

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

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Judgment delivered on: 16.01.2013

+ **ITA 606/2012****COMMISSIONER OF INCOME TAX-VIII**

... Appellant

versus

AJAI SHUKLA

... Respondent

Advocates who appeared in this case:For the Petitioner : Mr Sanjeev Sabharwal, sr. standing
counsel with Ms Gayatri Verma, Adv.

For the Respondent : Mr S. Krishnan, Adv.

CORAM:-**HON'BLE MR JUSTICE BADAR DURREZ AHMED****HON'BLE MR JUSTICE R.V.EASWAR****JUDGMENT****BADAR DURREZ AHMED, J (ORAL)**

This appeal has been preferred by the revenue in respect of the assessment year 2008-09 from the order dated 23.12.2011 passed by the Income Tax Appellate Tribunal, New Delhi in ITA No.2896/Del./2011.

2. The only issue that is sought to be raised here before us concerns the deletion of the addition of ₹70,18,518/- by the Commissioner of Income Tax (Appeals) as also by the said Tribunal. The said addition had



been made by the assessing officer on account of purported unexplained investments by invoking Section 69 of the Income Tax Act, 1961.

3. The assessing officer had made the said addition on the ground that there was no evidence/explanation offered by the assessee in respect of he said investments totaling ₹70,18,518/-. We may state at the outset that this finding of the assessing officer was ex-facie wrong as has been expressed by the Commissioner of Income Tax (Appeals) and also by the Income Tax Appellate Tribunal. This is so because the assessee had offered material by virtue of its letter dated 03.12.2010 and 13.12.2010. The assessee had also furnished certain other materials in support of its contention that the investments were clearly accounted in their books and that the same could not be recorded as unaccounted investments.

4. The Commissioner of Income Tax (Appeals) by virtue of its order dated 31.03.2011 held in favour of the assessee in the following manner :-

“4. I have considered the submissions of the appellant on the issue and it is seen that the Assessing Officer has made the addition without examining the submissions detailing the sources of investment of ₹70,15,800/-. The evidence filed by the assessee during the assessment proceedings has been completely ignored, whereas the same clearly shows that investment made by the assessee during the assessment proceedings has been completely ignored, whereas the same clearly shows that the investment made by the assessee are



duly unaccounted for. In view of this, the addition made by the Assessing Officer is deleted.”

The revenue was aggrieved by the said order and therefore, it preferred an appeal before the Tribunal. The Income Tax Appellate Tribunal also dismissed the revenue’s appeal and agreed with the Commissioner of Income Tax (Appeals) in the following manner :-

“6. We have heard the rival contentions in light of the material produced and precedent relied upon.

(i) Apropos investment of ₹70,18,518/-.

We find that the assessee has submitted the necessary information before the Assessing Officer vide submission dated 3.12.2010. The copy of the same has been provided before us vide paper book page no.101 & 102.

From the above, it is evident that the assessee has duly submitted before the Assessing Officer the detail of source of investment. Considering these submissions of the assessee, Ld. Commissioner of Income Tax (Appeals) held that the Assessing Officer has made the addition by completely ignoring the evidences filed during the course of assessment proceedings. In view of the aforesaid detail filed by the assessee before the Assessing Officer, in our considered opinion, the order of the Ld. Commissioner of Income Tax (Appeals) does not need any interference on our part. Accordingly, we uphold the same.”

5. In this backdrop Mr Sabharwal, appearing for the revenue submitted that while it is true that the assessee had offered an explanation and the Commissioner of Income Tax (Appeals) and also the Tribunal had concluded that the assessee had offered an explanation, neither the



Commissioner of Income Tax (Appeals) nor the Tribunal has returned any clear-cut finding as to whether the explanation offered by the assessee was satisfactory. He submitted that there must be a clear finding inasmuch as both the Commissioner of Income Tax (Appeals) as also by the Tribunal are appellate authorities and they are supposed to return findings of fact. The only finding of fact that has been returned by the two authorities is that the assessee had offered an explanation. The further finding of fact that the explanation was satisfactory has not been expressly stated by either the Commissioner of Income Tax (Appeals) or by the Tribunal.

6. The learned counsel for the assessee submitted that the findings are clear that the assessee had not only offered an explanation but that the explanation was acceptable to the Commissioner of Income Tax (Appeals) and also the Income Tax Appellate Tribunal.

7. However, we feel that the learned counsel for the revenue has raised an important question which needs to be answered. Consequently, we admit this appeal. The substantial question of law which arises for consideration in the backdrop of the facts narrated is :-



“Whether the Income Tax Appellate Tribunal ought to have returned a specific finding that the explanation offered by the assessee was satisfactory or not in the wake of the provisions of Section 69 of the Income Tax Act, 1961?”

8. With the consent of the counsel for the parties the appeal has been taken up for hearing and disposal straightaway.

9. The point in issue can be decided by looking at Section 69 of the Income Tax Act, 1961. The said provision reads as under :-

“Section 69- Unexplained Investments

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

A plain reading of the aforesaid provision would show that it envisages two situations when an addition can be made on account of unexplained investments. The first situation being, where the assessee does not offer any explanation about the nature and source of the investment. The second situation being, where the explanation offered by him is, in the opinion of the assessing officer, not satisfactory.



10. In the present case, we find that the assessing officer was clearly wrong in holding against the assessee by concluding that the assessee had not offered any explanation. This fact has been realized both by the Commissioner of Income Tax (Appeals) as also by the Income Tax Appellate Tribunal. It is clear that the assessee had offered an explanation. However, there is no express finding of the Commissioner of Income Tax (Appeals) or of the Tribunal as to whether the explanation offered by the assessee was satisfactory or not. Although, to be fair to the respondent/assessee, an inference could possibly be gathered that the Commissioner of Income Tax (Appeals) had found the explanation to be satisfactory. But according to us, the matter cannot be decided on inferences and the authorities below have to arrive at the clear and express conclusion as to whether the explanation offered by the assessee was satisfactory or not. We may also point out that the Tribunal is the final fact finding authority under the scheme of Income Tax Act and therefore, it is incumbent on the Tribunal to return a finding in clear and express terms. This is so, because it is only when the finding is clear that a question of law based on those findings can be examined by the High Court. Consequently, we feel that it would be appropriate that we remit



the matter to the Tribunal to return a clear finding as to whether the explanation offered by the assessee is satisfactory or not : The question is answered in favour of the revenue.

11. The appeal is allowed. The matter is remitted to the Tribunal for returning a finding on the explanation offered by the assessee as to whether the same is satisfactory or not for the purposes of Section 69 of the said Act. The parties shall appear before the Tribunal in the first instance on 06.05.2013.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 16, 2013

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