IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1429/2006

SUNIL DUA ..... Appellant
Through Mr.Ram Avtar Bansal, Adv.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr. R.D. Jolly, Adv.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S.L. BHAYANA

O R D E R
30.01.2008

The Assessee is aggrieved by an order dated 24th February, 2006 passed by
the Income Tax Appellate Tribunal, Delhi Bench ?D? in IT(SS) A. No. 75/Del/2001
relevant for the block assessment period 1st April, 1987 to 16th January, 1998.
Three issues have been raised by learned counsel for the Assessee. It is
firstly contended that the warrant of authorization drawn up in favour of the
Additional Director of Income Tax was not valid and, therefore, the search under
Section 132 of the Income Tax Act, 1961 (for short the Act) was itself illegal
and invalid.

We have heard learned counsel for the Assessee in this regard and find that the expression ?Deputy Director? who is admittedly competent to issue a warrant of authorization includes an Additional Director, in terms of the Notification No. SO 3862 dated 6th November, 1979 issued by the Central Board of Direct Taxes. That being the position, all the authorities below have rightly held that the Additional Director was competent enough to issue the warrant of authorization. There is no challenge raised by the Assessee to the validity of the Notification dated 6th November, 1979 and, therefore, we have to proceed on the basis of its correctness.

Under the circumstances, the first contention of learned counsel for the Revenue does not merit any serious consideration.

The second contention of learned counsel for the Assessee is that possession of jewellery worth Rs.2,96,800/- was duly explained by the Assessee.

It is submitted that out of the jewellery seized, 500 gms. were received by the wife of the Assessee as a result of a Will dated 25th May, 1993 made by the grandmother of the wife of the Assessee.

None of the authorities below have accepted the genuineness of the Will, which has been placed before us at page 28 of the paper book.

We find that the executant of the Will was 95 years of age and it is nowhere mentioned that she is in a sound physical and mental condition to understand the contents of the Will. Moreover, the language used in the Will clearly suggests that it has been made only for the purposes of showing that 500 gms. of jewellery was bequeathed in favour of the wife of the Assessee. The executant of the Will has signed in Gurmukhi while the Will is written in Hindi and there is nothing to suggest that she has understood the contents of the Will or that its contents have been explained to her.

We do not find any fallacy in the view adopted by any of the Departmental Authorities whereby the genuineness of the Will has not been accepted.

The third contention of learned counsel for the Assessee is that the Revenue had wrongly included a sum of Rs.30,000/- as unexplained income of the wife of the Assessee on account of deposits in Food Corporation of India and Unit Trust of India.

It has been shown to us that the Assessee was married for more than 10 years and it is quite possible that out of household expenses, the Assessee?s wife could have saved the amount of Rs.30,000/-, which is not

a huge amount.

We are of the view that the ground reality has been completely overlooked by the authorities below and it cannot be said that the amount of Rs.30,000/- is not explained by the Assessee. The order of the Tribunal, to this extent, is set aside.

Subject to our conclusion in respect of the third contention raised by the Assessee, in our opinion, no substantial question of law arises. The appeal is partly allowed.

MADAN B. LOKUR, J

S.L. BHAYANA, J
JANUARY 30, 2008
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