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

Reserved on: 18th July, 2019
Decided on: 22nd August, 2019

\+ **ITA 927/2005**

COMMISSIONER OF INCOME TAX, DELHI ..... Appellant
Through: Mr. Ajit Sharma, Senior Standing Counsel and Ms Adeeba Mujahid, Junior Standing Counsel for Revenue.

versus

ANOOP JAIN ..... Respondent
Through: Mr Ajay Vohra, Senior Advocate with Mr U.A. Rana and Mr Himanshu Mehta, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the order dated 21st February, 2005 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 2959 & 3221/Del./1996 for the Assessment Year ('AY') 1992-93.

2. While admitting this appeal on 22nd August, 2007, the following question of law was framed for consideration:

> "Whether the Income Tax Appellate Tribunal was correct in law in affirming the decision of the Commissioner of Income Tax

(Appeals) deleting the addition of Rs.5,17,45,958/- made by the Assessing Officer under Section 69-A of the Income Tax Act, 1961?"

3. The background facts are that the Respondent/Assessee is stated to be a member of the Delhi Stock Exchange ('DSE'), carrying on business in the name and style of M/s. Jain and Company. He is also stated to be an empanelled broker of financial institutions and funds like Unit Trust of India ('UTI'), Indian Bank Mutual Fund, Can Bank Mutual Fund, etc.

4. For the AY in question, the Assessee filed a return declaring his income as Rs.3,96,960/-. The return was picked up for scrutiny. The Assessing Officer ('AO') noticed that the Assessee had disclosed a bank account with Corporation Bank at Bombay in the Balance Sheet for the year ending on 31st March, 1993. This was, however, not disclosed in the Balance Sheet for the earlier year and the year ending on 31st March, 1992. In his statement on 13th February 1995, the Assessee claimed that this bank account had been inadvertently left out.

5. The AO further noticed that the balance in the said bank account as per the books of accounts of the Assessee was nil, whereas the bank statement showed it to be Rs.32,105/-. It was also noticed that as on 4th March, 1992, in the said account, there was a credit balance of Rs.1,03,31,250/-. Against this account, 24 cheques in different names had been issued between 11th and 17th March, 1992. The explanation offered by the Assessee was that this credit amount represented the sale proceeds of 7,25,000 units of the UTI 1964 Scheme sold to State Bank of Hyderabad ('SBH').

6. Looking into the complexity of the account, the AO directed a special audit under Section 142 (2A) of the Income Tax Act, 1961 ('Act'). It transpired that a chain of transactions had led to the above credit entry into the bank account of the Assessee. On 6th February, 1992, 7,25,000 units of the UTI 1964 Scheme were purchased from SBH Funds Management Cell, Bombay at Rs.14.20 each, for a total consideration of Rs.1,02,95,000/-. SBH issued their bankers receipt for the same amount on the same date in lieu of the units sold by them. The payment of this amount was made by the Assessee by a cheque dated 6th February, 1992 drawn on Standard Chartered Bank ('SCB') in favour of SBH, Bombay.

7. After purchasing the above shares, the Assessee sold the units on the same date to Mr. D. D. Chaturvedi. The Assessee explained to the AO that the Bank Receipt was purchased from SBH on 6th February, 1992 on behalf of Mr. Chaturvedi, who in turn had bought the same on behalf of M/s. Shri Maharaj Investment ('SMI'), which was a proprietory concern of Mrs. Sneh Pathak wife of Mr. Jaideep Pathak, the manager of SCB. The Assessee further explained that this bank receipt had been sold back to SBH on 4th March, 1992 for a consideration of Rs.1,03,02,250/- on the instructions of Mr. Chaturvedi. The Assessee thus claimed that he had entered into the transaction not on his own behalf but on behalf of Mr. Chaturvedi, who in turn was acting on behalf of SMI. The Assessee claimed that he had only made a profit of Rs.7,250/- in this transaction.

