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

Decided on: April 15,2015

\+ ITA 180/2015 & C.M.Nos.4214-15/2015

COMMISSIONER OF INCOME TAX-(CENTRAL)-I ..... Appellant

Through: Mr. Kamal Sawhney, Sr.Standing Counsel with Mr.Shikhar Garg and Mr.Mukul Mathur, Advs.

versus

ARVIND KHANNA ..... Respondent

\+ ITA 181/2015 & C.M.Nos.4216-17/2015
NAVIN KHANNA ..... Respondent

\+ ITA 182/2015 & C.M.Nos.4218-19/2015
ADITYA KHANNA ..... Respondent

\+ ITA 183/2015 & C.M.No.4220/2015
VINITA SINGH ..... Respondent

\+ ITA 184/2015 & C.M.Nos.4221-22/2015
ARVIND KHANNA ..... Respondent

\+ ITA 186/2015 & C.M.Nos.4349-50/2015
NAVIN KHANNA ..... Respondent

\+ ITA 187/2015 & C.M.Nos.4351-52/2015
ARVIND KHANNA ..... Respondent

\+ ITA 188/2015 & C.M.Nos.4353-54/2015
VINITA SINGH ..... Respondent

Through: Mr.Sanjeev Sasbharwal, Sr.Adv. with Mr.Bon Goswamy, Mr.Ankit Garg and Ms.Megha Kamthan, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT
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The matters are taken up today, since 14.04.2015 was declared a holiday on account of Ambedkar Jayanti.

1. The question of law urged by the Revenue is : *Whether in the circumstances of the case the assessees can be said to have satisfied the requirement of Section 68 of Income Tax Act and especially the creditworthiness of the donor and the genuineness of the transaction for the various Assessment Years?"*

2. This Court does not propose to elaborate the facts given the nature of the order proposed. Sh. Vipin Khanna (father of all the assessees) remitted different amounts in respect of each of his children for separate Assessment Years (AY), The Assessing Officer (AO) rejected these transactions as not genuine and added them back under Section 68 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") . The CIT (Appeals) accepted the assessees' explanation that the amounts were received by way of genuine gift and in view of this, CIT (Appeals) took note of the notarized statement of certain foreign trusts and other said entities which are confirmed credit entries in favour of the donor, Vipin Khanna. In the light of this it was held that the burden initially placed upon the assessees to establish the

genuineness of the transactions and the credibility of the donor stood discharged.

3. This order was confirmed by the ITAT. We have considered the submissions of the parties. Both the CIT (Appeals and ITAT took into account notarized statements and such like materials placed on record for satisfaction about the genuineness of the transaction. We are of the opinion that given the nature of the onus placed upon the assessees, under Section 68 of the Act – as elaborated in *CIT vs. Lovely Exports Pvt. Ltd.* 216 CTR 195, the CIT (Appeals) could not have arrived at the satisfaction in the manner that was done in the present case. Whilst, entities' certificate and notarized statements of the entities by themselves indicate, *prima facie*, the identity of such entities who have granted credit to Vipin Khanna, the creditworthiness of Sh. Vipin Khanna has to be independently established by other materials such as bank statement and other supporting evidence to say that he had the economic capacity to enter into such transaction. It was stated that Mr.Khanna had in fact mortgaged some properties in order to avail of the credit so as to settle amounts by way of gift to his children. If so, the copies of such related documents duly certified by the bank ought to have been produced.

4. In the light of this discussion, it is agreed by the parties that the matter may be remitted back to the CIT(Appeals) for the limited purpose of examining the nature of these documents which may be further adduced before it. In order to avoid delay, the CIT (Appeals) may appropriately call for a remand report, if necessary. After considering the material placed on the record and the statement of Sh. Vipin Khanna, the CIT (Appeals) shall record its findings. It is open to either of the parties to avail all remedies

available under law. The impugned common order is accordingly set aside. The appeals are allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 15, 2015
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HIGH COURT OF DELHI
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