

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.05.2012

+ **ITA 161/2011**

JASJIWAN KAUR

... Appellant

versus

ITO

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Sonia Mathur

For the Respondent : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal by the assessee pertains to the assessment year 2005-2006 and it arises out of ITA 283/Del/2009 decided on 06.08.2010 by the Income Tax Appellate Tribunal. The questions which have been framed for the consideration of this Court are as under:-

“(i) Whether on the facts of the present case, Tribunal was justified in law in upholding the addition of Rs.8,28,375/- made by Assessing Officer under Section 56(2)(v) of the Act in disregard of the fact that the amount of loan was subsequently paid/received by assessee?

(ii) Whether Tribunal was justified in law in upholding the addition by misinterpreting the provisions contained in Section 56(2)(v) of the Act and by disregarding that an admitted amount of “loan” could not be brought to tax in the hands of assessee as “Income from other sources”?”

2. During the course of arguments, the learned counsel for the appellant drew our attention to the fact that the appellant had mentioned in paragraph 3 of this appeal itself that the amount that was taken as loan had, in fact, been repaid.

Paragraph 3 of the appeal reads as under:-

“3. That Id. Tribunal has failed to appreciate that the amount of Rs.7.13 lacs was repaid by assessee to Smt Kewal Rattan on 25.05.2006. As regards the other amount of Rs.2.35 lacs received from Smt J Gurmeet Singh, an amount of Rs.1.15 lacs paid to assessee on 30.11.2004 was only repayment of the amount which was paid by assessee towards the electricity charges of Smt Gurmeet Singh by way of a draft made from the account No. SB 7924 held by assessee in Punjab and Sindh Bank. Consequentially no addition on this account was called for.”

3. We find from the factual position with regard to the addition of ₹ 8,28,375/- made under Section 56(2)(v) of the Income Tax Act, 1961 (hereinafter referred to as ‘the said Act’) that, initially, the Assessing Officer had made an addition of ₹ 27,20,375/- under the head of ‘income from other sources’ with regard to the alleged loans taken by the assessee. At that point of time, the Assessing Officer had not required the assessee to produce any evidence with regard to repayment of the alleged loan amount. It is the case of the learned

counsel for the appellant/ assessee before us that the loan amount had been repaid prior to the passing of the assessment order. Since the Assessing Officer had not required the assessee to place on record the evidence in respect thereof, no such evidence had been produced before the Assessing Officer. After the assessment order was passed, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who substantially accepted the plea of the assessee and deleted an amount of ₹ 26,40,375/- from the said amount of ₹ 27,20,375/- leaving an amount of ₹ 80,000/- as being the amount of addition sustained under the head of 'income from other sources'. Since the amount was small, the assessee did not prefer any appeal before the Income Tax Appellate Tribunal in respect of the order passed by the Commissioner of Income Tax (Appeals). However, the revenue filed an appeal before the Income Tax Appellate Tribunal. The revenue's appeal was partially allowed by enhancing the addition of ₹ 80,000/- to ₹ 9,48,375/-.

4. It appears from paragraph 14 of the impugned order passed by the Income Tax Appellate Tribunal that the addition has primarily been made on the ground that the assessee could not show that the loans had, in fact, been repaid by the assessee. Another aspect of the matter which was considered by the Tribunal

was that since no interest was paid on the purported loans, the said amounts were to be regarded as payments received without consideration.

5. We feel that the assessee's assertion that she had repaid the loans ought to be examined by the Tribunal. Since the material with regard to the repayment of the loan was not before the Tribunal in the circumstances mentioned above, we feel that it would be appropriate if the impugned order is set aside and the matter is remitted to the Tribunal to consider the issue afresh. Liberty is, however, granted to the assessee to file/ produce evidence of repayment of the said loans. The same, if filed/ produced by the assessee, shall be considered by the Tribunal and an appropriate order in accordance with law, after considering the entire facts and circumstances of the case, would be passed by the Tribunal.

6. With these directions, the matter is remitted to the Tribunal. In the first instance, the parties shall appear before the Tribunal on 10.07.2012.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 30, 2012
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