

## Submission of affidavit of gift received from spouse didn't explain source of investments found in search

**Summary – The High Court of Patna in a recent case of Hemant Kumar Ghosh, (the Assessee) held that where during search and seizure, investments were found in name of assessee, presumption could only be that they formed part of unaccounted income of assessee and mere fact of producing affidavit of close relatives would not be sufficient explanation**

### Facts

- During the course of search and seizure under section 132 certain facts came to light and notice under section 158BC was issued.
- During the assessment proceedings, the assessee claimed to have received certain gifts in cash from his mother and wife. The affidavits of wife and mother were also produced.
- However, the Assessing Officer was not satisfied with the aforesaid affidavits, and treated said amount as undisclosed income of the assessee for the relevant assessment years.
- The appeal filed to the Tribunal was also rejected.
- On appeal to the High Court:

### Held

- From a perusal of section 132 coupled with section 69, it is evident that it is for the assessee to offer satisfactory explanation as to the source of income with regard to any investments found to have been made by him and if the explanation offered is not satisfactory, then it is open to the Assessing Officer to deem the same to be the income of the assessee for such financial year. In *Sarogi Credit Corpn. v. CIT* [\[1976\] 103 ITR 344](#), this Court had clearly held that if an entry stands in the name of the assessee himself, the burden is undoubtedly on him to prove satisfactorily the nature and source of that entry and to show that it does not constitute a part of his income liable to tax and even if the entries are in the name of the wife and children or any near relation or an employee of the assessee, the burden would be upon the assessee to explain satisfactorily the nature and source of that entry. It is only when the entry stands in the name of a 3rd party who is an independent person and not close relation or connected with the assessee, then the burden upon the assessee is only to establish identity of the said 3rd party and place such other evidence *prima facie*, before the Assessing Officer that the entry is not fictitious and then the initial burden upon the assessee would be treated to have been duly discharged and it would be upon the Assessing Officer to show that the investment is to be treated as an unexplained one.
- In the instant matter undoubtedly the investment having been found to be in the name of the assessee and assessee alone, that too in the course of search and seizure under section 132, the presumption can only be that they form part of unaccounted income of the assessee and the mere

fact of producing an affidavit by the wife or mother of the assessee may not be treated by the Assessing Officer as sufficient explanation and neither the Assessing Officer nor the Tribunal has found the same to establish the genuineness of the two transactions. The said findings are purely findings of fact which is in the domain of the Assessing Officer and the Tribunal and it cannot be said that the findings are either based upon no material and are perverse. Such findings are the natural presumption to be drawn from the nature of evidence that the assessee had produced before the Assessing Officer.

- No question of law much less substantial question of law arises from the order of the Tribunal.