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

% *Judgment Reserved on: 29.11.2023*
Judgment Pronounced on:15.01.2024

\+ **ITA 169/2020**

PR. COMMISSIONER OF INCOME TAX- 18 ..... Appellant

Through: Mr Zoheb Hossain, Sr Standing Counsel, with Mr Sanjeev Menon, Standing Counsel.

versus

M/S WIG INVESTMENT ..... Respondent

Through: Mr S. Ganesh, Senior Adv. with Ms Shreya Jain and Mr Gaurav Tanwar, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.

Prefatory facts:

1. This appeal concerns Assessment Year (AY) 2006-07. Via the instant appeal, the appellant/revenue seeks to assail the order dated 16.10.2018, passed by the Income Tax Appellate Tribunal [hereafter referred to as "the Tribunal"].

1.1 Notably, in the Tribunal, it was a second round of litigation. In the first round, the respondent/assessee had approached the Tribunal against the order dated 12.03.2011, passed by the Commissioner of Income Tax [CIT] under Section 263 of the Income-tax Act, 1961 [hereafter referred to as "the Act"].

1.2 The CIT, exercising its powers under Section 263 of the Act, had set aside the assessment order dated 08.12.2008. Significantly, the assessment order dated 08.12.2008 was framed under Section 143(3) of the Act, *albeit* after scrutiny. The CIT, however, took the view that the said assessment order was both erroneous and prejudicial to the interests of the revenue and, in this regard, flagged two issues. First, the gain made by the respondent/assessee on redemption of mutual funds should have been treated as business income, not short-term capital gain. Second, the capital contribution received by the respondent/assessee should be taxed in its hands as deemed dividend under the provisions of Section 2(22)(e) of the Act.

1.3 The conclusion arrived at by the CIT in his order passed under Section 263 of the Act was, as indicated above, taken in appeal to the Tribunal by the respondent/assessee. The Tribunal, while holding that the CIT had correctly flagged the two issues referred to hereinabove, allowed the appeal of the respondent/assessee on the ground that even where the CIT had rendered "specific finding on certain issues", he had directed the Assessing Officer (AO) to reframe the assessment order as per the correct provisions of law and after giving adequate opportunity of hearing in the matter. According to the Tribunal, the CIT could not have returned findings on specific issues and, at the same time, issued a direction to reframe the assessment. Consequently, the Tribunal modified the order dated 12.03.2011 passed by CIT and directed the AO to reframe the assessment order without being bound by the findings returned by the CIT.

1.4 It is this direction of the Tribunal which led to a fresh assessment order being framed on 21.12.2011. The AO, thus, added the gain made on

redemption of mutual funds, i.e., Rs.4,28,82,839/-, under the head "profits and gains of business or profession" and likewise, the capital contribution made by the two companies, i.e., Kwality Processed Food Services and Equipments Private Limited (KPFSE) and Kwality Ice Creams India Private Limited (KICIPL) amounting to Rs. 21,08,38,530/- was added, treating it as deemed dividend under Section 2(22)(e) of the Act. The AO also issued a direction for the levy of interest under Sections 234A/234B/234C/234D of the Act. Besides this, the AO also initiated penalty proceedings under Sections 271(1)(c) and 271B of the Act.

1.5. The respondent/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, CIT(A)]. The CIT(A) dealt with the appeal concerning the AY in issue, i.e., 2006-07 and AY 2009-10. Thus, by a common order dated 27.01.2014, the CIT(A) partly allowed both appeals.

1.6 Importantly, the CIT(A), with regard to the two issues culled out hereinabove, returned the following findings of fact. Firstly, as regards gain made by the respondent/assessee upon redemption of mutual funds, the CIT(A) found:

> (i) The original partnership deed dated 12.07.2005, concerning the respondent/assessee, was amended on 31.08.2005.
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> (ii) Both partnership deeds adverted to the expression “business”. In the amended partnership deed, it was indicated that the respondent/assessee would “invest in stocks, shares, debentures, bonds, mutual funds or any other securities and carry on the business of lending of monies for interest or on other terms and conditions out of own funds or arranged funds…”.

(iii) The capital invested was rotated 3.13 times during the period in issue. The respondent/assessee did not enter into a large number of transactions in terms of value when compared with its capital and the frequency with which the mutual funds had been rotated. The respondent/assessee had concluded only 23 redemption transactions concerning mutual funds, demonstrating that the respondent/assessee intended to invest in mutual funds and not engage in a business activity.

(iv) The purchase and redemption of mutual funds was undertaken only *vis-à-vis* 15 mutual funds during the period in issue. The respondent/assessee did not repeatedly transact and redeem the same mutual funds. The mutual funds were, thus, not churned again and again by the respondent/assessee.

