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

Decided on: March 17,2015

+ ITA 198/2015, C.M. No.4860/2015
 + ITA 199/2015, C.M. No.4861/2015
 + ITA 200/2015, C.M. No.4862/2015
 + ITA 201/2015, C.M. No.4863/2015
 + ITA 202/2015, C.M. No.4864/2015
 + ITA 203/2015, C.M. No.4867/2015
 + ITA 204/2015, C.M. No.4868/2015
 + ITA 205/2015, C.M. No.4869/2015

ESTATE OF SMT. ABNASH KAUR Appellant
 Through: Mr. Bharat Beriwal, Advocate.

Versus

ACIT CIRCLE 23(1), NEW DELHI Respondent
 Through: None.

CORAM:

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

MR. JUSTICE R.K.GAUBA

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1. These eight appeals under Section 260-A of the Income Tax Act arise out of common order passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") on 07.02.2014 in appeals preferred before it respecting the assessment years (AY) 1991-92 and 1994-95 to 2000-01. The appeals have been instituted by Smt. Surjit Kaur Gill, one of the legal heirs of late Smt. Abnash Kaur, describing herself as the executor/administrator of the estate. Since the contentions raised in all the



appeals are identical, they have been heard together.

2. The appellant urges the following as the question of law for consideration:-

“Whether the decision of the ITAT that in the circumstances of the case there was no infirmity with the decision of the AO and CIT (Appeals) as to the tax liability in the hands of the estate of Late Abnash Kaur, was justified?”

3. The background facts as narrated by the appellant, to the extent germane to the issue involved, need to be noted.

4. It is stated that Smt. Abnash Kaur was married to Seth Shiv Prasad in 1955, it being his second marriage. It is claimed that with the help of money received as marriage gifts from her husband, Smt. Abnash Kaur purchased property No. 3, South End Road (now known as Rajesh Pilot Marg), New Delhi from S. Basakha Singh for total consideration of ₹2,50,000/- vide sale deed dated 18.01.1956 duly registered on 30.01.1957 in the office of Sub-Registrar, New Delhi. Smt. Abnash Kaur died on 10.06.1976. It is the aforesaid property that constitutes the estate which is subject matter of the bequest through Will dated 06.02.1973 left behind by Smt. Abnash Kaur at the time of her death and the rental income from which forms the bone of contention here. According to the appellant, in terms of the Will, the estate was bequeathed in equal shares in favour of six beneficiaries, they including (a) Sh. Kamal Kishore Bindal (son); (b) Smt. Surjit Kaur Gill (sister); (c) Sh. Ajit Singh (brother); (d) Smt. Adarsh Kaur Gill (sister); (e) Sh. Gumir Singh Gill (son of Smt. Surjit Kaur Gill and nephew of Smt. Abnash Kaur); and (f) Ms. Noorien Kaur Gill (daughter of Smt. Adarsh Kaur Gill and niece of Smt. Abnash Kaur).



5. The appellant Smt. Surjit Kaur Gill, claiming to represent the estate as its executor/administrator, contends that Smt. Abnash Kaur had executed a lease deed in March, 1961, ante-dating it as a document executed on 18.11.1958 in favour of her sister Smt. Adarsh Kaur Gill, the document being attested as witness by her brother Shri Ajit Singh, thereby purporting to let out the aforesaid property at a nominal rent of ₹500/- per month. It is stated that this was a sham transaction and that Smt. Adarsh Kaur Gill, in turn, had let out the same property at ₹4,500/- per month for a period of three years beginning 01.02.1961 in favour of Consul General of Democratic Republic of Vietnam. It appears that the income returns submitted by Smt. Abnash Kaur and Smt. Adarsh Kaur Gill (for AY 1959-60) claiming rental income on such basis were not accepted. The appellant avers that the objective sought to be achieved through the fake lease deed was to create a false charge in respect of the property in favour of Smt. Adarsh Kaur Gill by showing that she had spent an amount of ₹1,25,000/- on its renovation, thereby defeating the claim of step-sons of Smt. Adarsh Kaur in such regard. The appellant pleads that the view of the Assessing Officer (AO) to such effect was, however, overruled by ITAT in ITA No. 4576/69-70 by order dated 28.02.1971 for AY 1964-65 and that upon reference being preferred by the Revenue under Section 256(2) of the Income Tax Act, the High Court declined to answer it holding that it gave rise to questions of fact.

