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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.03.2025

+ **ITA 957/2018**

ROHIT GANDHI

.....Appellant

Through: Ms. Rano Jain, Mr. Venketesh
Chaurasia & Ms. Sakshi Rustagi,
Advs.

Versus

INCOME TAX OFFICER

.....Respondent

Through: Mr. Sunil Agarwal, Mr. Shivansh B.
Pandya, Mr. Viplav Acharya, Ms.
Priya Sarkar & Mr. Utkarsh Tiwari,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The appellant [Assessee] has filed the present appeal impugning an order dated 23.03.2018 [**impugned order**] passed by the Income Tax Appellate Tribunal [ITAT] in ITA No.6798/Del/2013 in respect of assessment year [AY] 2008-09. The impugned order is the common order passed by the learned ITAT in ITA No.6798/Del/2013, which was preferred by the Assessee, as well as ITA No.1130/Del/2014 which was preferred by the Revenue against an order dated 11.11.2013 passed by the Commissioner of Income Tax (Appeals)-IV, New Delhi [CIT(A)]. Whilst the learned ITAT partly allowed the Assessee's appeal, the Revenue's appeal was dismissed. The Revenue has not preferred any appeal against the impugned



order to the extent that its appeal was dismissed; the present appeal is confined to the impugned order passed in respect of the Assessee's appeal.

QUESTION OF LAW

2. The present appeal was admitted on the following question of law on 20.02.2025:

“A. Whether in facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in sustaining the addition of INR 34,67,900/- despite the assessee discharging the onus cast upon him to prove the gifts received by him?”

PREFATORY FACTS

3. The Assessee is an individual and Director of a company named M/s Cue Apparel Private Limited. He is also one of the constituent partners of the firm named M/s R&R Arts, which deals with works of art.

4. A search and seizure operation under Section 132 of the Income Tax Act, 1961 [Act] was carried out at the residential premises of the Assessee. Thereafter, on 15.12.2009, the Assessing Officer [AO] passed an assessment order under Section 143(3) of the Act assessing the Assessee's income at ₹1,44,62,994/- as against the income of ₹18,40,524/- declared by the Assessee in his return of income filed under Section 139 of the Act.

5. The addition made included a sum of ₹1,00,00,000/- (Rupees One Crore Only) on account of undisclosed investments in works of art (paintings). The said addition was premised on the estimated value of certain works of arts which were found at the Assessee's residential premises during the search proceedings and which the Assessee claimed were gifted to him.



6. The tabular statement setting out the description of the works of art as set out in the assessment order, is reproduced below:

“SI No.	Name of the Artist	Size of Painting	Price (RS.)
1	Shibu Natesan	40” x 60”	30 lacs
2	Bhupen Kakar	10” x 9”	10 lacs
3	F N Souza	10” x 9”	10 lacs
4	Manjit Bawa	10” x 10”	30 lacs
5	Jogen Chowdhary	5” x 5”	10 lacs
6	Arpana Caur	8” x 10”	10 lacs
	TOTAL		1 crore”

7. The Assessee claimed that the said works of art were his personal collections and not the inventory of the firm. He also claimed that the said works of art –except the painting by Ms Caur which was gifted to his mother – were gifted to him by the respective artists. In support of his contention, the Assessee had also produced letters signed by the said artists except in respect of a sketch by Sh. Manjit Bawa, who had expired. In respect of the art of work gifted by Mr. Manjit Bawa, the information could not be provided as he has since expired. The fact that the said work of art had been gifted by Sh. Manjit Bawa to the Assessee was confirmed in writing by the daughter of Sh. Manjit Bawa.

8. In the aforesaid view, the Assessee claimed that he had established (i) the identity of the donor; (ii) the genuineness of the transaction; and, (iii) the creditworthiness of the donor.

9. The AO accepted that the letters furnished by the artists identified that the artists were the donors. But he neither accepted the creditworthiness of



the donors, nor that the works were genuine. Accordingly, the AO made an addition of ₹1,00,00,000/-.

10. We find that the assessment order does not indicate the reasons or the basis of quantifying the addition to ₹1,00,00,000/-. The assessment order is bereft of any basis whatsoever for arriving at such a figure.

11. Aggrieved by the additions made in the assessment order, the Assessee preferred an appeal before the learned CIT(A).

12. The learned CIT(A) faulted the AO for not accepting the creditworthiness of the donors. The artists in question had gifted their own artworks and therefore their ability to do so could not be doubted. However, the learned CIT(A) did not accept that the genuineness of the gifts was proved beyond doubt. Accordingly, the learned CIT(A) upheld the decision of the AO of making an addition in respect of works of art (six in numbers). However, the learned CIT(A) was of the view that the estimate of values of the said works of art was “at a higher side”. He accordingly reduced the addition to a sum of ₹58,00,100/- as under:

“S.No.	Artist	Size	Amount(Rs)
1.	Shibu Natesan	40” x 60”	12,00,000
2.	Bhupen Kakar	10” x 9”	10,00,000
3.	F N Souza	10” x 9”	10,00,000
4.	Manjit Bawa	10” x 10”	12,00,000
5.	Jogen Choudhary	5” x 5”	6,00,000
6.	Arpana Caur	8” x 10”	8,00,100
	Total		58,00,100”

13. As noted above, the Assessee appealed the said decision before the learned ITAT. The learned ITAT did not interfere with the said decision. The learned ITAT reasoned that the artists in question have no business



interest with the Assessee and therefore the question of gifting of paintings to the Assessee is out of question. The learned ITAT proceeded on the basis that the relationship of donor and donee was not proved beyond doubt.