8. The AO, not being satisfied with the above explanation, recorded the statement of Mr. Chaturvedi. He also obtained statements of Mr. Jaideep

Pathak and his wife Mrs. Sneh Pathak at Bombay. In his statement, Mr. Chaturvedi accepted the transaction of purchase and sale of units through the Assessee. However, Mr. Pathak and Mrs. Sneh Pathak denied having entered into any such transaction with Mr. Chaturvedi or with the Assessee. The AO found that SCB had issued a letter on 6th February, 1992 under the signature of Mr. Pathak by which a cheque for Rs.1,02,95,000/- was forwarded. The AO was of the view that the cheque had been issued on the instructions and at the instance of the Assessee i.e. M/s Jain & Company. It was concluded that this amount had been obtained by the Assessee from SCB by utilizing his own funds.

9. The AO found that there were in all 15 drafts/pay orders ('PO') issued by Mr. Jaideep Pathak on behalf of SCB totalling to Rs.5,68,75,958/-. Out of these 15 POs, 13 were received by the Assessee, aggregating to Rs.5,17,45,958/-. The first of such POs of Rs.1,02,95,000/- was utilised for the purchase of 7,25,000 units from SBH. Remaining 12 POs were utilised for the purchase of shares of different companies by the Assessee on his own account which were later sold to Mr. Chaturvedi. Since the first PO of Rs.1,02,95,000/- was held to have emanated from the funds of Assessee, the AO held that for the remaining 12 POs, the same belonged to the Assessee on the parity of reasoning given with respect to the first PO of Rs.1,02,95,000/-. The AO noticed that the remaining 12 POs were not deposited in the Assessee's bank account with the Corporation Bank but were paid directly for the purchase of securities to the vendors.

10. The Assessee volunteered that this purchase was also done on behalf of

Mr. Chaturvedi and that the difference of the price and the amount of the POs was adjusted in the running account of the Assessee with Mr. Chaturvedi. However, the AO not being convinced with the above explanation, treated the entire amount of Rs.5,17,45,958/- as unexplained income of the Assessee under section 69A of the Act.

11. During the proceedings, the Special Auditor in his report under section 142 (2A) of the Act pointed out that the Assessee had made payments in excess of Rs.10,000/- otherwise than by crossed cheque or a crossed bank draft. This was held to be in violation of Section 40A (3) of the Act. Further, the amount of the 9 cheques to the extent of Rs.3,43,450/- was disallowed under Section 40A (3) of the Act. Rs.1,34,450/- was disallowed for failure to enter the transactions representing the amount into 'Chopris'.

12. Aggrieved by the above order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)']. By the order dated 6th February, 1996, the CIT (A) held that there was no material on record to suggest that the draft of Rs.l,02,95,000/- was utilised for the Assessee's own benefit. It was also held that there was no material to show that Assessee was acting in collusion with Mr Chaturvedi.

13. The CIT (A) noted that certain assets were found by the Central Bureau of Investigation ('CBI') in possession of Mr Chaturvedi, who then surrendered them to the CBI. The CIT (A) also held that there was no evidence to show that the money in question was utilised by the Assessee. The CIT (A) accordingly deleted the addition of Rs.5,17,45,958/-. The CIT

(A) however, confirmed the addition made by the AO of Rs.1,34,405/- and Rs.3,43,450/-.

14. Both, the Assessee as well as the Revenue, filed appeals before the ITAT. The addition of Rs.5,17,45,958/- under section 69A of the Act by the AO, was held by the ITAT in the impugned order to be bad in law since the Revenue had not been able to bring on record any material or evidence to indicate that the Assessee had carried out any transactions outside the books of accounts. The ITAT held that Section 69A of the Act was not applicable since the conditions precedent to give rise to the legal fiction had not been proved. However, in respect of the Assessee's plea as regards addition of Rs.l,34,150/- and disallowance of Rs.3,43,450/- under Section 40A (3) of the Act, it was held that the since it was an inadvertent omission, no addition could be made.