6. It is alleged by the appellant that after the death of Smt. Abnash Kaur, Smt. Adarsh Kaur Gill continued to sublet the property and earn rental income and when called upon by Shri Ajit Singh (one of the legal heirs, since deceased), she refused to vacate the property or give account of the



rent received. Against the backdrop of these facts, Shri Ajit Singh filed a civil suit No. 2167/1993 in this court on 16.09.1993 praying for reliefs in the nature of partition of the estate, rendition of accounts, declaration and permanent injunction.. The civil suit is stated to be still pending for adjudication.

7. It is further stated that Shri Ajit Singh being the executor and administrator of the estate had filed an application before Commissioner of Income Tax under Section 281-A (since repealed) of the Income Tax Act in 1985 for *Benamidar* declaration and also made a disclosure on 30.09.1986 under the amnesty scheme. Shri Ajit Singh further filed a revision petition under Section 264 of the Income Tax Act on 29.11.1990. It is stated that in all these petitions and declarations, Shri Ajit Singh made averments about the falsity of the lease document mentioned above. It is claimed that pursuant to the disclosure made by Shri Ajit Singh, the tax recovery officer issued a warrant of attachment on 11.09.1987 in respect of the property and that the said warrant has not been recalled till date.

8. The appellant further pleads that since the estate of Smt. Abnash Kaur had not been distributed, the AO issued a notice under Section 148 of Income Tax Act to re-open the assessment for the block period 1991-92 to 2000-01, recording, *inter alia*, the following reasons:-

"An application U/S 230 A (1) in Form no. 34A has been filed in respect of Estate of Late Smt. Abnash Kaur situated at Bungalow No.3, South End Road, New Delhi by Smt. Surjit Kaur Gill and Sh. G S Gill in the combined application both the legal heirs requested for grant of certificate to register 61% share in the undivided property of late Smt. Abnash Kaur. The other 39% share is claimed to have been devolved to Smt.



Abnash Kaur Gill and her daughter Smt. Noorien Kaur Gill. Smt. Abnash Kaur Gill acquired property known as Bungalow No.3 South End Road, New Delhi for a consideration of Rs.2,50,000/- vide sale deed dated 18.01.1956 registered as document no. 215, Additional Book no. 1, Vol. No. 354 at pages 117 to 138 on 30.01.1957 in the office of Sub-Registrar, New Delhi. Smt. Abnash Kaur Gill expired on 10.06.1976 leaving behind the following beneficiaries under her registered will dated leaving behind the following beneficiaries under her registered will dated 06.02.1973 bequeathing 1/6th share each to her six beneficiaries in the above said property:

Name of Beneficiaries	Relationship to Original	Division as per will of Smt. Abnash Kaur
<i>K K Bindal</i>	<i>Son (1/6)</i>	<i>16.67</i>
<i>Ajit Singh</i>	<i>Brother (1/6)</i>	<i>16.67</i>
<i>Surjit Kaur Gill</i>	<i>Sister (1/6)</i>	<i>16.67</i>
<i>GSGill</i>	<i>Nephew (1/6) ,</i>	<i>16.67</i>
<i>Adarsh Gill</i>	<i>Sister (1/6)</i>	<i>16.67</i>
<i>Noorien Kaur Gill</i>	<i>Niece</i>	<i>16.67</i>

