that the provisions of Section 69-B of the Income-tax



Act (hereinafter referred to as the Act) were not applicable to the case of the assessee in relation to payment of Rs.50,000/- to the Calcutta Stock Exchange through the broker Ajit Kumar Dey of Calcutta. Consequently, the appeal preferred by the Department was dismissed by the Tribunal.

2. The necessary facts are that the assessee has filed his return of Income-tax on 31.10.91 declaring the net income of Rs.4,06,810/- for the assessment year 1991-92. The matter was taken up for scrutiny and notice was issued under section 143(2) which was served upon the assessee, whose representative appeared. During the course of assessment proceedings, it came to the notice of the Assessing Officer that a ticket for Rs.50,000/- of Calcutta Stock Exchange from Shri Ajit Kumar Dey was purchased allegedly by the assessee, while according to the value of the ticket might have been above Rs.10 lacs. The assessee was called upon to explain this entry. Finally, the Assessing Officer took the value of the ticket at Rs.11,50,000/- and gave the benefit of Rs.50,000/- paid by the assessee, added the balance income of Rs.11 lacs as un-explained investment expenditure and made addition thereto to the income of the assessee. Further the Penalty proceedings under section 27(1)(c) of the Act were also initiated against the assessee. Upon appeal by the assessee, the Commissioner of Income-tax, deleted the addition of Rs.11 lacs as well as granted the following relief to the assessee :-

“ I have examined the contentions of the assessee's



AR. The assessee purchased a Card from Calcutta Stock Exchange through Shri Ajit Dey. The payment was made Calcutta Stock Exchange Association Ltd. which is supported by Memo of the Calcutta Stock Exchange Association Ltd. in favour of Shri Ajit Dey. Shri Ajit Dey confirmed that he had purchased one Stock Exchange Card of Calcutta Stock Exchange Association for a consideration of Rs.50,000/-. The payment was made by demand draft No.308124 dated 24.4.90. In view of these pieces of evidence, it was not fair on the part of the AO to presume that the assessee paid Rs.11,50,000/- for purchase of a ticket. The burden of proving this fact was on the AO and the AO has not made any verification either from Calcutta Stock Exchange Association Ltd. or from Ajit Kr. Dey. Under the circumstances, addition made is deleted. (relief Rs.11,00,000/-)."

2. Aggrieved from the above order of the Commissioner, the Department went up in appeal before the Tribunal, which as already noticed, vide order dated 3.8.2001 wherein it is held as under :-

" We have heard the rival parties and have perused the material placed on record. We have also examined the case laws relied upon. In the instant case, before making the addition, AO has not conducted any enquiry with the Calcutta Stock Exchange and the assessee has proved by all material at his disposal that the payment of Calcutta Stock Exchange Asso. Ltd. was only Rs.50,000/- through Shri Ajit Kumar Dey of Calcutta. This was the only consideration paid by the assessee. In the absence of any cogent material placed on record, we are of the opinion that the decision of Rajasthan High Court, supra, is not applicable to the facts of this case. We are in full agreement with the ld. AR that where no enquiry conducted, factum of understatement of investment not proved and hence



provisions of section 69B are not applicable. Keeping in view the totality of the facts and consideration of this case, we decline to interfere in the order passed by the CIT(A).”

3. This resulted in filing of the present appeal under section 260A before this Court. The contention raised on behalf of the appellant is that the receipt issued by the Calcutta Stock Exchange Association Ltd. indicates the name of Shri Anandi Nath Dutta, and payment through Ajit Kumar Dey and as such the respondent has not produced any bonafide document to show that he had made the payment for himself and purchase of the ticket in his own name, thus the addition made by the Assessing Officer was justified in law and on the facts of the case.
4. On the other hand, learned counsel appearing for respondent contends that the payment was made by a bank draft, the receipt of which is admitted by Ajit Kumar Dey and as the balance consideration was not paid, the petitioner had not purchased the ticket as yet as such the entire order of the Assessing Officer is based upon conjunctures and surmises.
5. The arguments addressed on behalf of the appellant suffers from a basic fallacy. Receipt No.1936 issued by the Calcutta Stock Exchange Ltd. records the name of Ajit Kumar Dey and states that deposit and cost of unit No.7 from Anandi Nath Dutta. The column of total cost for transfer deed has been scored out in the receipt. Cheque No.25283



issued on Hong Kong Bank was issued by the respondent-assessee. If the Assessing had any doubt in regard to the bonafides of the assessee, nothing prevented the Assessing Officer from exercising his powers under the Act and summoning the record of the Calcutta Stock Exchange and/or direct Anandi Nath Dutta to appear before him and produce relevant record in regard to receipt. The bare reading of the order of the Assessing Officer shows that he arrived at a conclusion, primarily on imaginative basis and conjunctures rather than on the basis of any record or books of accounts. The decision of the Assessing Officer was rightly upset by the Tribunal wherein it was clearly recorded that Ajit Kumar Dey had confirmed that he had purchased one stock exchange card of Calcutta Stock Exchange Association Ltd. for a consideration of Rs.50,000/- and still the transaction had to be finalised and the payment was made on behalf of the assessee. This was the view taken even by the Commissioner of Incom-tax (Appeals) which has been rightly confirmed by the Tribunal.

6. These are finding of facts based upon appreciation of evidence. It is a settled principle of law that Tribunal is the final fact finding forum and the High Court normally would not interfere in such findings. Further more, the contention of the appellants is based entirely upon re-appreciation of evidence and no question of law arises for consideration in



the present case.

For the reasons aforesaid, we find no merit in this appeal and the same is dismissed while leaving the parties to bear their own costs.

  
(SWATANTER KUMAR)  
JUDGE

  
(MADAN B. LOKUR)  
JUDGE

March 3<sup>rd</sup>, 2005  
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