15. The ITAT further held that the loss of Rs.24,29,739/- was rightly characterised as loss in speculation. The only question was how much of the loss had been suffered by the Assessee and how much by the Assessee's clients. Despite ample opportunities the Assessee failed to furnish the particulars. Thus the Assessing Officer (AO) was compelled to resort to an estimate. The AO attributed 50% loss to the Assessee which was reduced by the CIT (A) to 25%. Consequently, the ITAT saw no reason to interfere.

16. Thus, the Revenue's appeal was dismissed and the appeal filed by the Assessee was partly allowed by the ITAT. The addition of Rs.1,34,450/- on account of failure to enter transactions into Chopris and Rs.3,43,450/- by

way of disallowance under Section 40A (3) of the Act were deleted.

17. As already noticed hereinabove the present appeal has been admitted confined to only one question regarding deletion by the ITAT of the addition made by the AO of Rs.5,17,45,958/- to the income of the Assessee under Section 69A of the Act.

18. Mr. Ajit Sharma, learned counsel appearing for the Revenue submitted that the ITAT failed to appreciate that both Mr. Jaideep Pathak and Smt. Sneh Pathak had stated that they had not entered into any transaction with Mr. Chaturvedi or with the Assessee. He submitted that the ITAT also failed to appreciate that when Mr. Chaturvedi for whom the 7,25,000/- units of UTI 1964 scheme were purchased by the Assessee was questioned, he replied that the PO had been received from SMI, a proprietary concern of the wife of Mr. Jaideep Pathak. However, he was unable to produce any documentary evidence to substantiate this. This was also denied by SMI. The fact remained that in terms of the cheque dated 6th February, 1992 issued by the SCB addressed to SBH the proceeds of the PO were to be credited into the account of the Assessee.

19. Relying on the decision in ***CIT v. K. Chinnathamban (2007) 7 SCC 390***, Mr. Sharma submitted that in the above circumstances the onus to prove the source of Rs.1,02,95,000/- was on the Assessee and he failed to discharge it. Reliance was also placed on the decision in ***Sumati Dayal v. Commissioner of Income Tax, Bangalore (1995) Supp 2 SCC 453*** to urge that the burden of proof in the present case had shifted to the Assessee to prove the sources

of income.

20. Mr. Ajay Vohra, learned Senior counsel for the Respondent/Assessee, referred to the correspondence between the parties. In particular he referred to the letter dated 21st August, 1995 issued by the SCB to the AO stating that the record of the bank did not show that the aforementioned cheque of Rs.1,02,95,000/- in favour of SBH was issued on instructions of Jain & Co. i.e. Assessee. He pointed out that the letter stated that there were no written instructions from the Assessee to that effect and further that the money was not received back with the bank.

21. Mr. Vohra referred to a letter dated 25th August, 1995 stating that no security had been received against the PO. He also referred to the letter dated 25th August, 1995 addressed by the bank to the AO stating that it had not received any security against the PO nor were the funds returned to the bank. He referred to the reply of Mr. Chaturvedi to Question No. 3 of the AO where he confirmed that the payment of the above sum of Rs.1,02,95,000/- was made by Mr. Chaturvedi to the Assessee for making payment to SBH. He also confirmed that 24 cheques issued from Corporation Bank, Bombay by the Assessee were as per his instructions and on his behalf. He denied that the Assessee was connected with the clients of Mr. Chaturvedi to whom the 24 cheques were issued. Even in the course of cross-examination by the AO, Mr. Chaturvedi confirmed these transactions.

22. Mr. Vohra referred to the statement of Mr. Jaideep Pathak recorded by the AO on 24th March, 1995. In reply to questions 3,4 & 5 Mr. Pathak stated

that he had received instructions from Mr. Hiten P. Dalal, who was a stock and share broker from Kanpur, for issuing pay orders totalling Rs.5,68,74,958/-. He referred to the charge-sheet filed by the CBI on 20th June, 1992 where it was alleged that the pay orders of SCB were issued by Mr. Pathak from the funds of Mr. Hiten P. Dalal which were then given to Mr. Chaturvedi as part of criminal conspiracy to derive pecuniary benefit. He pointed out that in the assessment order dated 31st July, 1995 of Mr. Pathak for AY 1992-1993 Rs. 5,68,75,958/- was added to his income and this included a sum of Rs. 5,17,45,958/- added by the AO in the hands of the Assessee. He pointed out that Mr. Pathak had also written a letter on 6th February, 1992 to SBH stating that he had not received any instructions from the Assessee to issue a draft for Rs.1,02,95,000/-.

