



\* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.250/2006**

Judgment reserved on: July 20, 2006

% Judgment delivered on: August 04, 2006

Rakesh Kalia

..... Appellant  
Through: Mr. R. Santhanam with Mr.  
Sanjay Sharma, Adv.

versus

COMMISSIONER OF INCOME TAX

..... Respondent  
Through: Mr. R. D. Jolly with Mr. Vishnu  
Sharma , Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

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

**VIPIN SANGHI, J.**

1. This is an Assessee's appeal under Section 260A of the Income Tax Act ( for short 'the Act') against the order dated September 16, 2005 passed by the Income Tax Appellate Tribunal ( for short 'The Tribunal') in ITA No.901 /Del/2003 pertaining to assessment year 1992-1993.



2. The relevant facts in brief are that the Assessing Officer upon scrutiny of the documents filed by the Assessee along with return found that there was a credit entry of Rs. 2,55,000/- made on 1.2.1992 in the Savings Bank Account of the Assessee. The Assessee was asked to explain the nature and the source of the receipt. In response, he filed a declaration under the Remittance in Foreign Exchange (Immunities) Scheme, 1991 to claim that this amount was received by debit to an NRE Account. It was not clear from the certificate issued by the bank as to whom the account belonged. To verify the genuineness of the declaration, a reference was made to the State Bank of India, Race Course Road, Bangalore, (for short 'SBI'). From the response of SBI, it transpired that the declaration was not correct since the amount did not come from any NRE account but it came from a Savings Bank Account of one Arun. L with SBI. The Assessee was called upon to produce Arun L but he failed to do so. The Assessing Officer accordingly added the amount as Assessee's income. The Commissioner of Income Tax (Appeals) (for short 'CIT Appeals') upheld the addition in the appeal filed by the Assessee. It was held that the Assessee could not prove the identity of the donor Arun L. The Assessee preferred a further appeal to the Tribunal.

3. In second appeal to the Tribunal by the Assessee, the Tribunal while noticing the good investigation carried out by the Assessing Officer, observed that it was necessary to give full



opportunity to the Assessee to rebut the evidence which had collected behind the Assessee's back. Since the Tribunal felt that Assessee had not been given full opportunity to furnish the details and rebut the findings given by the Assessing Officer, the order of the CIT (Appeals) was set aside and the matter restored to the file of the Assessing Officer with a direction to re-decide the issue in accordance with law after giving a full opportunity to the Assessee.

4. The Assessing Officer accordingly took up fresh assessment proceedings under Section 254 read with Section 143(3) of the Act. He gave fresh opportunity to the Assessee to substantiate the claim regarding the deposit of Rs.2,55,000/-. The Assessee was provided with a copy of the letter of the Chief Manager, SBI in which he stated that the funds deposited into the account of Arun L came from a resident depositor's account and not from any NRE account. In compliance with the earlier order of the Tribunal, the Assessing officer required the Assessee to explain the nature, source and genuineness of the deposit and also to substantiate the same by proving the identity of Arun L. He was also asked to provide the present address of Arun L. In response thereto the Assessee raised several contentions and stated that the onus to prove that the deposit was a genuine NRE gift was not on the Assessee, and that it was for the Assessing Officer to prove that the said deposit came from a resident's account. Since the Assessing Officer did not find the explanations furnished by the



Assessee to be satisfactory, he added the amount of Rs. 2,55,000 income from undisclosed sources. In appeal before the CIT (App preferred by the Assessee, the order of the Assessing Officer was maintained. Against the order of the CIT (Appeals) the Assessee again preferred an appeal before the Tribunal which has been dismissed by the impugned order.

5. The Tribunal considered the matter and noticed that till date the Assessee had not been able to establish the identity of Arun L from whom the amount was found to have been received by the Assessee. It was also noticed that the Assessee had failed to avail of the opportunity which had been granted by the Tribunal on an earlier occasion. It was also noticed that when the Assessee was confronted with the fact that the amount did not come from any NRE account, but that it came from a resident depositor's account, the Assessee demanded evidence for the same. Accordingly he was given a copy of the letter issued by the Chief Manager, SBI. The Tribunal also noticed that the Assessing Officer had found that the said account was opened on 27.1.1992 by depositing 5 lakhs in cash. The other deposits in cash amounting to Rs. 20,20,000/- were deposited within 4 days from the opening of the account. The account was finally closed on 15.2.1992 on which date the drafts were issued in various names including the one in the name of the Assessee. The Tribunal also noticed that upon verification the Assessing officer had found the particulars of the



address of Arun L. to be incorrect. Despite yet another opportunity the Assessee had failed to produce Arun L and to explain the creditworthiness of Arun L and the genuineness of the transaction. He was also asked to provide the present address of Arun L, which too he could not provide. The Tribunal also noted that the Assessee had conceded before the Settlement Commission that the immunity declaration given by him was false. The Tribunal also found that the Assessee was prolonging the assessment proceedings by taking untenable pleas without discharging the burden placed upon him. The Assessee had, on the basis of one or the other specious plea been successful in dragging the proceedings for nearly 14 years without establishing the identity and creditworthiness of Arun L and the genuineness of the transaction.

