IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.ANo. 267 of 2006.

Date of decision : January 19, 2006.

The Commissioner of Income Tax, Faridabad

.....Appellant

through Mr.Yogesh Putney, Advocate

v.

R.S.Aggarwal,Prop.Agro Engg. Works, 36, DLF Indl.Area, Faridabad.

.....Respondent

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

***

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

***

By way of the present appeal, the revenue impugns the order, dated 28.2.2005, passed by the Income Tax Appellate Tribunal, Delhi Bench`B', New Delhi, upholding the order, dated 27.6.2003, passed by the Commissioner of Income Tax (Appeals), Faridabad.

On the basis of information, received from the Additional Director of Income Tax (Investigation), Faridabad that the assessee had received a gift of Rs.5 lacs from one Sameer Mahajan from his NRE account No.99 with the New Bank of India, Defence Colony, New Delhi, a notice, dated 28.3.1997, was issued, under Section 148 of the Income Tax

Act (for short herein after referred to as "the Act"). However, without examining the donor, the Assessing Officer, vide order dated 2.2.1999, dropped proceedings, accepting the gift to be genuine. The Commissioner of Income Tax, Rohtak, vide order dated 16.7.1999, passed under Section 263 of the Act, set aside the order of the Assessing Officer and directed to frame the order afresh, after following the procedure, in accordance with law on the ground that during proceedings, before the Enforcement Directorate, Sameer Mahajan had admitted that the gifts were bogus and were made for a consideration of 12% over and above the gifted amount. He also admitted that he had charged Rs.112/- for every Rs.100/- shown as gift. Consequently, the Assessing Officer directed the assessee to show the source of Rs.5.60 lacs, paid to Sameer Mahajan.

The assessee prayed before the Assessing Officer that as Sameer Mahajan had not been examined by the Income Tax Department or cross-examined by the assessee, a notice be issued to Sameer Mahajan to attend proceedings so as to enable the assessee to cross-examine him. This request was declined and the Assessing Officer treated the amount of Rs.5.60 lacs as income of the assessee from undisclosed sources and completed the assessment on 28.3.2002 under Sections 143(3)/147/263 of the Act.

The respondent, namely, the assessee thereafter filed an appeal before the Commissioner of Income Tax (Appeals), Faridabad. The Commissioner of Income Tax(Appeals), vide order dated 27.6.2003, deleted the addition of Rs.5.60 lacs and held that the Assessing Officer erred in relying upon the statement of Sameer Mahajan, made before the enforcement authorities. It was also held that the Assessing Officer failed

to take into consideration the directions, issued by the Commissioner of Income Tax, Rohtak, in order, dated 16.7.1999, to summon and examine the donor and to examine the NRE account, maintained by the donor. It was also held that as the assessee had not been provided an opportunity to cross-examine the donor, the addition of a sum of Rs.5.60 lacs to his income, was unwarranted.

The revenue thereafter filed an appeal before the Tribunal. The said appeal was dismissed, hence, the present appeal.

Counsel for the appellant contends that the question of law, which arises for consideration, is as follows :-

> "Whether the Hon'ble ITAT on the facts and circumstances of the case, was right in law in deleting the addition of Rs.5,60,000/- by adducing wrong conclusion from the order, passed by CIT Rohtak, u/s 263 and by ignoring the onus, which lies on the part of the assessee to prove the genuineness of the gift."

Counsel for the appellant contends that the Commissioner of Income Tax (Appeals), as also the Tribunal held that the Assessing Officer failed to comply with the directions, issued by the Commissioner of Income Tax, Rohtak, directing him to summon and examine the donor and to examine his NRE account. It is contended that the Commissioner of Income Tax, Rohtak did not issue any such directions and, therefore, the Commissioner of Income Tax (Appeals), as also the Tribunal committed an error of law.

We have heard learned counsel for the appellant and perused the paper book.

The question of law, as framed, in our considered opinion, is a simple question of fact. Whether the Commissioner of Income Tax, Rohtak, in his order, dated 16.7.1999, passed under Section 263 of the Act, issued directions to summon Sameer Mahajan as a donor, and verify his NRE account, in our considered opinion, are wholly irrelevant. A perusal of the impugned order reveals that the Assessing Officer added Rs.5.60 lacs to the assessee's income, on the basis of a statement, made by Sameer Mahajan, before the Enforcement Authorities. Admittedly, and as held by the Commissioner of Income Tax (Appeals), as also by the Tribunal, the Assessing Officer did not issue any notice to Sameer Mahajan to appear personally so as to provide an opportunity to the assessee to cross-examine him. The assessee was, thus, deprived of an opportunity to confront the donor, namely, Sameer Mahajan. The incriminating statement, made before the enforcement authorities, could have been read against the assessee after affording him an opportunity to confront the author of the statement. The order of the Assessing Officer, in our considered opinion, was passed in gross disregard of the principles of natural justice and, therefore, was rightly set aside by the Commissioner of Income Tax (Appeals), as also by the Tribunal. No question of law, much less a substantial question of law, arises for consideration. Consequently, the present appeal is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 19, 2007.
`kk'