Shri K K Bindal s/o. Late Smt. Abnash Kaur expired on 15.12.1995, in Estate, leaving no first and second class heirs. His share was thus, devolved to Shri Ajit Singh, Smt. Surjit Kaur Gill and Adarsh Kaur Gill @ 5.55%, 5.56% and 5.56% respectively. Similarly, Sh. Ajit Singh expired on 12.12.2000 and his share of 22.22% (16.67 + 5.55) would devolve to Smt. Surjit Kaur Gill, being executor and administrator to the Estate left by Shri Surjit Kaur Gill and Shri G S Gill in their letter dated 21.05.2001(Annex. A-3), thus, comes to as under as on date:

<i>Surjit Kaur Gill</i>	<i>44.45%</i>
<i>G. S. Gill</i>	<i>16.67%</i>
<i>Adarsh Kaur Gill</i>	<i>22.22%</i>



Noorien Kaur Gill 16.67%

The property in question being No.3, South End Road, New Delhi is in the possession of the above named four persons who are executors/ administrators/ occupiers/ legal heirs of Late Smt. Abnash Kaur. It is further noticed from the details furnished along with the letter dated 21.05.2001 that the property was let out to various parties during the period for last ten years. No return of income, however, for any of these last ten years were filed in the name of Estate of Late Smt. Abnash Kaur with the department. It is further noticed that there are certain contradictions in the submission made by the legal heirs/ occupiers/ administrators/executors etc to the Appellate Authorities including ITAT as also to the other Courts. One such matter is still pending before the Hon'ble Delhi High Court. Details of such facts are narrated in the letter dated 21.05.2001. In view of the above mentioned facts and since no return of income of the Estate of Late Smt. Abnash Kaur is filed, I have reasons to believe that income chargeable to tax have escaped the assessment. Since the status of all four legal heirs/ occupiers/ administrators/ executors etc. is not known to this office in the absence of complete details, notices u/s 148 of the Act are being issued from Assessment Year 1991-92 to 2000-01 in the cases of the four existing legal heirs/ administrators/ executors/occupiers i.e. Smt. Adarsh Kaur Gill, Noorien Kaur Gill, Surjit Kaur Gill and Sh. GS Gill. "

9. It is further stated by the appellant that the AO framed the assessment orders on 25.03.2003 for the afore-mentioned period adding the rental income in the sum of ₹81,21,250/- in the hands of the appellant. It is stated that Smt. Adarsh Kaur Gill, however, filed an appeal against the said assessment order dated 25.03.2013 before the Commissioner of Income Tax (Appeals) [CIT (Appeals)] challenging the said addition. In the course of consideration of the appeal, the appellant (Smt. Surjit Kaur Gill) with her son made a request for opportunity of hearing.



10. The appellant states that the CIT (Appeals), by his order dated 26.03.2004, deleted the addition of rental income in the hands of the estate primarily on the ground that the said rental income had been already assessed in the hands of Smt. Adarsh Kaur Gill. The Revenue challenged the order of CIT (Appeals) before ITAT, during the hearing on which the appellant also participated to raise grievance about denial of opportunity to rebut. The ITAT dismissed the appeals of the Revenue by common order passed on 07.02.2014.

11. It is argued by the appellant that the view taken by ITAT is erroneous because the lease deed in favour of Smt. Adarsh Kaur Gill was a sham document and cannot be relied upon; the estate not yet divided or distributed, Section 168 mandates that the income be assessed in the hands of the executor who is in the *de facto* management of the estate; and that the conclusion that there is no loss to Revenue is not correct since there are outstanding dues of income tax and wealth tax in the name of the estate for the period 1969-70 to 1988-89, as reflected, *inter alia*, in notice dated 04.10.2001 under Section 221(1) of Income Tax Act indicating demand in the sum of ₹41,15,101/-.

