



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

+ **ITA 151/2008**

% **Decided on: 14th March, 2008**

COMMISSIONER OF INCOME TAX

Delhi-VI

C.R.Building

New Delhi.

..... Appellant

Through Mr.R.D.Jolly, Adv.

Versus

USHA STUD AGRICULTURAL FARMS LTD.

D-7/6, Vasant Vihar

New Delhi

..... Respondent

Through Nemo

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

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| 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 |

V.B. GUPTA, J (Oral)

The short question in the present appeal is as to



whether the Income Tax appellate Tribunal (for short as 'Tribunal') was right in deleting addition of Rs.15 lacs made under Section 68 of the Income Tax Act, 1961 (for short as 'Act') by the Assessing Officer.

Brief facts of the case are that the Assessee filed return of income for the assessment year 1999-2000 on 27th December, 1999. The assessment order was passed on 22nd March, 2002 under Section 143(3)/147 of the Act and it was noticed by the Assessing Officer that the Assessee had shown an advance of Rs.15 lacs from one Bhai Manjeet Singh. The Assessee was asked to furnish the details of this advance. It was explained by the Assessee that this was received towards advance breeding charges. Thereafter the Assessee was asked to file confirmation from Bhai Manjeet Singh, which he failed to do so and accordingly the Assessing Officer made this addition of Rs.15 lacs under Section 68 of the Act.

Aggrieved against the order passed by the Assessing



Officer, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for short as CIT(A)] and the appeal of the Assessee was allowed.

Against the order of CIT(A), the Revenue filed an appeal before the Tribunal, that is, ITA No.1527/Del/2003 for the assessment year 1999-2000 and the same was dismissed by the Tribunal, Delhi Bench 'E' vide the impugned order.

It has been contended by learned counsel for the Revenue that despite several opportunities, the Assessee had failed to file confirmation from Bhai Manjeet Singh and, therefore, the Assessing Officer was justified in making addition under Section 68 of the Act.

Section 68 of the Act reads as under:-

“68. Cash credits

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum



so credited may be charged to income-tax as the income of the assessee of that previous year.”

According to this Section, any sum found credited in the books of the Assessee maintained for a previous year may be charged to income tax as the income of the Assessee of that previous year, if –

- (i) The Assessee offers no explanation about the nature of sources of such sum, or
- (ii) The explanation offered by him is, in the opinion of the Assessing Officer, not satisfactory.

Here, the CIT(A) has deleted the addition of Rs.15 lacs mainly on the ground that this credit balance of Rs.15 lacs is being reflected in the accounts of the Assessee over the past four to five years or so and hence this was not a fresh credit entry of the previous year under consideration and these credit entries were already made and accounted for in the assessment years 1995-96 and 1997-98 which



were introduced in the form of advance against breeding stallions owned by the Assessee and thus these credit entries did not relate to the year under consideration for being considered under Section 68 of the Act.

Since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the Assessee, does not pertain to the year under consideration, under these circumstances, the Assessing Officer was not justified in making the impugned addition under Section 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).

The above being the position, no fault can be found with the view taken by the Tribunal.

Thus, the order of the Tribunal does not give rise to a question of law, must less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals



against the order which involves a substantial question of law.

Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

V.B. GUPTA, J

MADAN B. LOKUR, J

MARCH 14, 2008
Bisht