



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

% Judgment delivered on: 27.04.2010

+ ITA 128/2009

COMMISSIONER OF INCOME TAX Appellant

versus

SURESH KUMAR KAKAR Respondent

Advocates who appeared in this case:-

For the Appellant : Ms Rashmi Chopra

For the Respondent : Mr Salil Aggarwal with Mr Ravi Pratap Mall

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K. JAIN

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. The revenue is in appeal against the order dated 04.04.2008 passed by the Income-tax Appellate Tribunal in ITA No.2479/D/07 relating to the assessment year 2000-01. Two issues were raised before the Income-tax Appellate Tribunal. One was concerning the validity of the proceedings under Section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). The other was on the issue of merits with regard to the addition of Rs 24,77,000/- made by the Assessing Officer under Section 68



of the said Act. The addition had also been confirmed by the Commissioner of Income-tax (Appeals).

2. We have heard the counsel for the parties. At the outset, we may state that we have not gone into the issue of the validity of the proceedings under Section 147 of the said Act inasmuch as we find that the Tribunal has come to a correct conclusion on the merits of the matter. On merits, we find that the points in issue are gifts totalling to Rs 24.77 lakhs made by the mother of the assessee in favour of the assessee during the financial year 1999-2000. The Assessing Officer rejected the contention of the assessee that these were gifts made by the mother and held the same to be unaccounted income of the assessee and made an addition of Rs 24.77 lakhs under Section 68 of the said Act. The Commissioner of Income-tax (Appeals) examined the matter and agreed with the findings of the Assessing Officer with regard to the genuineness of the gifts. According to the Commissioner of Income-tax (Appeals), the gifts were not genuine. One of the reasons, and strangely so, was that gifts are normally given on the eve of some occasion and since these gifts were not given in relation to any occasion, the same were doubtful. We fail to understand the logic adopted by the Commissioner of Income-tax (Appeals). We must keep in mind that this is a case of gifts made by a mother to a son. Such gifts do not require any occasion and the mother can make a gift to her son at any time.

3. Insofar as the identity is concerned, that is an admitted position that the gifts were made by the mother to the son. With regard to the



creditworthiness, the assessee has been able to discharge the onus cast upon him by furnishing the bank statement of his mother (donor) as also the confirmation certificate from the mother confirming the said gifts. Once the assessee has discharged the primary onus, which was cast upon the assessee, it was incumbent upon the Assessing Officer to prove on the basis of a cogent evidence that the transaction was not genuine. There is no such evidence forthcoming. We find that the conclusions of the Assessing Officer and the Commissioner of Income-tax (Appeals) with regard to the genuineness of the transactions are merely conjectural and are based on surmises and assumptions. Such conjectures and assumptions cannot take the place of proof, once the assessee has discharged the primary burden which had been cast upon him.

4. The Tribunal has correctly concluded that the authorities below had ignored the fact that there was a blood relationship (mother-son) between the donor and the donee; that the gifts are normally made by parents to children through love and affection and do not necessarily require any particular occasion; that the gifts in the present case were all made by cheques and through banking channels. The Tribunal held that when the identity and the capacity are proved beyond doubt and the source of the gifts was the mother, there was no question of making the addition under Section 68 of the said Act.



5. In the foregoing circumstances, the findings recorded by the Tribunal do not suffer from any perversity. Consequently, no substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 27, 2010

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