

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF FEBRUARY, 2010

PRESENT

THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE N ANANDA

Income Tax Appeal No.253 of 2009

Between:

- 1 THE DIRECTOR OF INCOME TAX
EXEMPTIONS.
C R BUILDING, QUEENS ROAD
BANGALORE
- 2 THE DY. COMMISSIONER OF
INCOME TAX [EXMP]
C R BUILDING, QUEENS ROAD
BANGALORE ... APPELLANTS

[BY SRI ARAVIND, JR. STANDING COUNSEL
FOR SRI M V SESHACHALA, ADV..]

And:

SMT. ARCHANA SATWALEKAR
NO.311-6/1, MANGALYA
RESIDENCY CROSS
BENSON TOWN
BANGALORE - 560 046 ... RESPONDENT

THIS APPEAL IS FILED UNDER SEC. 260-A OF I.T.ACT, 1961
ARISING OUT OF ORDER DATED 31.12.2008 PASSED IN ITA
NO.1195/BANG/2008. FOR THE A.Y. 2005-06 PRAYING TO
FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED
THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER

PASSED BY THE ITAT BANGALORE IN ITA NO.1195/BNG/2008 DATED 31.12.2008 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, D V SHYLENDRA KUMAR.J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the Income Tax Department under section 260-A of the Income Tax Act, 1961 [for short 'the Act'] directed against the order passed by the Income Tax Appellate Tribunal, Bangalore Bench, dated 31.12.2008 [copy at Annexure-A] wherein the Appellate Tribunal had dismissed the appeal of the revenue and confirmed the order passed by the Commissioner of Income Tax [Appeals] as per order dated 13.6.2008 [copy at Annexure-B], who had in turn, modified the assessment order dated 28.12.2007 passed by the assessing officer in respect of the respondent – assessee for the assessment year 2005-06 by adding an income of Rs.11 lakhs to the return as filed by the assessee on the premise that Rs.11 lakhs which was an amount indicated as investment by way of deposit in M/s. Shriram Transport Finance Company Limited and the interest earned

from out of such deposits constituted an unexplained investment on the part of the assessee as the assessee had not responded to a notice issued by the assessing officer under section 142 of the Act.

2. The assessing officer having proceeded to pass a best Judgment assessment order on such premise and that order having been questioned in appeal, the Appellate Commissioner has taken the view that the assessee had plausible/tenable explanation for the investment which according to the assessee was a gift by her parents by name Dr. A K Nagendra and Smt. Anuradha Satwalekar and in terms of the Gift Deed dated 25.5.2004 and therefore there was no occasion to add back this investment as unexplained income of the assessee earned during the accounting period relevant for the assessment year.

3. The appellate commissioner having reversed the order passed by the assessing authority on this aspect of the matter, the revenue had appealed further to the Tribunal,



but without success as the Tribunal in terms of the impugned order has affirmed the finding of the appellate commissioner and dismissed the appeal.

4. It is in such circumstances, the present appeal by the revenue.

5. Appearing on behalf of the appellants, Sri Aravind, learned junior standing counsel for the revenue, submits that the Tribunal has thoroughly misunderstood the scope of the Judgment of the Supreme Court in the case of '**COMMISSIONER OF INCOME TAX vs. SMT. P K NOORJEHAN**' reported in **237 ITR 570**; that it has misapplied the ratio of this Judgment to the facts of the case; that the appellate commissioner as well as the Tribunal have committed an error in accepting that the assessee had properly explained the source of investment when the assessee had not even made good that the amount of Rs. 11 lakhs which was explained as a gift from her



parents had ~~not~~ been shown to have suffered tax in the hands of her parents etc.; that in the circumstances, the appeal warrants admission and further setting aside orders passed by the Tribunal and the appellate commissioner and to restore the order passed by the assessing authority.

6. We have bestowed our consideration to the submissions made and grounds urged in support of the appeal.

7. As to whether the source of investment had been properly explained and even as to whether the parents of the deceased had made a gift of this nature and in turn as to whether they had such savings from out of tax paid money are all questions of facts and does not give rise to a question of law.

8. If the Appellate Commissioner was satisfied about such existence of facts and the Tribunal thought it fit not to



interfere, we are afraid, we cannot, in the jurisdiction under Section 260-A of the Act, interfere in a matter of this nature.

9. Accordingly, this appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

AN/-