(v) That a commercial motive was not established, as the respondent/assessee had invested in mutual funds to earn dividends and appreciation in value. This was evident as the respondent/assessee had not repeatedly invested in the same mutual funds.

(vi) The mutual funds which were doing well were not on account of volatility in the market. The respondent/assessee did not enter the futures/index/intra-day (non-delivery) trading. Such transactions are executed when an investor seeks to reap the harvest of a volatile market.

(vii) The respondent/assessee had acquired and redeemed mutual funds and not entered into sale transactions as they were not freely tradable.

(viii) The respondent/assessee had invested in mutual funds from its own resources. It had not borrowed funds for making investments in mutual funds, which is usually the case when an investor indulges in trading operations. The motive of the respondent/assessee was not to maximize profits but to create wealth.

(ix) In its balance sheet, the respondent/assessee had shown the transactions in mutual funds as investments and not stock-in-trade. The mutual funds were held and redeemed mainly on the maturity date, which indicated that the intention of the respondent/assessee in purchasing mutual funds was to make investments and derive benefits from accretion in value. As of 31.03.2006, the respondent/assessee had investments worth Rs.41.12 crores in mutual funds. During the AY in issue, i.e., AY 2006-07, it had earned dividends amounting to Rs.1.74 crores, which showed that the respondent/assessee intended to invest in mutual funds.

(x) A perusal of the profit and loss account of the respondent/assessee shows that it did not debit any amounts towards salaries, telephone, and other incidental expenses, which would have been the case if the respondent/assessee was trading in mutual funds.

2. Based on the aforesaid findings of fact, the CIT(A) concluded that the gains derived by the respondent/assessee on the transfer of mutual funds were chargeable under the head "capital gains". Accordingly, the addition made by the AO of Rs.4,28,82,839/- under the head "profits and gains of business or profession" was directed to be deleted. Furthermore, a direction was issued to the AO to assess the said sum under the head "capital gains",

in accordance with the law. The AO was also directed to grant the respondent/assessee consequential relief.

3. As regards the addition of Rs. 21,08,38,530/- as deemed dividend under Section 2(22)(e) of the Act in the hands of the respondent/assessee, the CIT(A), after a detailed discussion, came to the following conclusion:

> " *....I am of the considered view that the payments made by the company partners are not taxable in the hands of the appellant firm; however, the same is chargeable to tax in the hands of the shareholders. Reliance is placed on the decisions in the cases of Bhaumik Colour (P) Ltd. 118 ITD 1 (Mum) (SB), CIT Vs. L. Alagusundaram Chettiar (1977) 109 ITR 508 (Mad) and Ankitech P. Ltd, 340 ITR 14 (Del). Accordingly, the deemed dividend of Rs.21,08,38,530/- is hereby deleted. Consequential relief shall be given by the AO. The AO may consider taking remedial action as per law in assessing the deemed dividend of Rs.21,08,38,530/- in relevant AY in the hands of registered & beneficial shareholders; Mr. Pradeep Wig and Mrs. Neera Wig. In view of the above finding, ground no. 4 succeeds and ground no. 5 fails."*

4. Against this order, cross-appeals were preferred concerning the AY in issue, i.e., AY 2006-07. The Tribunal, in this round, i.e., the second round, dealt with not only the appeals instituted by the appellant/revenue and the respondent/assessee for AY 2006-07 but also adjudicated the appeal of the appellant/revenue concerning AY 2011-12.

5. Insofar as AY 2006-07 was concerned, the Tribunal adjudicated the two issues referred to hereinabove and an additional ground raised by the appellant/revenue pertaining to Section 150(1) of the Act. The appellant/revenue wanted the Tribunal to hold that the observation made by the CIT(A) in his order dated 27.01.2014 that the AO may consider remedial action, as per law, in assessing the deemed dividend amounting to Rs. 21,08,38,530/-, in the relevant AY, in the hands of the registered and

beneficial shareholders i.e., Mr Pradeep Wig and Mrs Neera Wig, as a direction under Section 150 of the Act.

6. The Tribunal, via the impugned order, sustained the order dated 27.01.2014 passed by the CIT(A) in totality.

6.1 The Tribunal held that the gain made on redemption of mutual funds should be treated as capital gain, not business income.

6.2 Insofar as the addition in the hands of the respondent/assessee concerning deemed dividend, the Tribunal held that the capital contribution made by KPFSC and KICIPL was in the nature of a commercial transaction and would not fall within the category of loans and advances to be construed as deemed dividend under Section 2(22)(e) of the Act. In this regard, the Tribunal referred to Circular No. 19/2017, dated 12.06.2017, issued by the Central Board of Direct Taxes (CBDT), which, according to it, clarified that a commercial transaction would not fall within the ambit of the expression "advance" mentioned in Section 2(22)(e) of the Act.