23. By a letter dated 26th September, 1995 SCB confirmed to the Assessee that he did not have any bank account with them and that SCB had not filed any civil claim against the Assessee. Mr Vohra referred to the letter dated 25th September, 1995 from Mr. Chaturvedi to the Assessee giving a list of the securities and money deposited by Mr. Chaturvedi with the CBI amounting to Rs.4,73,19,836/- consisting of drafts, shares and money. This letter also confirmed that the assets were held by Mr. Chaturvedi in his books in the name of SMI whose proprietor was Mrs. Sneh Pathak, the wife of Mr. Jaideep Pathak. This showed that the money was held by Mr. Chaturvedi on behalf of SMI. Additional evidence was also admitted by the CIT (A) at the time of appeal.

24. The above submissions have been considered. Apropos the question of

law framed in this appeal, it is necessary first to refer to Section 69A of the Income Tax Act which reads as under:

> "69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is 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 acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

25. The legal requirement as regards Section 69A may be summarised thus:

i) In any financial year the Assessee should be found to be the owner of any money, bullion, jewellery etc.

ii) Such money, bullion, jewellery etc. should not be recorded in his books of account, if any maintained by him for any source of income.

iii) The Assessee should offer no explanation about the nature and source of acquisition of the money.

iv) The explanation offered by him is not found to be satisfactory in the opinion of the AO.

26. If the above conditions exist then such money and the value of such bullion, jewellery etc. would be deemed to be the income of the Assessee for

such financial year. In ***Chuharmal v. CIT (1988) 3 SCC 588*** it was explained that the word 'income' in Section 69A had a wide meaning.

27.1 In ***CIT v. K. Chinnathamban*** (*supra*) relied upon by learned counsel for the Revenue, the Respondent/Assessee was connected with the firm by name of V.V. Enterprises. On search of its premises by the police officers Rs.1.18 crores of cash was seized. The firm was managed by one K. Palaniasamy who had filed its returns and gave statements in the course of the assessment proceedings.

27.2 Mr. K. Palaniasamy was not in a position to explain the source of deposit of Rs.1.18 crores. The AO therefore treated the said amount as undisclosed income of the persons in whose names the deposit appeared. As far as the Respondent/Assessee was concerned, Rs.5.16 lakhs was determined to be his income on the basis that Rs.16,148/- as his salary and Rs.5 lacs as undisclosed income. It was found by the AO that although M/s V.V. Enterprises was stated to be a registered firm but there were in fact no bank accounts in the name of such firm. Also there were no accounts in the name of any of the partners alleged therein. There were no deposits either in the name of the firm or of any of the partners.

27.3 In view of the statements of Mr. K. Palaniasamy the AO proceeded to frame assessment in his hands on protective basis and in the hands of the deposit holders for unexplained deposits. As far as Assessee is concerned, he could not establish the source of the deposit and there was no evidence to support his claim that the amount had been collected from members of the

public.

27.4 It was held by the Supreme Court in ***CIT v. K. Chinnathamban*** that where the deposit stands in the name of third person and that person is related to the Assessee then in such a case the proper course would be to call upon the person in whose books the deposit appears or the person in whose names the deposit stands to explain such deposit.

27.5 In that case it was found that there was no evidence regarding the registration of firm or the source of investment. The onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks. Accordingly, the action of the department in making the individual assessment in the hands of the Assessee was upheld. Therefore, what turned the decision in the case was the failure of the Assessee to properly explain the source of the deposit.

