

A.F.R.**Reserved on 24.10.2017****Delivered on 09.11.2017****Court No. - 4****Case :- INCOME TAX APPEAL No. - 24 of 2008****Appellant :- Smt.Sheela Ahuja @ Lata Ahuja****Respondent :- The Commissioner Of Income Tax And Another****Counsel for Appellant :- Shakeel Ahmad****Counsel for Respondent :- S.S.C., Krishna Agarawal****Hon'ble Abhinava Upadhya,J.****Hon'ble Ashok Kumar,J.****(Per: Hon'ble Ashok Kumar,J.)**

The present appeal arise from a decision of the Income Tax Appellate Tribunal dated 24.08.2007 passed in I.T.A. No. 63/Lucknow/2007 for the assessment year 2000-01.

The following questions of law have been framed by the assessee which are quoted hereinbelow:-

“(a) Whether under the facts and circumstances of the case, the Tribunal was justified in confirming the order of the Commissioner of Income Tax (Appeals) justifying the issuance of notice under Section 147/148 of the Act?

(b) Whether upon the facts and circumstances of the case, the Tribunal was justified in not considering the vital issue of not issuing the copies of the return with annexures filed by the appellant while observing that the same is an administrative decision, which has to be taken up with the departmental authorities?

(c) Whether upon the facts and circumstances of the case, the Tribunal was justified in holding that the appellant should have filed a revised return after receiving the notice under Section 148 of the Act?

(d) Whether upon the facts and circumstances of the case, the finding of the Tribunal is correct in justifying the notice under Section 148 of the Act by holding that there were no assessment proceedings pending before the Assessing Officer after 31.03.2003?

(e) Whether upon the facts and circumstances of the case, the confirmation of the additions regarding the alleged unexplained gift and alleged unexplained credit in bank account is correct in law?”

Heard Sri Shakeel Ahmad, learned counsel for the appellant

and Sri Krishna Agarwal, learned counsel appeared on behalf of the Revenue.

The brief facts of the case are that in the assessment year 2000-01 the appellant has filed her return. During the pendency of the return a notice dated 28.11.2003 has been issued under Section 148 of the Income Tax Act, 1961, hereinafter referred as 'The Act'. The reasons for issuance of the notice under Section 148 of the Act was that the appellant had not shown true and fair as well as correct facts of her income and certain concealment of income was noticed on account of the information which has been received by the Directorate of Income Tax (Investigation).

According to the said information, it is found that the appellant has received the bogus gift amounting to sum of Rs. 3,00,000/- which, in fact, was the income of the appellant introduced in her funds in shape of the gifts.

In response to the notice issued under Section 148, the appellant has informed, vide letter dated 12.01.2004, that her return which had already been filed on 15.05.2000 be treated as response to the notice.

After the said reply notices under Sections 142(1) and 143(2) are issued along with the detailed questionnaire. After discussion with the authorised representative about the said amount of Rs. 3,00,000/-, which has been transferred through cheque from the account of two persons of Co-operative Bank, Kanpur, the assessing authority found no satisfactory reply and he has noticed that the appellant given a formal reply namely that notice under Section 143(2) cannot be issued because the time limit for scrutiny has already been expired in the month of March, 2002. The assessing

authority has proceeded on the basis of reply and the information which has been gathered during the investigation and he arrived at the conclusion that the said amount of Rs. 3,00,000/- has been received by the appellant through cheques from two persons who operated the bank account of the appellant. The relevant extract of the conclusion of the assessing authority is quoted herein below.