6.3 Furthermore, the Tribunal refused to construe the observations made by the CIT(A) that the AO may take remedial action, as per law, concerning treatment of Rs. 21,08,38,530/- as deemed dividend in the hands of registered and beneficial shareholders, i.e., Mr Pradeep Wig and Mrs Neera Wig, as a direction under Section 150(1) of the Act, on the ground that this power lay with the CIT(A) and not the Tribunal. The Tribunal took the view that it could not hold that a direction issued by the CIT(A) should be read in a particular manner relatable to a specific section. The Tribunal, thus, refused to interfere with the observations made by CIT(A) as it was apparently of the opinion that the said issue could be examined if an action is taken *vis-à-vis* the concerned individuals and not otherwise.

Submissions made by counsel:

7. On behalf of the appellant/revenue, arguments were advanced by Mr Zoheb Hossain, while Mr S. Ganesh made submissions on behalf of the respondent/assessee.

8. The submissions of Mr Hossain can be broadly paraphrased as follows:

(i) The respondent/assessee intended to trade in mutual funds. This is demonstrable if one considers that the respondent/assessee had invested Rs. 86.19 crores in mutual funds in the period in issue, of which only Rs. 3 crores was invested through portfolio managers. During the period in issue, the respondent/assessee had earned a profit of Rs. 4,31,96,995/- and dividend amounting to Rs. 1,74,24,717/-. Thus, the motive was to earn profit on transactions. The dividend earned by the respondent/assessee was incidental to the trade in mutual funds carried out by it.

(ii) Merely because mutual funds were shown as "investment" in the books of accounts, the gain made on its transfer, offered for tax as capital gain, would not change the nature of the income.

(iii) If the transactions were examined bearing in mind the time when entry and exit were made *qua* a particular mutual fund, it would show that the respondent/assessee intended to maximize profit. Thus, after the profit had been booked as a dividend, the mutual fund (representing securities) was sold.

(iv) The Tribunal failed to appreciate that although mutual funds (which are representative of securities) do not involve direct

inter se trade between two persons through the stock exchange, such transactions are recognized as a business activity. Therefore, the volume of transactions and the quantum of investments should have led to the conclusion that the respondent/assessee was trading in mutual funds, and the income earned should have been taxed as such.

(v) The Tribunal failed to appreciate the contents of the CBDT's Circular No. 6/2016 dated 29.02.2016, which clearly states that only if shares and securities are held for more than 12 months preceding the date of their transfer, the income derived from such transaction should be treated as capital gain.

8.1 In support of the aforesaid submissions, reliance was placed on the following decisions: ***CIT vs. D&M Components Ltd.*** 364 ITR 179***; CIT vs. H. Holck Larsen*** (1986) 3 SCC 364***; PVS Raju vs. ACIT*** (2012) 340 ITR 75***; Raja Bahadur Visheshwara Singh vs. CIT*** (1961) 41 ITR 685 ***and P M Mohammad Meerakhan vs. CIT*** (1969) 2 SCC 25.

8.2 As regards the other issue, it was submitted that once the Tribunal concluded (and in this regard, agreed with the observation of the AO) that Mr Pradeep Wig and Mrs Neera Wig were majority shareholders having control over KPFSE and KICIPL, it ought to have logically held that the aforementioned individuals had benefited from the capital contributions made in the respondent/assessee by KPFSE and KICIPL. In other words, the receipt of capital contribution by the respondent/assessee was a colourable device employed by Mr Pradeep Wig and Mrs Neera Wig, the shareholders of KPFSE and KICIPL, to earn profit/derive benefit. The capital

contribution made by KPFSE and KICIPL was nothing but an amount advanced to benefit its shareholders, Mr Pradeep Wig and Mrs Neera Wig.

8.3 The Tribunal failed to note that Mr Pradeep Wig was the Managing Director of KPFSE and KICIPL, and he, along with his wife, Mrs Neera Wig, held majority shares in the said companies. The Tribunal should have, thus, held that the provisions of Section 2(22)(e) of the Act applied to the transaction in issue and, therefore, the amount contributed by KPFSE and KICIPL to the extent of accumulated profit on the first day of the year in issue should have been added to the income of the respondent/assessee.

8.4 The expression "any payment" obtained in Section 2(22)(e) of the Act, which was not necessarily a loan or advance, can be treated as a deemed dividend.

8.5 The Tribunal's view that the transaction was purely a commercial transaction was utterly unsustainable, having regard to the facts and circumstances that obtained in the case.

