

Commissioner Of Income Tax vs Ms.Uma Gupta

ID: F2J-C-2685 **Court:** Punjab-Haryana High Court

Case: ITA No. 168 of 2008 1 **Date:** 2008-08-29

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Punjab-Haryana High Court Commissioner Of Income Tax vs Ms.Uma Gupta on 29 August, 2008 Author: Ajay Tewari Bench: Adarsh Kumar Goel, Ajay Tewari ITA No. 168 of 2008 1

In the High Court of Punjab and Haryana at Chandigarh

ITA No. 168 of 2008 Date of Decision: 29.08.2008

Commissioner of Income Tax, Chandigarh-II Appellant

Versus

Ms.Uma Gupta Respondent

Coram: Hon'ble Mr. Justice Adarsh Kumar Goel Hon'ble Mr. Justice Ajay Tewari

1.Whether Reporters of local papers 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?

Present: Ms. Urvashi Dhugga, Advocate for the appellant. **** Ajay Tewari, J.

This is an appeal by the revenue against the order of Income tax Appellate Tribunal, Chandigarh Bench-B (hereinafter referred to as 'the Tribunal') in ITA No. 765/CHANDI/2006 dated 31.07.2007, proposing the following substantial questions of law:-

1. "Whether on the facts and the circumstances of the case and in law, the order of the ITAT is perverse as it has failed to appreciate that the Assessing Officer has made the addition on the basis of evidence collected and declaration of such income by the father-in-law of the assessee in his own hands would not preclude the Assessing Officer from making the assessment in the hands of the 'right person' i.e. the assessee, regarding which sufficient evidentiary material is available?

2. Whether on the facts and circumstances of the case and in law, the ITAT was correct in holding that the Assessing ITA No. 168 of 2008 2 Officer has accepted the fixed deposits as belonging to Shri Tarsem Gupta simply on the premise that the Assessing Officer had accepted the income from the concerned FDRs shown by Sh.Tarsem Gupta in his return. The ITAT failed to appreciate the fact that the Assessing Officer could not have reduced the income of Sh. Tarsem Gupta."

On the basis of an information received, notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued to the assessee and her family members on the ground that the family owns many FDRs made in cash which had been claimed by the father-in- law of the assessee as having been made from his resources, albeit in the name of the assessee. Having not found the reply satisfactory, notice under Section 148 of the Act was issued and subsequently the Assessing Officer added the said income in the hands of the assessee. In appeal, the Appellate Authority reversed the finding which was carried by the revenue by way of second appeal to the Tribunal. The Tribunal rejected the same holding that the Assessing Officer while framing the assessment of the father-in-law of the assessee, accepted that the said income was his and had considered the same in his hands and, therefore, there was no justification for considering the same in the hands of the assessee. Learned counsel for the revenue, while assailing the judgments of the two Appellate Authorities, has relied upon the judgement of the Hon'ble Supreme Court in ITO v. Ch. Atchiaiah reported as 218 ITR 239. We are of the view that the CIT as well as the Tribunal having recorded a finding of fact that the FDR in question belonged to father-in- ITA No. 168 of 2008 3 law of the assessee and not to the assessee, question of law sought to be raised does not arise. The judgment relied upon is distinguishable. Therein question was whether the Department had option not to assess the AOP when individuals had already been assessed. It was held that AOP was liable to be assessed under Section 183 of the Act, irrespective of the fact that individual members had already been assessed. We are not concerned with such a situation here. No substantial question of law arises. The appeal is dismissed.

(AJAY TEWARI) JUDGE (ADARSH KUMAR GOEL) JUDGE August 29, 2008 sunita