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

Reserved on : 4th October, 2012
% *Date of Decision : 11th October, 2012*

\+ ITA 1114/2005
\+ ITA 411/2006
\+ ITA 413/2006
\+ ITA 439/2006
\+ ITA 440/2006

THE COMMISSIONER OF INCOME TAX ..... Appellant

versus

J.B.ROY ..... Respondent

\+ ITA 235/2006

COMMISSIONER OF INCOME TAX ARA ..... Appellant

versus

J.B.ROY ..... Respondent

\+ ITA 410/2006
\+ ITA 436/2006

COMMISSIONER OF INCOME TAX ..... Appellant

versus

OP SRIVASTAVA ..... Respondent

\+ ITA 238/2006

COMMISSIONER OF INCOME TAX DEL ..... Appellant

versus

MR.J.B.ROY ..... Respondent

Presence : Mr. Kamal Sawhney, Sr. Standing counsel for the appellant.

Mr. S. Ganesh, Sr. Advocate with Mr.Satyen Sethi, and Mr. Arta Trana Panda, Advs. for the respondent in ITA No.1114/2005.
Mr.Percy J. Pardiwalla, Sr. Advocate with Mr.Satyen Sethi, and Mr. Arta Trana Panda, Advs. for the respondent in ITA No.235, 410, 411, 413, 436, 439, 440 & 238/2006.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.:

1. These appeals have been filed by the Commissioner of Income Tax, Delhi (Central)-I, New Delhi against the orders passed by the Income tax Appellate Tribunal on 28.4.2005 in the cases of J.B. Roy and O.P. Srivastava, the assessees herein. ITA No.1114/2005 is taken as the lead case since admittedly the facts in all the appeals are common.

2. The substantial question of law framed by this Court in these appeals is following:

> "Whether the Income Tax Appellate Tribunal was correct in law in allowing the Assessee's claim of loss of Rs.4.32 crores and not agreeing with the Assessing Officer who had not accepted the loan transaction in respect of purchase of unquoted shares by the Assessee as a genuine transaction?"

3. The facts leading upto the filing of the appeal may be noticed. The assessee, J.B. Roy, is assessed to income tax in the status of 'individual'. He was at the relevant time a partner in M/s Sahara India and a director in Sahara India Financial Corporation Ltd., Sahara India

Housing Ltd. and Sahara India Airlines Ltd. In the return of income filed in respect of the assessment year 1994-1995, relevant to the previous year ended on 31.3.1994., the assessee declared a loss of ₹50,54,928/-. The return was initially processed under Section 143(1)(a) of the Income Tax Act, 1961 (Act, for short). Subsequently it was selected for scrutiny and notice under Section 143(2) was issued. In the course of the assessment proceedings, the Assessing Officer noticed that the assessee had declared a loss of ₹53,46,382/- under the head "income from other sources". He further noted that the loss represented the amount of interest on the loans borrowed from M/s. Sahara India Mutual Benefit Co. Ltd. for purchase of shares in several companies belonging to the Sahara Group. The AO further noticed that no income was shown under this head.

4. The Assessing Officer thereafter examined the utilisation of the loans taken by the assessee and found that the loans were utilised for purchase of shares in closely held companies (belonging to the Sahara Group) and they were not quoted shares. Some of the unquoted shares which had the face value of ₹100/- were found to have been bought by the assessee for very nominal amounts.

5. The assessee had in the earlier years borrowed funds at a rate of interest which was higher than the rate of interest for which he had lent the monies in those years to concerns belongings to the Sahara Group. According to the Assessing Officer, when the differential interest was brought to tax in those years under Section 2(24)(iv) of the Act as a benefit or perquisite, the assessee had resorted "to the new subterfuge"

in order to avoid being assessed on the differential rate of interest. The method adopted by the assessee, according to the Assessing Officer, amounted to a colorable device for transferring the funds of some concerns of Sahara Group to other concerns of the same Group, himself acting as a conduit; not only that, in the process the assessee claimed heavy deduction on account of interest, thus reducing his own tax liability. To quote the words of the Assessing Officer, this is what he held.

> *"I, therefore, hold that the assessee has resorted to a colorable device for transferring funds to some concerns of Sahara group to other concerns of Sahara group acting himself as a conduit and in the process claims heavy deduction on account of interest liabilities and thus trying to reduce his own tax liability."*

6. On the above basis, the Assessing Officer disallowed the loss shown by the assessee under the head 'income from other sources'. The income by way of salary and perquisites received by the assessee from M/s. Sahara India Mass Communication was brought to tax subject to the allowance of the standard deduction, without computing any loss under the head 'income from other sources'. The result was that the assessee was assessed to tax on a total income of ₹11,62,080/- and the loss declared by him under the head 'income from other sources', which was claimed to be adjusted against the income under other heads was not permitted to be so adjusted.

