



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.08.2008

+ **ITA 606/2008**

COMMISSIONER OF INCOME TAX ... Appellant

- versus -

SHRI AWANINDRA SINGH ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Prakash Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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 ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal under Section 260 A of the Income-tax Act, 1961 has been preferred against the tribunal's order dated 15.06.2007 in respect of the assessment year 1996-97. The Assessing Officer had made an addition on account of the alleged unexplained investment made by the assessee through Certificate of Deposit (CD) in Wells Fargo Bank, USA. The Commissioner of Income-tax (Appeals) had deleted the said addition and while doing so, he observed as under :-

“I have considered in detail the facts and circumstances of



14/12/2000 and 19/4/2002 in para-e thereof, it is clear that there is prima facie evidence to indicate that the amounts deposited in Wells Fargo Bank were the funds of Mohd. Shaikh, Khursheed Ahmed and Mrs. Dina Shah. The appellant therefore has discharged the initial burden to show that the investments in the bank account were not made by him. There is nothing contrary on record to controvert the appellant's submission that the funds were contributed by the aforesaid foreign nationals. The affidavit duly notarized of these three persons which established their identity has been filed by the appellant affirming that the contributions were made by these three persons. In these circumstances, after the receipt of the report dated 19/4/2002 of the FTD, which was not available on record at the time of finalization of assessment, it is clear that the source of funds available in the bank account in question was the deposits made by the three persons named above. Hence, the addition of Rs. 56,40,701/- is no longer warranted and the same is deleted."

2. The said observations were in the context of the explanation given by the assessee with regard to the source of the said investment made by the assessee. It is relevant to note that the assessee's wife (Smt. Poonam Rani Singh) had also made a similar investment and proceedings in respect of her were also initiated by the revenue. The assessee sought to explain the investment by stating that the same were deposits advanced by three US citizens. The affidavits of the said three US citizens had also been filed by the assessee before the Assessing Officer. Those affidavits were sent by the Assessing Officer for verification through the Foreign Tax Division. But, before the report was received from the said authority, the Assessing Officer completed



made by the assessee in the deposits with Wells Fargo Bank, USA by treating the same as unexplained. The report, however, was received from the Foreign Tax Division prior to the passing of the order by the CIT (Appeals) and, therefore, it finds mention in the order passed by him, a portion of which has been extracted above.

3. The tribunal dismissed the revenue's appeal after taking note of the fact that a similar issue was involved in the case of Smt. Poonam Rani Singh and that the tribunal had decided the same by its order dated 15.12.2006 in ITA No.4533/Del/2003 while deleting the additions made by the Assessing Officer. The said order dated 15.12.2006, in the case of Smt. Poonam Rani Singh, was not accepted by the revenue and an appeal being ITA No.99/2008 had been filed before this court. That appeal was dismissed by an order dated 19.02.2008 wherein the court observed that in view of the inter-governmental exchange which resulted in a report from the IRS Department of the American Government to the Foreign Tax Division of CBDT, the transaction was completely above board and the revenue could not seek to add the amount to the income of the assessee without any substantial material and merely on the basis of surmises. This court also noted that in view of the concurrent findings of fact with regard to the genuineness of the transaction, no substantial question of law arose for its consideration.



4. In view of the foregoing and following the decision of this court in ITA No.99/2008 decided on 19.02.2008, we dismiss this appeal for the same reason that no substantial question of law arises for our consideration.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

August 05, 2008

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