12. The CIT (Appeals), in deleting the addition made by the AO in the block assessment order, *inter alia*, rejected the contention that the rent deed executed by Smt. Abnash Kaur in favour of her sister Smt. Adarsh Kaur Gill is a sham document. The ITAT upheld the said finding of fact quoting (in Para 40 of the impugned order) the observations of the first appellate authority as under:-

“40. ... Late Smt. Abnash Kaur in her Will has categorically made mention of the lease agreement dated 18.11.1958



between her and Smt. Adarsh Kaur Gill relating to property no. 3, South End Road, New Delhi. She has also mentioned the increase the lease rent through a subsequent agreement and she has also categorically stated that the property 3, South End Road is in physical possession of Smt. Adarsh Kaur Gill. She has admitted in her Will that Smt. Adarsh Kaur Gill is her tenant from whom a rent of Rs.1,500/- p.m. was being received. She is also mentioning about the charge of Smt. Adarsh Kaur Gill, the lessee of the house under agreement dated 18-11-1958 vide clause No. 13 created at 50% of the amount spent by her in the renovation of the said house No. 3, South End Road, New Delhi as and when she vacates the premises. The declaration made by late Smt. Abnash Kaur in her Will relating to the agreement dated 18-11-1958 tallies with the photocopy of the lease agreement dated 18-11-1958...

In her Will late Smt. Abnash Kaur has made reference that Sh. Ajit Singh is authorized to receive the rent of Rs.1,500/- per mensem from property 3, South End Road, New Delhi from Smt. Adarsh Kaur Gill. This makes it clear that during her lifetime Smt. Abnash Kaur never terminated the tenancy rights given through the lease agreement to Smt. Adarsh Kaur Gill and she never intended to terminate the lease agreement even after her death because otherwise there was no purpose to authorize Sh. Ajit Singh, executor of the Will to receive Rs.1,500/- p.m. as rent from Smt. Adarsh Kaur Gill.

The Assessing Officer has not brought anything on record to prove that the tenancy rights given by Smt. Abnash Kaur Gill during her life time were terminated by her during her lifetime or even after her death except relying on the statement of Sh. Ajit Singh who was one of the witness to the lease agreement. Perusal of the declaration made by Sh. Ajit Singh indicates that Sh. Ajit Singh has not denied his signatures on the lease agreement.

The writing of this document has not been denied even by Sh. Ajit Singh and he has also not denied the writing and existence of the lease agreement. He has only said that the lease arrangement was a sham transaction entered into between the



parties for saving the property from the litigation by the order claimants i.e. the step sons of the Smt. Abnash Kaur. The Assessing Officer has not discussed whether Sh. Ajit Singh was competent to make a benami declaration u/s 281A because such declaration could be made by the owner of the property actually belonging to the person but held in the name of some other person. A certificate was to be issued by the CIT on the basis of declaration of 281A and the Assessing Officer has not brought on the record whether any cognizance was taken by the CIT on the benami declaration u/s 281A and whether any certificate was issued ...”

13. Taking note of the fact that the estate of Smt. Abnash Kaur remains to be divided/partitioned, the contention that the rental income received by Smt. Adarsh Kaur Gill is liable to be assessed in the hands of the estate was rejected by the CIT (Appeals) for the following reasons:-

“The Assessing Officer has ultimately come to the conclusion that the estate of late Smt. Abnash Kaur i.e. property No. 3, South End Road, New Delhi is still undivided and the rental income received by the legal heirs on account of this property is liable to be reassessed in the hands of the estate. As discussed above this conclusion drawn by the Assessing Officer cannot be considered as logical or cogent because as per Will and as statement filed before the competent authority discussed above the property owned by the estate is still on rent with Mrs. Adarsh Kaur Gill at Rs.1,500/- per month and following the decision of Hon’ble ITAT Bench Delhi for different years in the case of Smt. Abnash Kaur as discussed above, it is held that the rental income assessable in the hands of the estate would be only the extent of Rs.1,500/- p.m. which is the rent payable by Smt. Adarsh Kaur Gill. Since the estate is not self occupied by any of the heirs as legal heirs but is actually in possession of one of the legal heirs on account of the tenancy rights, hence the Assessing Officer was also not justified to assess any notional income on account of self occupancy.”



