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ITEM NO.13 COURT NO.1 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS.4653-4655 OF 2007

C.I.T., CHENNAI Appellant (s)

VERSUS

P.R. GANAPATHY & ANR. Respondent(s)

With Civil Appeal No.5528 of 2007

Date: 12/09/2012 These Appeals were called on for hearing today.

CORAM :
HON’BLE THE CHIEF JUSTICE
HON’BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. Rahul Kaushik,Adv.
Mr. F.A. Ayyubi,adv.
Ms. A. Subhashini,Adv.
Ms. Anil Katiyar,Adv.
for Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. Pratap Venugopal,Adv.
Ms. Namrata Sood,Adv.
Mr. Gaurav Nair,Adv.
for M/s. K.J. John & Co.,Advs.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

The civil appeals are allowed with no order as to costs.

[T.I. Rajput] [Indu Satija]
A.R.-cum-P.S. Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 4653-4655 OF 2007
Commissioner of Income Tax, Chennai ... Appellant(s)
Versus
P.R. Ganapathy & Anr. ...Respondent(s)
With Civil Appeal No. 5528 of 2007

O R D E R

Civil Appeal Nos. 4653-4655 of 2007
Heard learned counsel on both sides.
These civil appeals filed by the Department concern Assessment Years 1994-1995 and 1995-1996.
P.R. Ganapathy, Respondent No. 1, claims to have received

purported gift from two NRIs, viz., T. Chandra and Pushpa Rani in the sum of Singapore Dollars 2,14,000/- and 1,70,000/- respectively. Respondent No. 2 - T. Kannaki, received purported gift in the sum of Singapore Dollars 1,70,000/-.

On going through the records, we find that an important query was raised by the Department as to whether these two donors had the financial capacity to make the gift(s) in favour of the assessees herein. This query has not at all been answered by the Income Tax Appellate Tribunal ['ITAT', for short]. The ITAT merely states that the two donors were assessed to tax at Singapore. Being assessed at Singapore, does not answer the query raised by the Department.

In this case, the Department has invoked Section 68 of the Income Tax Act, 1961. The burden is on the assessees to show that the amount received by

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purported gift(s) from the two donors was a "gift" in the legal sense. Assessees have not led evidence to show whether the alleged donors had adequate funds in their respective accounts to make these purported gift(s) in Singapore Dollars, which is almost running into more than five lakhs. This question has also not been considered by the High Court, which has summarily dismissed the appeal. However, it is contended by the learned counsel for the assessees that no opportunity was given to prove their case.

In the circumstances, we set aside the impugned Orders of the High Court and the ITAT. We direct the ITAT to examine this question in the light of what is stated above. It would be open to the assessees to produce relevant evidence in the light of the judgment of this Court in the case of Commissioner of Income Tax vs. P. Mohanakala, reported in 2007 (6) SCC 21.

Accordingly, the civil appeals filed by the Department are allowed with no order as to costs.

Civil Appeal No. 5528 of 2007:

In terms of the afore-stated Order passed in Civil Appeal Nos. 4653-4655 of 2007, this civil appeal filed by the Department is allowed with no order as to costs.

....CJI
[S.H. KAPADIA]

....J.
[MADAN B. LOKUR]

New Delhi,
September 12, 2012.