7. Aggrieved by the assessment order, the assessee preferred an appeal to the CIT (Appeals). The CIT (Appeals) relying on the

detailed reasons given by him in the case of another assessee by name Subroto Roy, directed the Assessing Officer to allow the assessee's claim for deduction of interest on the borrowed funds.

8. The Revenue carried the matter in appeal before the Tribunal which passed a consolidated order in several cases, including the case of the assessees herein on 28.4.2005. It would appear that since the Tribunal deal with several cases together including the case of Subroto Roy, it had the benefit of the order of the CIT (Appeals) passed in his case, which had been relied upon by the CIT (Appeals) in the present assessee's case. The Tribunal noted that the CIT (Appeals) had accepted the assessee's claim for computation of a loss under the head 'income from other sources' on the basis of the judgment of the Supreme Court in ***Commissioner of Income Tax vs. Raghunandan Prasad Moody***, *(1978) 115 ITR 519*. In this case, the Supreme Court held that in order to justify the allowance of interest on borrowed amounts under Section 57(iii), it was not necessary that the assessee should have actually earned any income and so long as the interest was paid for the purpose of making or earning any income, it would be allowable as a deduction notwithstanding that the intention of the assessee to earn income did not fructify. Before the Tribunal, a point was made on behalf of the Revenue that the question of allowing the claim of interest would arise only when the amount borrowed possessed the character of a loan, that in order to constitute a borrowing of monies it must be shown that the borrower had both the intention and also the capacity to repay the monies, that the borrowings

of the assessee had piled up to a very huge amount over a period of years which the assessee could never repay, given his meagre income by way of salary. It was accordingly argued for the department that the lender companies will never be able to recover their monies from the assessee. Apparently, the point sought to be made by the Revenue was that the borrowing itself was sham and therefore, the interest was not eligible for deduction under Section 57(iii) of the Act. The Tribunal appears to have put to the Revenue that this was not the ground on which the interest payment claimed as a deduction was disallowed. The response of the Revenue was based on the judgment of the Supreme Court in ***National Thermal Power Co. ltd. vs. CIT*** *(1998) 229 ITR 383* in which it was held that the Tribunal would have the power to go into issues which had not been raised by the Assessing Officer, on a proper additional ground being taken before the Tribunal with its leave. The response of the assessee before the Tribunal to this point raised by the Revenue was that the lending and borrowing were substantiated by relevant entries in the books of account of the lender-companies and that the interest on the loans was taxed as income in the hands of those companies and therefore, it is not open to the Revenue to contend that the Act of lending and borrowing of the monies was a sham. It was also pointed out on behalf of the assessee that the shares were purchased for acquiring controlling interest in the companies. With regard to the contention of the Revenue that the assessee did not have the capacity or the means to repay the heavy borrowings which was a relevant consideration for judging whether the transaction was genuine or sham, it was pointed out before the Tribunal on behalf of

the assessee, by filing a statement, that the assessee had repaid the loans to the lender-companies in the previous year relevant to the assessment year 1999-2000. It was thus argued that the question relating to the capacity of the assessee to repay the loans and the consequent question whether the transactions were sham were academic since the loans had in fact been repaid. It was further urged on behalf of the assessee that the Tribunal was not an investigating agency and had to limit itself, while disposing of the appeal, to the issues raised before it and those issues which were not agitated or raised by the Assessing Officer cannot be considered by the Tribunal and the controversy be expanded.

9. The Tribunal on a consideration of the rival submissions, agreed with the contentions of the assessee and dismissed the ground raised by the Revenue in the following manner:-

> *"10. As regards Revenue's observation about the powers of the Tribunal, we agree that the Tribunal has some inherent powers, but such powers cannot be extended to an issue which is not agitated by the Department. The Tribunal has to limit itself to the issues raised/agitated and considered by the A.O. In the instant case, the A.O. has never doubted that the funds borrowed by the assessee was not a loan. Apart from then A.O., who has accepted that the funds borrowed were in the nature of loan, we find that even the lender companies have treated the funds as loans advances and have also accounted for the interest as interest income. Such amount has also been taxed as interest income. We, therefore, hold that as the Department itself has accepted the borrowed funds as loan, there is not need of giving*

any finding whether the borrowed funds were in the nature of loan or not. While making these observations, we have also taken into consideration that the borrowed funds have been repaid in the assessment year 1999-2000.

