(2007) 07 DEL CK 0117

In the Delhi High Court

Case No : ITA No. 77 of 2007

Rajeev Tandon APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:
Income Tax Act, 1961 — Section 260A, 68

Citation : (2008) 215 CTR 272 : (2007) 294 ITR 488 : (2007) 164 TAXMAN 271

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Krishan Mahajan, for the Appellant; R.D. Jolly and Vishnu Sharma, for the Respondent

Judgement

Madan B. Lokur, J.—The assessed is aggrieved by an order dated 8th September, 2006 passed by the Income Tax Appellate Tribunal,

Delhi Bench ''C'' in ITA No. 3495(Del)/2004 relevant for the assessment year 2001-02.

2. The assessed claims to have received two gifts from abroad. One gift was from Mr. P.B. Bhardwaj and was of an amount of Rs. 30,04,300/-

while the second gift was from Mr. Surender Khoka of an amount of Rs. 4,61,942/-. The assessed produced documentation to show the

creditworthiness of both the donors but the Assessing Officer took the view that the gifts were bogus and that the assessed had merely routed his

own money through these persons to increase his capital for purchasing a house. The alleged gifts were given to the assessed by persons who were

not related to him in any manner and were not given to him for any particular reason except because he needed the money to purchase a house and

these donors wanted to help him.

3. The assessed preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] before whom he contended that the identity

and creditworthiness of the donors had been established and consequently it was submitted that the Assessing Officer should not have come to the

conclusion that the gifts were bogus. The CIT (A) did not agree with the view canvassed by the assessed and dismissed the appeal. Similarly, the

Tribunal also dismissed the appeal of the assessed and that is how we are required to deal with this appeal u/s 260A of the Income Tax Act, 1961.

4. Having heard learned Counsel for the assessed, we find that the Tribunal considered the entire case law on the subject including several

decisions of the Supreme Court and this Court. Reference has been made to Commissioner of Income Tax, West Bengal II Vs. Durga Prasad

More, wherein the Supreme Court observed that the taxing authorities were entitled to look into the surrounding circumstances to find out the real

and factual position. Similarly, this Court in Sajan Dass and Sons Vs. Commissioner of Income Tax, took the view that not only must the assessed

establish the identity of the donor and his capacity to make the gift, but he must also establish that the amount received by him was in fact a gift.

5. We find from the facts of this case that the two donors had absolutely no connection with the assessed and they made gifts to the assessed only

because he needed money to buy a house and they wanted to help him. It appears to us that this is not only quite unusual but also quite unnatural.

It sounds rather incredible that a complete stranger would want to gift lakhs of rupees to a person only because that person wanted the amount for

purchasing a house. The taxing authorities were entitled to look into the surrounding circumstances, which they did, and came to the conclusion that

the gifts could not be said to be genuine. On these facts, we find no reason why a different view should be taken.

6. We may note that very recently, the Supreme Court dealt with a somewhat similar situation in Commissioner of Income Tax Vs. P.

Mohanakala, . While dealing with Section 68 of the Act, the Supreme Court held that:

(i) There has to be a credit of the amount in the books maintained by the assessed.

(ii) Such credit has to be of a sum during the previous year.

(iii) The assessed offers no Explanation about the nature and source of such credit found in the books, or if the assessed offers an Explanation then,

in the opinion of the Assessing Officer, it is not satisfactory

it is only then that the sum so credited may be charged to income tax as the income of an assessed.

7. The Supreme Court considered the expression ï¿½the assessed offers no Explanationï¿½ and observed that what it means is that the assessed

offers no proper, reasonable and acceptable Explanation in the opinion of the Assessing Officer, formed objectively with reference to the material

available on record.

8. In so far as the present case is concerned, the Explanation offered by the assessed does not appear to be reasonable, much less acceptable.

Consequently, we do not find any error in the view taken by the Tribunal. No substantial question of law arises for consideration. Dismissed.