“ From the perusal of bank a/c of M.K. Shukla & R.A. Shukla as received from Directorate of Income-tax (Inv.) Kanpur, it is clear that the persons are habitual donors and had given entries to so many persons. The assessee was not able to produce these persons for confirmation of gift of Rs. 3,00,000/- and the creditworthiness of the donors could not be proved by the assessee. Thus the income of Rs. 3,00,000/- is proved to be income of assessee. Now coming to the details of bank statement of the assessee for the period under consideration, it is noticed that following credits were made in this account:

1) 05.08.199	by clearing	Ch. No. 304637	Rs. 2,00,000/-
2) 05.08.1999	by clearing	Ch. No. 720298	Rs. 1,00,000/-
3) 01.09.1999	by transfer	CC2507 -	Rs. 1,00,000/-
4) 21.09.1999	by transfer	-	Rs. 1,00,000/-
5) 10.03.2000	by cash	-	Rs. 9,000/-
6) 10.03.2000	by cash	-	Rs. 1,000/-

since no evidences of above credits have been provided by the assessee, the sum of Rs. 5,10,000/- as detailed above is being treated as income of the assessee.

The assessee never came forward to prove the above transactions hence she concealed true and fair facts of her income and is to be penalized as per provisions contained in Section 271(1)(c) of the Income Tax Act, 1961. For this purpose penalty proceedings are separately initiated.

On the basis of above facts, the income of assessee is computed as under:

<i>Unexplained gift</i>	<i>Rs. 3,00,000/-</i>
<i>Other unexplained credits in bank a/c</i>	<i><u>Rs. 5,10,000/-</u></i>
<i><u>Total income</u></i>	<i><u>Rs. 8,10,000/-</u></i>

An appeal has been filed before the Commissioner of Income Tax (Appeals) by the appellant. The Commissioner of Income Tax (Appeals) has dismissed the appeal by affirming the order passed by the Assessing Authority by observing that the appellant has failed to prove the genuineness of the credits.

The C.I.T. (Appeals) has further observed that the appellant has not offered any explanation regarding the credits in the bank account. He has further observed that on the other hand, the Assessing Officer has proved that the credits were not genuine, though, he is not supposed to prove it as per law.

Aggrieved by the order of the CIT (Appeals) the appeal has been preferred by the appellant before the ITAT.

The appellant has reiterated the same submissions as had been submitted before the CIT (Appeals). The Tribunal has decided the appeal by considering the submissions and objections of the appellant and as such has held that the initiation of the proceedings under Section 148 is fully justified and the submission has been properly considered by the CIT (Appeals) and discussed in his order particularly in para 10.

The ITAT has also observed that the assessing authority was fully justified in initiating the proceedings under Section 148 of the Act and the appellant/assessee should have responded to the notice issued by the Assessing Officer under Section 148 either by filing the revised return or should have objected the proceedings.

In view of the aforesaid, the Tribunal has held that no interference is called for in the order of the CIT (Appeals). The argument with regard to the permission to the assessee for inspection of material, the Tribunal has observed that the fact reveals that a gift of Rs. 3,00,000/- has been received but the same has not been disclosed by the assessee and since the intimation from the investigation unit is an administrative in nature therefore the same cannot be permitted to be demonstrated to the assessee. The claim of the appellant/ assessee is that the inspection of record is essential for

disposal of the case has been rejected. At the end the Tribunal has held that since the assessee has failed to produce the donors as well as the creditworthiness of the donors whereas various opportunities were allowed to the appellant, which the appellant failed to furnish any explanation, there is no option but to confirm the order passed by the authorities below.

We have considered the submissions of the learned counsel for the parties and after perusal of the orders passed by the assessing authority, order of the CIT (Appeals) and the impugned order of the Tribunal, we find no illegality in the orders of the authorities below as well as in the impugned order of the Tribunal and since the assessee/appellant has failed to prove the creditworthiness of the donors as well as failed to place any evidence in support of her contention in respect of the issue which are raised before the Tribunal therefore we find no error in the order of the Tribunal. The order of the ITAT therefore is confirmed and the appeal filed by the appellant is dismissed as the ITAT has recorded categorical finding of facts. No question in law involved in the present appeal. The appeal therefore is dismissed.

Order Date :- 09.11.2017
SK Srivastava

(Ashok Kumar,J.)

(Abhinava Upadhya,J.)