14. The ITAT upheld the above-quoted findings and concluded (in Para 43) as under:-

“... in view of the pending litigation regarding the distribution of estate of late Smt. Abnash Kaur i.e. 3, South End, New Delhi, the estate still continues to be undivided, and the income to be assessed in the hands of the estate would only be Rs.1,500/- per month. The entire property is still subject to partition only, as and when the estate is partitioned the liability of paying tax would fall on those successors of Abnash Kaur from whom the revenue could collect tax later...”

15. The ITAT further observed (in Para 45) thus:-

“...It is evident from the records placed before us, and rather stands admitted, that the tax demands in question have already been paid by Smt. Adarsh Kaur for the relevant assessment years. The only argument raised before us, to justify re-opening these demands, is under the garb that the corresponding income ought to have been accounted for in the estate of Abnash Kaur. There is no evidence or arguments brought to bear that in case such re-accounting is done, the tax demands for the relevant assessment years qua the said property would have increased, and some benefit would have accrued to the exchequer. As such, it is evident that this effort of re-accounting, even if successful, may yield no benefit to the exchequer, whatsoever and is merely an academic exercise sans any benefit. It is well settled that this sort of adjudication for academic purposes only, cannot be permitted, rather we are not willing to be persuaded to indulge in such purely academic exercise when judicial institutions of every level, including the Tribunal is seriously burdened with huge backlog of cases. We are in agreement with the finding of the ld. CIT(A) that had the rental income been separately assessed in the hand of the estate then the tax payable would be lower than what has been paid by Smt. Adarsh Kaur Gill because she has other income also than the rental income. Therefore, ld. CIT(A) has found that there is no reduction of tax on account of rent from sub-



letting of properties assessed in the hand of Smt. Adarsh Kaur Gill as an individual.”

16. It appears that in the civil suit No. 2167/1993 instituted by Shri Ajit Singh, *inter alia*, seeking partition, Smt. Adarsh Kaur Gill who had been impleaded as defendant No. 1 had moved an application under Order VII Rule 11 of Code of Civil Procedure taking objection to the claim for rendition of account (in respect of rental income) being time barred. The application was dismissed by the learned Single Judge by order dated 07.04.2008. But, a Division Bench by order dated 27.01.2009 allowed FAO(OS) No. 290/2008 holding the reliefs other than the one praying for partition of the property to be time barred. A copy of judgment dated 30.01.2014 allowing civil appeal No. 8221/2011 of Supreme Court has been filed to contend that the claim of Shri Ajit Singh (since deceased) as one of the legal heirs of Smt. Abnash Kaur for his share in the rental income is still alive. It does appear that in taking the views to the effect quoted above, the CIT (Appeals), and the ITAT, had referred to the rejection of the claim in the civil suit to the extent of rendition of accounts in the rental income. But then, in our view, nothing turns in favour of the appellant in these appeals on account of the judgment rendered by the Supreme Court on 30.01.2014 in the context of the civil suit.

17. The findings of the two appellate forums on the plea respecting the lease deed executed by late Smt. Abnash Kaur in favour of Smt. Adarsh Kaur Gill relate to questions of fact which cannot be agitated in appeals under Section 260-A. Whilst there is no doubt that in terms of Section 168 of the Income Tax Act, the income of the estate of the deceased person is



chargeable to tax in the hands of the executor, in the face of the factual matrix indicating the legal heirs to be locked in litigation in the civil court for their respective claims, the view taken by the CIT (Appeals) and the ITAT cannot be faulted. The rental income accruing to Smt. Adarsh Kaur Gill, may be on account of subletting, cannot be included in the annual letting value of the estate, until and unless the civil suit is decided. Even otherwise, as held by the authorities below, such rental income coming in the hands of Smt. Adarsh Kaur Gill has been duly declared in her returns and assessed accordingly. The appellant claims to be the executor/administrator of the estate. If she makes any payment on account of outstanding liability of the estate towards income tax, or wealth tax, she would be entitled to get suitable adjustment or set off towards such liability in the event of she succeeding in her claim in the civil suit,

18. Thus, no substantial question of law arises. The appeals are dismissed.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

MARCH 17, 2015

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