6. We have heard the counsel for the appellant and we find that the Tribunal has dealt with the matter in great detail. It is clear that the appellant has not availed of the repeated opportunities granted to him and has miserably failed to establish the identity and the creditworthiness of the said Arun L as also the genuineness of the transaction. The conduct of the appellant through out has been to deflect all queries raised on him by claiming that the entire responsibility to prove that the amount of Rs. 2,55,000/- added by the Assessing Officer constituted undisclosed income lay on the Taxing Authorities and that there was no corresponding responsibility on the



Assessee to explain the evident falsity of his claim that the amount of Rs. 2,55,000/- was received by him by debit to an NRE account.

7. Under Section 68 of the Act when a sum is found credited in the books of the Assessee, and the Assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not found to be satisfactory, the sum so credited can be charged to income tax as income of the Assessee.

8. Section 68 of the Act has been considered and interpreted on various occasions by this Court. In **Commissioner of Income Tax vs. M/s. Sophia Finance Limited**, [1994] 205 I.T.R 98 (F.B), the Full Bench observed as follows:-

"As we read Section 68 it appears that whenever a sum is found credited in the books of accounts of the assessee then, irrespective of the colour or the nature of the sum received which is sought to be given by the assessee, the Income-tax Officer has the jurisdiction to enquire from the assessee the nature and source of the said amount. When an explanation in regard thereto is given by the assessee then, it is for the Income-tax Officer to be satisfied whether the said explanation is correct or not. It is in this regard that enquiries are usually made in order to find out as to whether, firstly the persons from whom money is alleged to have been received actually existed or not. Secondly depending upon the facts of each case the Income-tax officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is a mere name lender or not. Be that as it may, it is clear that the Income-tax Officer has jurisdiction to make enquiries with regard to



the nature and source of a sum credited in the books of account of an assessee and it would be immaterial as to whether the amount so credited is given the colour of a loan or a sum representing the sale proceeds or even receipt of share application money. The use of the words "any sum found credited in the books" in Sec.68 indicates that the said Section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money."

9. The Court further held:-

"What is clear, however, is that Section 68 clearly permits an Income Tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessee. In other words, the truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of account can be gone into by the Income-tax Officer."

10. In *Commissioner of Income Tax vs. R. S. Sibal*, [2004]

269 I.T.R 429, this Court held as follows:-

"There is no quarrel with the proposition that a mere identification of the donor and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift and since the claim of a gift is made by the assessee the onus lies on him not only to establish the identity of the donor but his capacity to make such a gift."

10. In *Premnath Goel & Co. vs. Commissioner of Income Tax*, [2004] 271 I.T.R 390, this Court held as follows:-



"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 the 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."

In *Premnath Goel's* case the Assessee produced the three creditors to show that they had advanced a credit of Rs. 1 lakh each to the Assessee. However, the said explanation was not considered to be satisfactory by the Tribunal since these creditors were persons of small means and there was no evidence of the availability of the amount advanced by them to the Assessee on the dates on which they were ostensibly advanced to the Assessee.

11. In the present case it is clear that the initial explanation offered by the Assessee was found to be patently wrong, inasmuch as, the Chief Manager of SBI clarified that the amount credited to the account of the Assessee came from a Savings Bank account of one Arun L and not from any NRE account. This assertion was admittedly false, inasmuch, as the funds did not come from any NRE account. Further investigation showed that the said Arun L was not traceable, his address was found to be incorrect and that the account had been



opened, operated and closed within a span of about 20 days. It also found that cash had been deposited in the said account to the tune of Rs. 25 lakhs and withdrawn by way of demand drafts including the one in the name of the Assessee on the day of closure of account. It is clear from the aforesaid that the authorities had clearly nailed the lie of the Assessee in the present case.

12. We find no force in the submission of the Assessee that he had not been treated fairly since the Chief Manager, SBI was not produced for cross examination, and, therefore, the communication sent by him cannot be relied upon. As noticed by the CIT(A) and the Tribunal, the Assessee had himself conceded before the Settlement Commission that the declaration made by him under the Foreign Exchange Immunity Scheme, 1991 was incorrect. Therefore no prejudice seems to have been caused to the Assessee in this case.

13. We also find, that independent of the evidence produced by the Chief Manager, SBI, the Assessee had not discharged his obligation to establish either the identity or the credit worthiness of the donor nor had he established the genuineness of the transaction. Consequently, in the facts of this case the Taxing Authorities were justified in treating the amount of Rs. 2,55,000/- as income of the Assessee.

14. In view of the aforesaid, we find no infirmity with the order passed by the Tribunal dated 16.9.2005 and we affirm the same. Since



no question of law arises in the present case, we dismiss the present appeal.

15. In the present case the Appellant has been pursuing for the last over 14 years, a line of argument which is contrary to well settled principles of law by continuing to insist that he has no responsibility to establish the identity and creditworthiness of the donor and the genuineness of the transaction and that the entire responsibility rests with the Department. This we find is neither bona fide nor responsible conduct on his part, particularly in the facts of this case. Consequently, we impose costs of Rs.10,000/- on the Appellant.

VIPIN SANGHI  
JUDGE

MADAN B. LOKUR  
JUDGE

August 4, 2006  
as

- R.P. 386/06 for review