11. We find that the AO's only objection to the allowance of deduction was that the borrowed funds have been utilized for purchase of shares from which no income has been earned. The factum of purchase of shares have not been doubted. The assessee has also earned interest income and dividend income on other investments. Thus, even if such income has been assessed under the head 'income from other sources', the deduction mentioned in Section 57(ii) and 57(iii) of the Act has to be allowed. The Hon'ble Supreme Court in the case of Rajendra Prasad Moody (supra) has considered this issue and has held that once the investment has been made, the receipt of any income on such investment was immaterial has for allowing deduction u/s 57(ii) and 57(iii) of the Act . While allowing relief to the assessee, the ld. CIT (A) has relied on the decision of Hon'ble Supreme Court. As his findings is in accordance with the finding of the Hon'ble Supreme Court, we find no infirmity in the same and while upholding his finding, we dismiss the ground of appeal raised by the Revenue.

10. In support of the appeal, it is contended on behalf of the Revenue firstly that the fact that the assessee adopted a colorable device to reduce his tax liability has not been addressed by the Tribunal and it was this question that properly arose in the appeals before it. Thus the Tribunal erred in law in ignoring the contention of

the Revenue. It was further pointed out that in a connected matter in the case of a connected assessee (Swapna Roy, wife of Subroto Roy) of the same group, the Allahabad High Court has observed in its decision reported in ***Commissioner of Income Tax vs. Smt. Swapna*** **Roy** (2011) *331 ITR 367,* on similar facts, that the assessee had adopted a device to reduce his tax liability. According to the Revenue, the facts of the present case being similar, and the assessee herein also belonging to the same group, the similar modus operandi adopted by him should be disapproved as a subterfuge as was done by the Allahabad High Court. It was contended that the Tribunal erred in failing to address itself to the question of tax avoidance or colorable device adopted by the assessee even though it was raised by the Assessing Officer as also by the Revenue before the Tribunal. It is contended that the judgment of the Supreme Court cited *supra* applied to the benefit of an assessee in a genuine case, but in the present case, there was sufficient material brought to the notice of the Tribunal and also adverted to in the assessment order, to show that the lending and borrowing were sham transactions and were gone through merely for the purpose of reducing the tax liability of the assessee. It is also contended that since the relevant facts have not been considered by the Tribunal, which it ought to have, given its status under the Act as the final fact-finding body, the matter may be remanded for relevant findings on the aspect of tax avoidance, if necessary.

11. On behalf of the assessee, it is contended that the amounts borrowed by it were immediately invested in purchasing shares, though in companies belonging to the same group, that the loans taken in the

previous year relevant to the assessment year 1994-95 were repaid in the previous year relevant to the assessment year 1999-2000 as was pleaded before the Tribunal on the basis of a statement filed on behalf of the assessee. Counsel argued that the Revenue authorities did not discharge their burden of proving that the loan transactions as well as the investments in the shares were sham, that the Assessing Officer did not examine the value of the shares and acquired by the assessee with reference to their financial position exhibited in their balance-sheets, or it was a mere one-line statement made by the Assessing Officer that the shares had no value or had a value of a few paise and that in these circumstances, there was no iota of evidence to show that the borrowing of the monies for interest was sham or that the assessee indulged in a subterfuge or colorable device to reduce his tax liability. It was contended that the interest was included in the assessments of the lender companies which was a pointer to the genuineness of the transaction. With regard to the contention of the Revenue based on the judgment of the Allahabad High Court (supra) in the case of a connected assessee it was submitted that in that case there was material on record to show that the assessee there had adopted a device or smoke screen to reduce his tax liability, but in the present case there was no such material. Ultimately it was submitted that in case this Court was of the view that further investigation is required to be carried out in order to ascertain whether the transactions were sham and were merely gone through with a view to avoiding or reducing the assessee's tax liability, the matter should be remanded for *de novo* consideration.