REASONS & CONCLUSION

14. At the outset, it is noted that the quantum of addition made by the AO and as upheld by the learned CIT(A) in respect of works of art found during the search proceedings, is not based on any valuation or cogent evidence as to their market value. Neither the AO nor any other authority had made any reference to the Valuation Officer or obtained the value of the said artworks from any independent valuer. On this ground alone, the additions made by the AO and as upheld by other authorities is unsustainable. It is well settled that additions cannot be made on unfounded surmises.

15. In *Esthuri Aswathiah v. Commissioner of Income Tax, Mysore* : (1967) 66 ITR 478, the Supreme Court faulted the learned ITAT in estimating the Assessee's income from undisclosed sources without any evidence and observed as under:

“6. The function of the Tribunal in hearing an appeal is purely judicial. It is under a duty to decide all questions of fact and law raised in the appeal before it : for that purpose it must consider whether on the materials relied upon by the assessee his plea is made out. Conclusive proof of the claim is not predicated : the Tribunal may act upon probabilities, and presumptions may supply gaps in the evidence which may not on account of delay or the nature of the transactions or for other reasons be supplied from independent sources. But the Tribunal cannot make arbitrary decisions : it cannot found its judgment on conjectures, surmises or speculation. Between the claims of the public revenue and of the tax payers, the



Tribunal must maintain a judicial balance. The order passed by the Tribunal without recording any reasons in support of the estimate of unaccounted income cannot, therefore, be sustained.

16. We also consider it apposite to refer to the oft quoted judgement of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal : (1954) 26 ITR 775* and take note of the following observations, which although made in a different context, do set out the principle that it is impermissible for the Income Tax Authorities to base their decision purely on guess work:

“9...As regards the second contention, we are in entire agreement with the learned Solicitor General when he says that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of Section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all..”

17. The Assessee was required to satisfy the three conditions, that are (i) the identity of the donor; (ii) the creditworthiness of the donor; and, (iii) the genuineness of the gifts/transaction. According to the Assessee, he had satisfied all the three conditions for establishing that the works of art in question had been gifted to him by the respective artists. Concededly, the learned CIT(A) and the learned ITAT had accepted that two of the aforesaid three conditions, namely, identity of the donors and the creditworthiness of



the donors was established. However, the said authorities found that the Assessee had not established that the works of art were genuine gifts.

18. In view of the above, the only question that remains to be examined is whether the Assessee had established the genuineness of the transaction.

19. In his support, the Assessee had produced letters of confirmation by the artists and in one case, by the daughter of the deceased artist. The said letters confirmed that all the works in question, except one, were gifted to the Assessee and the work by Ms Arpana Caur was gifted to the Assessee's mother.

20. It is also material to note that the description on some of the works of art also clearly indicate that the same were gifted.

21. The sketch made by Mr. Manjit Bawa clearly mentions below his signature that it was "To Rohit/Rahul". Clearly if the said sketch was to be included as an inventory for sale, the same would not have carried any such notation on the face of the work. This has been completely disregarded by the concerned authorities.

22. It is also material to note that the work of art by Sh. Jogen Choudhary is a Diwali Card of a size 5"x5". He also confirmed in his letter that the said work of art was sent as a Diwali Card to his friend Rohit Gandhi.

23. There is no material for the AO or the learned CIT(A) to doubt the said confirmation.

24. Similarly, Sh. Shibu Natesan sent a letter dated 16.12.2005 intimating the Assessee that one of his paintings "the Other Side" had won the Triennale Award 2005. The Lalit Kala Akademi had made certain prints of



the said artwork. And he was gifting one of the prints of the said artwork to the Assessee as an expression of his gratitude for the support lent by the Assessee to the said artist.

25. The said letter also could not be disregarded without any cogent reason.

26. In the case of the art work of Sh. Bhupen Kakka, he had furnished a letter clearly indicating that the Assessee was a close friend and was a follower of Lord Krishna and therefore he is gifting his work of art which was not for sale. Similarly, Mr F.N. Souza also certified that his work of art was gifted to the petitioner.

27. In respect of work of art made by Ms. Arpana Kaur, she had issued a certificate clearly indicating that the same was a gift to Mrs Shashi Gandhi.

28. In addition, the Assessee had stated that he knew the artists in question for several years and some of them are also his friends/acquaintances of his mother. There is no material to controvert this assertion as well.

29. In the given circumstances, where the donors have confirmed that they have gifted the works of art to the Assessee and that they are the friends and acquaintances of the Assessee; there is also no reason to doubt the genuineness of the transactions.

30. Any addition to the income of the Assessee is required to be based on cogent material and not on mere surmises and conjectures. It is also material to record that Assessee is a constituent partner of a firm that is engaged in running an art gallery. This also clearly establishes that the Assessee would



be acquainted with the artists in question. There is no reason to suspect that they have not given their personal works of art as gifts to the Assessee.

31. In *Omar Salay Mohd. Sait v. Commissioner of Income Tax, Madras* : (1959) 37 ITR 151, the Supreme Court observed as under:

“33.On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court.”

32. We find that the finding of the AO, learned CIT(A) and ITAT are based on surmises and completely unjustified and thus are liable to be set aside.

33. In view of the above, the question of law as framed in the present appeal is answered in favour of the Assessee and against the Revenue.

34. The appeal is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 28, 2025

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