28.1 Turning now to the decision in ***Sumati Dayal v. CIT, Bangalore*** (*supra*), the Assessee there carried on business as a dealer in art pieces, antiques and curios in Bangalore. During the AY 1971-72 the Assessee received a total amount of Rs.3,11,831/- "by way of race winnings in Jackpots and Treble events in races at Turf Clubs in Bangalore, Madras and Hyderabad." The amount was shown by the Assessee in the capital account in the books. The AO recorded the statement of the Assessee and in the Assessment Order held that the above amount did not represent winnings and races. He treated the receipt as income from undisclosed sources and assessed it as income from other sources. For the AY 1972-73 similar

amount of Rs.93,500/- shown by the Assessee as race winnings was treated as income from other sources.

28.2 While the appeals were pending before the Appellate Tribunal the Assessee withdrew those appeals and went before the Settlement Commission. By majority, the Settlement Commission came to the conclusion that the Assessee's claim about her winnings and races was contrived and not genuine. The Chairman of the Settlement Commission gave a dissenting opinion.

28.3 In upholding the majority of the opinion of the Settlement Commission the Supreme Court explained that once there was *prima facie* evidence against the Assessee, the burden shifted to the Assessee to rebut the inference that the unexplained money constituted income in the Assessee's hands. The legal position was explained in para 4 as under:

> "4. It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. (See: *Parimisetti Seetharamamma* (*supra*) at P. 536). But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation

of the assessee the Department cannot, however, act unreasonably. (See: *Sreelekha Banerjee* (*supra*) at p. 120)"

28.4 As far as the merits of the case was concerned, it was observed as under:

"7. There is no dispute that the amounts were received by the appellant from various race clubs on the basis of winning tickets presented by her. What is dispute is that they were really the winnings of the appellant from the races. This raises the question whether the apparent can be considered as real. As laid down by this Court, apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. (See: *Commissioner of Income Tax v. Durga Prasad More,(1971) 82 ITR 540*, at pp. 545, 547)"

28.5 Both the above decisions, therefore, turned on the peculiar facts of each case. In both cases, the Assessee was not able to satisfactorily explain the source of income.

29. Turning to the case on hand, the question to be asked is whether the Assessee was able to satisfactorily explain the source of the credit entry of Rs.1,02,95,000/- appearing in his Corporation Bank Account. It must be recalled that while this was the starting point, during the course of assessment the AO found that the Assessee had received not one but 13 pay orders aggregating to Rs.5,17,45,958/- from SCB, Bombay during the FYs in question and mostly between December, 1991 and February, 1992. All these POs were utilised by him for purchasing units and shares from different

banks and mutual funds.

30. The explanation offered by the Assessee was that all 13 POs were received from Mr. Chaturvedi, a Bombay Broker and the purchase of units and shares were done by him on behalf of Mr. Chaturvedi and then the same were sold back to Mr. Chaturvedi after earning normal brokerage. The AO found that all 13 POs were actually tainted POs relating to the Securities Scam of 1992 and that they had been issued by the SCB under extra ordinary circumstances. The SCB had informed the ACIT Circle 7 (3) that it had been a victim of a massive fraud perpetrated in 1992 by certain brokers in collusion with certain ex-employees of the SCB to siphon out funds from the bank. It was also informed that SCB had filed an FIR with CBI in which Mr. Jaideep Pathak, an ex-employee was named as one of the accused and all the above referred 13 POs were part of total 15 POs fraudulently issued by Sh. Pathak.

31. It must be noticed here that even during the course of the assessment proceedings the AO required the Assessee to show cause as to why the said sum of Rs.1,02,95,000/- should not be added to his total income under Section 69A of the Act. The Assessee filed a petition before the CIT under Section 144A of the Act challenging the above proposal. This application was disposed of by the Additional CIT by an order dated 22/25th September, 1995.

32. The direction sought by the Assessee from the Additional CIT was that the AO should put to the Assessee, the material gathered by him on the basis

of which the addition was proposed to be made. In the said order dated 22/25th September, 1995 the Additional CIT noted the fact that the AO of Mr. Jaideep Pathak had held that there was an apparent case of financial *quid pro quo* against Mr. Pathak and had already added a sum of Rs.5.68 crores, equal to the amount of said 15 POs, as Mr. Pathak's income from other sources. It was noticed therein that "13 out of these 15 POs were received by Mr. Anoop Jain, the Assessee and were utilised by him for purchasing the units and shares from different banks."