12. On a careful consideration of the facts in the light of the rival contentions, we are of the view that the order of the Tribunal, as it stands, cannot be sustained. Section 57 of the Act provides for deductions in computing the income under the residuary head i.e. 'income from other sources'. Clause (iii) of the Section allows deduction of any expenditure (not being in the nature of capital expenditure) laid out or expended wholly or exclusively for the purpose of making or earning such income. Interest paid on borrowings made for making investments with the object of making or earning income falls for consideration under this clause. In the case of ***R.P. Moody*** (*supra*) the Supreme Court held that that it is not necessary for the purpose of obtaining the deduction under the clause, that the assessee should have actually earned any income and that it is sufficient if the assessee is able to prove that the expenditure was incurred 'for the purpose' of earning the income. It was observed, following the dictum of Lord Thankerton in the case of ***Hughes vs. Bank of New Zealand*** *(1938) 6 ITR 636 (HL)* that it was not necessary to justify an item of debit in the profit and loss account, that there should be an item of credit in the said account. However, as rightly pointed out on behalf of the Revenue, the principle would apply to a genuine case of borrowing and lending and if there are materials to show that the transaction of borrowing and lending was sham or was got up with the purpose of avoiding or reducing the tax liability, nothing prevents the revenue authorities from ignoring the claim.

13. The difficulty in the present case with the order of the Tribunal is that despite being told that there are several unusual features which

throw considerable doubt on the assessee's claim for deduction of the interest, it did not consider it proper to examine the matter further, but chose to take umbrage on the principle that the Tribunal cannot be expected to act as an investigating agency. It is true that the Tribunal cannot by itself embark upon an investigation and try to raise a new issue or make out a new case for the revenue which has not occurred to the revenue authorities; however, in the present case the Assessing Officer did indicate the broad contours of the intention of the assessee to reduce his tax liability by claiming interest under Section 57(iii) on borrowings allegedly made from companies belonging to the same group for the purpose of acquiring shares, again in companies of the same group, which were closely held and did not yield any dividend. It is therefore, not a case where the Tribunal, for the first time, was being invited to investigate into an aspect which was not raised by the income tax authorities. The Tribunal ought to have therefore examined the contention of the Revenue with some seriousness. In answer to the contention of the Revenue that the lending and borrowing were sham because the assessee had no capacity to repay the huge borrowings out of his meagre sources income by way of salary, the assessee had filed a statement showing that by the previous year relevant to the assessment year 1999-2000, the assessee had repaid the loans. It was for the Tribunal to examine the statement further. It should have examined whether the assessee repaid the loans out of his own sources or out of further borrowings. In other words, examination of the sources from which the assessee claimed to have repaid the loan would have given a deeper insight into the real motives behind the transactions. It was, in

our opinion, a very relevant aspect of the matter to be examined. It is also somewhat peculiar that the assessee borrowed heavily from Sahara Group of Companies to acquire shares in companies belonging to the same group. It was worth examining why the companies belonging to the same group could not have helped each other directly and why the assessee was introduced as a conduit. Mr.Ganesh, counsel for the assessee, submitted before us that there might have been difficulties for those lender companies to acquire shares in the other companies or to lend monies as inter-corporate deposits. But this is an aspect which ought to have been probed as it would have helped reach a proper conclusion with regard to the motives of the assessee. The Assessing Officer had also made an interesting observation in the assessment order to the effect that in the earlier years, the assessee had borrowed monies from Sahara Group of Companies/Firms at a higher rate of interest and passed on the monies to other group concerns at a lower rate of interest and that when he found that the differential interest was assessed as benefit or perquisite under Section 2(24)(iv), he abandoned that method and adopted a different method which according to the Assessing Officer was a "new subterfuge", the new subterfuge being the borrowing of monies for interest and investing them in acquisition of shares of the group companies, shares which were worthless and would not have normally attracted anyone. Mr.Ganesh objected to this on the ground that the Assessing Officer had no material before him such as the financial statements of the companies whose shares were acquired to show that they were worthless and he had made a sweeping statement – what Mr.Ganesh described as "one-line statement" –

without any basis. Prima facie the objection holds water, but that does not really answer the question as to why the assessee who does not have any income from business, much less share business, and derives income only by way of salary would indulge in any such speculation in the hope that the shares acquired by him at a huge interest cost would at some future point of time bear fruit. The interest liability in the assessment year 1994-1995 itself amounts to ₹53,46,382/-; the salary income of the assessee, even including the perquisites, and without allowing the standard deduction is only ₹11,77,082/-. If these figures are taken note of, a question would naturally arise in anyone's mind as to how the assessee hopes to repay the loans. Another aspect which needs to be examined and ought to have been examined is whether the interest was actually paid by the assessee or it was only shown as a liability in favour of the lender-companies. Mr.Ganesh would however submit that the interest was included in the assessment of the lender-companies and taxed. When we posed a query as to whether the lender companies had shown taxable income or filed returns showing losses, he confessed that there was no material available with him to answer the query and that he would call for the same and submit to the Court. Till the date of pronouncement of the judgment, these details have not been filed.

