



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ITA No. 219 of 2009Decided on : 16th July, 2009.

AJEETA KAUR SALUJA

... Appellant

through :

Mr. Anil Sharma, Advocate.

VERSUS

COMMISSIONER OF INCOME TAX

... Respondent

through:

Ms. Sonia Mathur, Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. In the assessment carried out by the Assessing Officer in respect of assessment year 2000-01 of the assessee/appellant herein, the AO found that three receipts allegedly shown as gifts from three specific persons were bogus and therefore, he added those gifts in the income of the assessee. The case of the assessee was that he had received Rs.3,50,000/- from Shri Ashok Kumar on 08.06.1999, Rs.1,50,000/- from Shri Ramesh Chand on 08.06.1999 and Rs.2,50,000/- from Shri



Pyare Lal on 08.09.1999 respectively. In this manner a total sum of Rs.7,50,000/- was shown which was received by "three family friends". The AO on becoming suspicious asked the assessee to produce these donors for necessary verification, but the assessee failed to produce the purported donors. In these circumstances, the AO added the said amount in the income of the assessee as unexplained receipts under Section 68 of the Income Tax Act. The CIT(A) while confirming this order, further recorded the following facts, which would clearly demonstrate that the aforesaid entries were bogus:

"4. After receipt of the order of the Settlement Commission, the AO again issued a Show Cause Notice to the assessee wherein the AO pointed out to the assessee that the donor's income were just near to the exempt limit i.e. Shri Pyale Lal's income for the assessment year 1997-98 was Rs.41,960/-, Shri Ramesh Chand's income was Rs.42,200/- for the assessment year 1997-98 and Shri Ashok Kumar's income was Rs.43,450/- for the assessment year 1998-99. Bank statement of Shri Ashok Kumar shows that balance was Rs.54,184/- only and Rs.6,54,050/- was deposited on 05.06.99 and withdrawal of Rs.3,50,350/- was made on 08.06.99. Bank statement of Shri Ramesh Chand shows that the balance was Rs.1,695/- only. Rs.2,56,250/- was deposited on 07.06.99 and withdrawal of Rs.1,50,150/- and Rs.1,00,000/- was made on 08.06.99 and 11.06.99 respectively. Shri Pyare Lal's bank statement was not furnished who gifted Rs.2,50,000/- on 08.09.99."



2. No doubt the entries were in the form of Cheques and there strictly speaking, provisions of Section 68 of the Income Tax Act were not applicable. In these circumstances, while confirming the aforesaid findings of fact, the ITAT did not find any infirmity in the orders of the Assessing Officer as well as CIT(A) and opined that it would still be included as unexplained money under Section 69A of the Income Tax Act. On this basis, appeal of the assessee was dismissed.

3. The only ground raised in this appeal is that when it was found by the ITAT, the matter is not covered under Section 68 of the Income Tax Act, before deciding that it is covered under Section 69A, opportunity should have been given to the assessee. He further submitted that under Section 69A, onus is upon the AO to establish that the entries are bogus, whereas as per Section 68, such an onus lies on the assessee. Therefore, the assessee has been prejudiced. The learned counsel has also referred to the judgment of Punjab & Haryanan High Court in the case of *Commissioner of Income Tax,*



Patiala-II Vs. Om Prakash Bidhi Chand, 141 ITR 751, observa

contained therein as under:

“The powers of the Tribunal to pronounce upon the matter in issue are very wide. If on the material on record more than one arguments available for recording a same or similar finding and if any of the arguments was not found mentioned in the order of the ITO or the ACC, the Tribunal is always entitled to record such a finding, subject however to the assessee having been given an opportunity of being heard in that regard.”

4. After going through the record, the order of the AO, CIT(A) as well as ITAT, we find that in the facts and circumstances of the case, no prejudice is caused to the appellant. From the narration of facts discussed above, it is clear that in order to find out the genuineness of the gifts ‘presented’ to the assessee, the AO had posed certain queries to the appellant and for want of any satisfactory answer, particularly, when the assessee could not produce the donors, the AO found that those entries were bogus. The AO while doing so, recorded the following reasoning:

1. “It has been clearly proved by the AD that the alleged donors did not have the capacity to give gifts, in view of meager savings in his bank account.
2. The explanation given by the appellant was not found satisfactory as the amount was deposited in cash in the




accounts of the donors and when withdrawn through banker cheque to give it the colour of genuineness.

3. The purported donors were strangers to the donee in the sense that they were not related to the donee in any way. It is, therefore, unlikely that a man having a meager saving in his bank account could have given gift to this extent.
 4. The gifts were found to be not genuine. It was a stage managed affair.
 5. The appellant has adopted the *modus operandi* to introduce her unaccounted money in the garb of gifts from different persons."
5. The above findings are confirmed not only by the CIT(A), but by the ITAT as well. Thus, it is the revenue, which has discharged the initial onus in the matter.
6. After the aforesaid facts were found onus shifted upon the assessee to show as to how the entries were genuine and not bogus, which the assessee could not discharge. In the absence of any satisfactory explanation by the assessee, the findings are correctly recorded that the aforesaid three purported gifts are bogus. Once we proceed on these facts, the case is clearly covered under Section 69A of the



Income Tax Act. From the order of the ITAT, we find one reason inference that at the time of arguments, this must be a poser. In fact, Para 10 of the order of the ITAT, the contention to this effect of the revenue is noted and thus it is not possible to contend that this plea was not taken up in the ITAT. In view thereof, the judgment of the Punjab & Haryana High Court cited above by the appellant is not applicable.

7. In these circumstances, we find no substantial question of law arises for our consideration. This appeal is accordingly dismissed with cost quantified at Rs.5000/-, which shall be deposited with the Delhi High Court Mediation & Conciliation Centre within two weeks and the receipt thereof shall be placed on record.


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

July 16, 2009.
pmc