33. According to the Additional CIT the above facts appeared to be "sufficient justification to the AO to suspect the Assessee's claim that the transactions relating to 13 POs of SCB were normal business transactions." He started investigation to find out the truth. The Additional CIT set out the gist of the evidence collected by the AO but added that it was "not exhaustive nor is it possible for me to describe it fully due to time constraint."

34. However it was concluded that "prima facie there appears to be a collusion between the Assessee and DDC in obtaining the 13 POs from Standard Chartered Bank through a financial quid pro quo with Mr. Jaideep Pathak." The objective behind the collusion appeared to be to invest heavily in the booming stock market prior to the Budget of 1992 and make a big and quick profit on sale of the shares subsequently. However, the additional CIT added as under:

> "15. However, I hasten to add that before coming to a final and fair conclusion in this regard it would be necessary to consider

> all the facts, materials, and surrounding circumstances of the case including the materials and arguments advanced by the assessee in this regard. This will be lengthy and time consuming exercise and I do not have adequate time for this purpose. However, I am satisfied that the AO is capable of passing a fair and judicious order after considering all relevant facts, materials and surrounding circumstances of the case. I, therefore, direct him to do so and decide the issues on merits and in accordance with law."

35. When the matter went back to the AO he referred to not this paragraph but subsequent paragraphs of the order of the CIT where the attention was drawn to the AO to the decision of the ITAT Delhi in ***ITO v. DC Rastogi 39 ITD 490***. The AO then proceeded to hold that the Assessee had acquired a pay order of Rs.1,02,95,000 from SCB "after a financial quid pro quo of an equal amount". On this very basis he added the amount to the income of the Assessee. On the same basis he further concluded that the amount constituting the remaining 12 POs should also be added to the income of the Assessee.

36. Thus it is seen that the very basis for making the additions is the inference drawn by the AO that the Assessee had received the above POs and spent the monies for purchase of shares and units as a result of some 'financial quid pro quo'.

37. This Court has again examined the evidence in some detail. There are certain facts that stand out which showed that the aforementioned amounts received by the Assessee as POs did not belong to him. The Assessee was only a conduit through whom the amounts were floated. One of the essential

conditions in Section 69A of the Act is that the Assessee should be the "owner of the money" and it should not be recorded in his books of accounts. This was a pre-condition to the next step of the Assessee offering no explanation about the nature and source of the acquisition of such money.

38. In the present case the evidence placed before the AO clearly indicated that Mr. Chaturvedi confirmed that the draft of Rs.1,02,95,000/- was given by him to the Assessee and that the transactions of purchase of units were done by the Assessee on his behalf. Books of accounts maintained by Mr. Chaturvedi confirmed the above statement.

39. Added to this is the fact that CBI recovered securities and cash worth Rs.4,73,19,836/- from Mr. Chaturvedi and he claimed that these were held on behalf of Mrs. Sneh Pathak, the proprietor of SMI. This was to be read with the statement of Mr. Jaideep Pathak, an employee of the SCB, stating that the drafts worth Rs.5,68,74,958/- were issued by him on instructions of Mr. Hiten P.Dalal.

40. The two letters issued by SCB dated 21st August and 25th August, 1995 to the AO are significant. They clearly state in regard to the cheque of Rs.1,02,95,000/- issued in favour of SBH that as per the records "there were no written instructions from M/s Jain & Company to this effect." They also confirmed that the money was not received back by SCB. The letter dated 25th August, 1995 in this regard is even more detailed. It was confirmed that:

> "The above Pay Order is a part of 15 Pay Orders which were issued by the said Mr. Jaideep Pathak to siphon out funds from

the Bank. The circumstances surrounding these Pay Orders have been investigated by Deputy Superintendent of Police, Central Bureau of Investigation (CBI) in SCB's case Ref No. RC-11 (S) 92-Bom."