14. In the aforesaid circumstances, the Revenue, in our opinion had every justification to invite the Tribunal to embark upon an investigation into the motives of the assessee in entering into the loan transactions and claiming huge interest. The Tribunal, with respect, was not justified in brushing aside the invitation on the ground that it

was not an investigating agency and has to limit itself to the issues raised before it. The issue as raised before it was the motive of the assessee and the Tribunal, given the status as the ultimate fact finding authority under the Act, ought to have remanded the matter, so that the motives of the assessee in making huge claims for deduction of interest under Section 57(iii) of the Act are made known to those who matter, particularly the taxing authorities. The Tribunal, again with respect, failed to keep in view the entire conspectus of the case and the surrounding circumstances such as :

a) That not only the assessee herein, but several other persons belonging to the same group i.e. Subroto Roy, Swapna Roy, Joy Brata Roy, O.P. Srivastava etc. had also indulged in similar transactions and had made similar claims under Section 57(iii) and the cases of O.P. Srivastava, Subroto Roy and Joy Brata Roy were actually being heard by it along with the assessee's case; which showed a pattern;

b) That in the earlier years, the assessee had shown borrowings from group companies at a higher rate of interest and lent them at a lower rate of interest to group companies and when the differential interest was being assessed as benefit or perquisite, the assessee adopted a different modus operandi of borrowing monies from group concerns for huge interest and utilizing the monies for acquisition of shares in the group companies, despite the fact that the shares could have held no attraction to an investor;

c) That though the Assessing Officer had stated in the assessment order that the shares were of the value of 'few paise or even zero", the assessee placed no material before the revenue authorities or before the Tribunal to dispute the statement, granting that it was a sweeping statement made by the Assessing Officer; even if it was a sweeping statement, the burden was on the assessee to show that it was factually wrong;

d) That the assessee was not an investor in shares nor was he a trader; in fact he was not carrying on any business. It was therefore, for him to show the motives which impelled him to acquire the shares of the group concerns. It is true that it was for the assessee to arrange his affairs the way he pleases. But at the same time, we cannot take away right of the Assessing Officer to inquire into the motive or purpose of the investment or acquisition of shares as it impinges upon the genuineness and liability of the claim of interest on the borrowings made for acquiring the shares under Section 57(iii) of the Act.

15. The Allahabad High Court (*supra*) in the case of Swapna Roy, wife of Subroto Roy and a connected assessee, did disapprove of the motives of a similar transaction. The transactions entered into by the Swapna Roy were similar to those entered into by the assessees before us. She had also claimed deduction of interest paid on borrowings under Section 57(iii) on the ground that the borrowed funds were invested in Sahara Group of Companies. She had borrowed monies

from Sahara Group of concerns. The Allahabad High Court examined the claim of the assessee in detail and held as under:-

> *"In the present context, the assessee has repeatedly submitted incorrect statements (supra) and borrowed the money for investment in her sister concerns managed by her close associates and relatives which are running in loss without any expectation to gain profit. A man of common prudence shall never like to make investment in a company whose financial status is fragile and not liable to make profit.*
>
> *The investment must be wholly and exclusively for the purpose of earning profit. At least the dominant purpose of investment made must be to earn profit. The decision taken under the circumstances while making an investment should reveal that there was likelihood to earn profit. The investment or expenditure made in a company where there is no hope of earning profit shall not be covered by section 57(iii) of the Act (laid out or expended wholly and exclusively for the purpose of making or earning such income).*
>
> *After filing original return the petitioner has submitted a revised return and statements giving out different figures. This act on the part of the assessee reveals that she has not acted bona fide and tried to avail of the benefit of section 57(iii) of the Act by changing her stand. Neither the appellate authority nor the Tribunal has considered this aspect of the matter with regard to bona fide of the assessee.*

Though it is not unfair to borrow money or take loan from one concern and invest the same in other concern for the purpose of profit or income but while doing so, the assessee must act bona fide with primary motive to earn profit. The amount taken on loan from one concern and investment in other concern running in loss having fragile financial status cannot be treated as bona fide act on the part of the assessee. The action of the assessee suffers from lack of bona fide and seems to be a device to help sister concerns.

