

IN THE HIGH COURT OF DELHI AT NEW DELHI
ITA No. 1243/2008
COMMISSIONER OF INCOME TAX '.. Appellant
Through: Mr R.D. Jolly, Advocate

Versus

M.N. SECURITIES PVT. LTD '.. Respondent
Through: Mr Shashi M. Kapila, Advocate

CORAM

HON'BLE MR JUSTICE VIKRAMAJIT SEN
HON'BLE MR JUSTICE RAJIV SHAKDHER

O R D E R
20.03.2009

This appeal is filed against the concurrent findings and conclusions of the CIT(A) as well as the ITAT against the Revenue. It is discovered that certain investments aggregating Rs 9,16,50,000/- have been received by the assessee from Sh. Dinesh Jain, his wife Lata Jain along with his three minor sons. The ITAT has applied the decisions of the Hon'ble Supreme Court in CIT vs Orissa Corporation P. Ltd; (1986) 159 ITR 78 as well as the CIT vs Sophia Finance Ltd; (1994) 205 ITR 98 of the Full Bench of the Delhi High Court and other decisions to arrive at the conclusion that the assessee had discharged the burden which lay on him so far as giving an explanation for the credit entries was concerned. Mr Jolly

relies on CIT vs United Commercial and Industrial Co. (P) Ltd; (1991) 187 ITR 596 and CIT vs Precision Finance Pvt Ltd.; (1994) 208 ITR 465 of the High Court of Calcutta. He further relies on two decisions of Division Bench of this Court in Rajeev Tandon vs ACIT; (2007) 294 ITR 488 and CIT vs Anil Kumar; (2007) 292 ITR 552 which dealt with the capacity as well as the identity of persons who had made gifts to the assessee in that case. There is a material difference in the case of gifts. Our attention has also been drawn to Sumati Dayal vs CIT; (1995) 214 ITR 801 where the Lordships have observed that:
'in view of Section 68 of the Income Tax Act, 1961 where any sum is found credited in the books of the assessee for any previous year it 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 a case there is, prima facie, evidence against the assessee, viz., the receipts of money, and if he feels to rebut the said evidence, it can be used against him by holding that it was a receipt of income an income nature.'

In the case in hand summons have been issued to the said persons namely Dinesh Jain and his family members, but their attempts were to delay the proceedings. That is not sufficient

reason to apply section 68 against the assessee.

In view of above, we do not wish to interfere with the concurrent findings of the CIT(A) and ITAT since there is no demonstrable perversity found in them.

Accordingly, the appeal is dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

MARCH 20, 2009

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