41. This obviously meant that the above POs had been issued without obtaining any corresponding deposit of money into SCB by anyone else. Certainly the Assessee did not seem to have been involved at all. The addition of the sum of Rs.5,17,45,958/- to the income of Mr. Jaideep Pathak by his AO is another significant aspect. The said addition was part of the larger sum of Rs.5,68,79,958/- added to his income. The question of adding the same amount in the hands of the assessee clearly was not permissible.

42. The following reasoning of the CIT (A) in disbelieving the case of the Revenue appears to be an acceptable analysis of the evidence.

"36. During the course of the hearing of the appeal, the A.C. was confronted with the letter of SCB stating that no security was received by them against the issue of draft of Rs.1,02,95,000/-. The A.O. admitted that his case does not rest any longer on the deposit of money with the bank of equivalent amount and the case of the department now is that this money was given by the assessee to Mr. Jaideep Pathak, the manager of SCB in his personal capacity for obtaining the draft in his favour. If this is so, it means that the assessee had utilised his unaccounted money to obtain the white money by way of a draft from the bank. If that is so, there was no need for him to attempt to conceal his bank account in the corporation bank, Bombay as is claimed by the department. Secondly, the draft would have been utilised by the assessee for his own benefit and it has not been shown by the A.O. whether it was so. On the contrary, the amount of Rs.1,02,95,000/- has been utilised for issuing 24 drafts in favour of certain parties on the instruction of Mr. DDC which fact is confirmed by DDC. Thus, the

subsequent conduct of the assessee does not support the case of the department that the money was given by the assessee to Mr. Jaideep Pathak to obtain the drafts and is rather disproved by the facts stated above including the chargesheet filed by the CBI where the facts and modus operandi adopted have been discussed in details.

37. The theory of the A.O. is also not sustainable on another consideration. If the money belonged to the assessee and the purpose was to launder the same as is made out, then it has to be explained as to why Mr. DDC is supporting the contention of the assessee that the money was supplied by him which belonged to Shri Maharaj Investment. It was argued on behalf of the revenue that the assessee was acting in collusion with Mr. DOC and that is why the case of the assessee is being supported by him.

38. However, this contention is without any merit as even as per the case of the department, no money has been invested by Mr. DDC. If the assessee and Mr. DDC were acting in collusion then it stands to reason that both will be making the investments and not merely the assessee. No such investment by Mr. DDC is even alleged by the Department. Further, from the conduct of the parties and the subsequent events, it appears that no benefit was to accrue to Mr. DDC and if that is so then the story of collusion is not supported by the facts. As already stated, the chargesheet filed by CBI disproves this contention totally. It may however, be mentioned that certain assets were found by the CBI in the possession of Mr. DDC which have been surrendered by him to the CBI. He claimed that these assets were held by him on behalf of SMI and not on his own behalf. He had not stated that this money belonged to the assessee or he himself and this claim has not been disproved and on the contrary is accepted by the Deptt. in case of Mr. Jaideep Pathak."

43. As rightly noted by the CIT (A) there was no evidence to show that the 24 cheques stated to have been issued by the Assessee on behalf of Mr.

Chaturvedi were utilised by the Assessee and were meant for the benefit of the Assessee.

44. In other words, there was nothing to show that the Assessee had benefited in any way from any of the above transactions. As regards the test of human probabilities if there was no evidence whatsoever to the contrary it could have been resorted to draw certain inference.

45. However, in the present case there appears to be overwhelming evidence to show the involvement of Mr. Chaturvedi acting on behalf of Mrs. Sneh Pathak for SMI. The CBI also did not choose to proceed against the Assessee and that discounts the case of any collusion between the Assessee and Mr. Chaturvedi along with Mr. Pathak. It does appear that the Assessee was at the highest used as a conduit by the other parties and did not himself substantially gain from these transactions.

46. In that view of the matter, the concurrent view of both the CIT (A) and the ITAT that the addition of the aforementioned sum to the income of the Assessee was not warranted, does not call for interference. The question of law framed is accordingly answered in the affirmative i.e. in favour of the Assessee and against the Revenue. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 22, 2019/rd/mw