



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

+ **ITA No. 911 of 2009**

% Decision Delivered On : 31st August, 2010.

Ex. CAP. VIKAS GUPTA . . . Appellant

through : Ms. Aishwarya Bhati, Advocate

VERSUS

THE COMMISSIONER OF INCOME TAX (APPEALS) XXX
. . . Respondent

through: Ms. Rashmi Chopra, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

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. Admit.
2. The following substantial question of law arises for consideration:

“Whether the order of the learned Tribunal as well as Authorities below suffers from a fundamental error and illegality in adding ₹2,26,592 as unexplained cash credits to the assessment of the appellant, when the amount was paid by cheque from the account of Shri Rajiv Garg and Mrs. Yojana Garg to HUDCO and later on the same proceeds on the said amount was refunded to Mrs. & Mr. Garg through cheques?”



3. Filing of paper book is dispensed with. With the consent of t parties, we have taken up the matter today itself and heard finally. Both the counsel are heard at length.

4. The appellant is an Ex. Service Man, who had applied for and was allotted a flat in May 1999 by U.P. Awas Vikas Parishad, Vasundhra, Ghaziabad under Armed Forces category. At that time, he was in active service. The payment of that flat was to be made to the U.P. Awas Vikas Parishad in instalments and the appellant had been making those payments from time to time. It so happened that on 09.07.1999, the appellant was posted with the regiment, which was deployed in the Kargil Operation. He remained there till the date of his release from the Army. Since he was sent away on duty, he had instructed his real sister Mrs. Yojana Garg and brother-in-law (sister's husband) Rajiv Garg to make the payments of monthly installments to the U.P. Awas Vikas Parishad in his absence. Both Mrs. Yojana Garg and Mr. Rajiv Garg, under instructions from the appellant, made payments to the extent of ₹2,26,592 from their joint account. The appellant filed his return of income for the Assessment Year 2003-04 in which he showed the purchase of the said flat. During the proceedings, the Assessing Officer found that the aforesaid payments have been made by Mrs. Yojana Garg and Mr. Rajiv Garg on behalf of the appellant. The Assessing Officer, however, came to the conclusion that the aforesaid two persons could not show their creditworthiness and therefore, made additions of ₹2,26,592 as unexplained cash credit. Certain other additions



- were also made, which included unexplained income of ₹37,5 and capital gain to the extent of ₹ 35,000.
5. Some of these additions were deleted by the Income Tax Appellate Tribunal ('the Tribunal' in short). However, three additions, viz., unexplained cash, credit of ₹2,26,592, unexplained income of ₹37,550 and capital gain of ₹35,000 have been sustained by the Tribunal.
 6. This appeal is preferred challenging the order of the Tribunal. Insofar as capital gain is concerned, addition to this extent is not pressed in the appeal. We are, thus, concerned with the remaining two additions mentioned above.
 7. Regarding addition of ₹2,26,592 as unexplained cash credit, the case of the appellant before the Authorities below was that Mr. Rajiv Garg and Mrs. Yojana Garg had been given gifts by various persons for making payments against the allotment of the said flats. In this behalf, it was stated that the following persons in relation of Mr. Rajiv Garg had given the gifts:

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|-------|----------------|------------------------------|
| (i) | Father | ₹1,00,000 as gift. |
| (ii) | Father-in-law | ₹25,000 as gift. |
| (iii) | Sister | ₹17,000 as loan. |
| (iv) | Wife | ₹36,000 as joint A/c holder. |
| (v) | Cousin Brother | ₹18,000 as loan. |



8. It was supported not only by the affidavits of Mr. Rajiv Garg and Mrs. Yojana Garg, but also by the affidavits of the aforesaid five persons. Further, material evidence was also filed which included Bank Statements of Mrs. Yojana Garg and Mr. Rajiv Garg as well as Bank Statements of Bhan Prakash Garg (Father), Mr. R.N. Gupta (Father-in-law) and Mr. Manoj Gangal (cousin brother). All these documents are also placed on record.
9. From the order of the Tribunal, we find that these material aspects in support of the version of the assessee that there was proper explanation in respect of the aforesaid amounts has not been given any consideration. It is clear from the amounts of gifts that these are small amounts given by the aforesaid persons. The highest amount which is gifted by his father is ₹1,00,000. The Bank Statements submitted by Bhan Prakash Garg shows the withdrawal of ₹1,00,000 (₹50,000 each) on the same date from his bank account.
10. We are, thus, of the opinion that findings of the Tribunal are totally perverse as the cogent and supportive evidence is not looked into or considered. The aforesaid evidence clinches the issue in favour of the assessee, who had duly explained the cash received in the accounts of Mrs. Yojana Garg and Mr. Rajiv Garg from where the payments were made. We, thus, decide the question in the affirmative, i.e., in favour of the assessee and against the Revenue and delete the addition of ₹2,26,592 made in the income of the assessee.



11. Insofar as addition of ₹37,550 as unexplained income is concerned, we find from the order of the Tribunal that the addition only to this extent was made, which could not be explained by the assessee. This was the position even before the Tribunal as well. Therefore, there is no reason to interfere with this finding of fact. This addition is sustained.
12. The Assessing Officer had also initiated penalty proceedings. Since most of the additions made by the Assessing Officer stand deleted, we are hopeful that those penalty proceedings shall now be dropped.
13. This appeal is allowed partly in the aforesaid terms.

**(A.K. SIKRI)
JUDGE**

**(REVA KHETRAPAL)
JUDGE**

AUGUST 31, 2010

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