Some of the companies where the assessee has made investments are not listed in the stock exchange and not likely to fetch any resale value. The Assessing Officer may exaggerate the factual position but things as they stand reveal that no person shall make investment in companies which lack financial soundness and where there is remote chance of profit or to earn income. The expenditure towards interest on loan does not seem to lay out or expend wholly and exclusively for the purpose of making or earning income from the shares under section 57(iii) of the Act. The reasoning given by the Assessing Officer substantially seems to be correct while disallowing deduction.

There is one other aspect of the matter. While interpreting the provisions contained in section 57(iii) of the Act, the Tribunal or the court has got ample power to pierce the veil. The court may find out from the material on record with regard to bona fide and intention of the assessee while claiming benefit of

section 57(iii) of the Act. Every word of section 57(iii) of the Act should be given meaning."

At page 400, the Allahabad High Court has noticed the peculiar features of the case, which are similar to the facts in the case of the assessees before us:-

"It is strange that the salary of Ishtiaq Ahmad and U. K. Bose is of few lakhs, loan sanctioned without any guarantee and chance of return is remote and the investment of substantial amount is made in such sister firms which lacks financial backbone with remote chance to earn income.

From the discussion hereinabove and keeping in view the fact that the assessee in question collectively along with other employees borrowed the fund from sister concerns and invested in other sister concerns majority of which lacks financial viability and running in loss since several years there appears to be no doubt that the assessee and her associates (connected appeals) had not invested wholly and exclusively for the purpose of earning income. The material on record reveals that purpose was not to earn profit but it was a colourable device to utilise the fund of one firm in other sister concerns for the purpose of trade or business.

16. It is also noteworthy that the Allahabad High Court in the decision cited (*supra*) has noted at page 376 of the report as follows:-

"The Assessing Officer noted that in similar way, the loan was taken by all the assessee belonging to the Sahara group namely Shri Subroto Roy Sahara, Smt. Swapna Roy, Shrii J.B. Roy, Shri O.P. Srivastava, Shri Istiaque Ahmad, Shri Sanjay Bahadur Mishra, Shri U.K.

Bose and all of them claimed deduction of interest accrued on the loan under section 57(iii) of the Act."

From the above observations we note that the Assessing Officer who assessed Swapna Roy considered the persons named in the quoted paragraph as belonging to the same group and these names include the present assessees, namely, J.B. Roy and O.P. Srivastava.

17. The features mentioned in (a) to (d) supra have not been kept in view by the Tribunal while deciding the appeals. It has chosen to disregard the plea of the Revenue for further investigation into the matter though there was sufficient material, which was referred to by the Assessing Officer, to suspect the motives of the assesses in claiming such huge expenditure by way of interest under Section 57(iii) of the Act. It is necessary to keep in mind the duty of the Tribunal in such cases. They ought to pay due attention to the unusual or even suspicious features of the case. If they find sufficient material to show that the claim of the assessee may not be genuine or could be a sham or that the motive of the assessee was to avoid his tax liability lawfully due, the Tribunal cannot plead helplessness; if it is prima facie convinced of the motives of the assessee – and in the present case there was sufficient material before the Tribunal– the Tribunal should not hesitate to order a deeper investigation into the facts in order to elicit the truth and in doing so, it has the power to remit the matter to the income tax authorities. In our opinion, in the present cases, the Tribunal ought to have kept the above principles in view. We further note that the present cases were transferred from Lucknow jurisdiction to Delhi jurisdiction by an order passed by the CBDT under Section

127 of the Act on 29.7.2005 (copy of the order filed with the appeal). Had the cases continued to be assessed in Lucknow, the judgment of the Allahabad High Court (supra) would have applied to them. If the facts are the same in all the cases, of which one of them had reached the Allahabad High Court which had frowned upon the device adopted by one of the assessees as a colorable device, it should logically follow that the decision should be the same in all the connected cases.

18. We therefore, answer the substantial question of law framed on 20.3.2007 in the negative, in favour of the Revenue and against the assessee. However, having regard to what has been said by us above, we consider it proper to set aside the orders of the CIT (Appeals) and the Tribunal on the point of Section 57(iii) and remand the cases to the Assessing Officer for *de novo* proceedings. He shall take a fresh decision and pass fresh orders in all the cases in accordance with law and after affording adequate opportunity of being heard to the assessees. The appeals of the Revenue are thus allowed in the above terms with costs which we assess at ₹25,000/- in each set.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

OCTOBER 11, 2012
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