8.6. It is a well-established legal position that if the shares of a company are held in the name of a firm's partner, since the firm cannot be registered as a shareholder, the partnership firm can be treated as a registered shareholder. Given this position, the transaction in question falls within the ambit of Section 2(22)(e) of the Act and, hence, was assessable in the hands of the respondent/assessee.

8.7 In support of the assertions above, reliance was placed on the following decisions: ***CIT vs. National Travel Services*** (2012) 347 ITR 305; ***National Travel Services vs. CIT*** (2018) 3 SCC 95 and ***Gopal & Sons (HUF) vs. CIT*** (2017) 3 SCC 574.

8.8 Lastly, the Tribunal failed to appreciate that it had the power to treat the observation made by CIT(A), that the capital contribution could be treated as deemed dividend in the hands of Mr Pradeep Wig and Mrs Neera Wig, as a direction under Section 150(1) of the Act. A plain reading of the said provision would show that any authority could issue this direction in a proceeding carried out under the Act.

9. In rebuttal, Mr S Ganesh submitted that no interference with the impugned order was required. According to Mr Ganesh, both the CIT(A) and the Tribunal had returned findings of fact. In support of his submission, Mr Ganesh primarily relied upon the orders passed by the Tribunal and the CIT(A).

10. Mr Ganesh emphasized the fact that mutual fund investments were capital assets and not stock-in-trade, as found by the two statutory authorities referred to above, and therefore, the gain made could not be treated as 'business profit'.

10.1 Furthermore, it was submitted that the Tribunal had returned an unequivocal finding that no loan or advance had been extended to the respondent/assessee by the partner companies, i.e., KPFSE and KICIPL. It was emphasized that KPFSE and KICIPL had made capital contributions to the respondent/assessee that did not attract the provisions of Section 2(22)(e) of the Act. Since the Tribunal had returned a specific finding of fact that the respondent/assessee was neither a registered nor a beneficial shareholder of the two partner companies, i.e., KPFSE and KICIPL, the transaction in issue did not fall within the ambit of Section 2(22)(e) of the Act.

10.2 In sum, it was contended, on both issues, the Tribunal has returned findings of fact which cannot be disturbed unless the Court concludes that

they are perverse. The findings of fact returned by the Tribunal are binding on this Court. [See ***K. Ravidranathan Nair vs. CIT*** 2001 (1) SCC 135]. The findings of fact returned by the Tribunal are based on the evidence/material placed on record; hence, no substantial question of law arises for consideration by this Court.

10.3 As regards the facts obtaining in the case, Mr Ganesh drew our attention to the orders passed by the Tribunal and the CIT(A).

Analysis and Reasons:

11. We have heard learned counsel for the parties and perused the record. As regards the first issue, i.e., whether the transactions carried out by the respondent/assessee concerning mutual funds were in the nature of 'investment' or 'stock-in-trade', is an aspect which is fact-centric, juxtaposed with the law enunciated *qua* like transactions. Thus, what the adjudicating authority has to discern is the intent of the assessee. The intent has to be ascertained keeping in mind the magnitude and frequency of the transactions, the period for which shares are held, the purpose for which they are held, and how transactions are disclosed in the books of account. There is no presumption in law that the acquisition of shares by an assessee is necessarily for trade as against investment. The courts have enunciated this principle in several decisions, including ***Commissioner of Income Tax, U.P v. Madan Gopal Radhey Lal***, [1969] 73 ITR 652 (SC); ***P.M. Mohammed Meerakhan v. Commissioner of Income-tax, Kerala,*** 73 ITR 735 (SC); ***Commissioner of Income Tax v NSS Investments Ltd*** 2007 (277) ITR 149 (Mad); ***Commissioner Of Income Tax vs Rewashanker A. Kothari*** (2006) 201 CTR Guj 510 ***and CIT vs Amit Jain*** 2015:DHC:2076-DB.

12. The CIT(A) and the Tribunal, after appreciating the material on record, have concluded that the transactions concerning mutual funds were in the nature of investment and not motivated by trade. In this context, the CIT(A) and the Tribunal, among other things, looked at the transactions from the following prism: quantum of trade, value, purpose, the period for which mutual funds were held, and how disclosure had been made in the books of accounts/financial statements. For the sake of brevity, we are not setting forth the findings returned on the said aspects by these statutory authorities once again. Reference in this regard has been made in the paragraphs above. None of these findings have been assailed before us as being perverse.

13. Concededly, the appellant/revenue has not proposed a question that the findings returned by the Tribunal concerning the aforementioned aspects were perverse as they were not based on the material placed on record. Appreciation of material/evidence placed before the statutory authorities cannot form a subject matter of appeal under Section 260A of the Act unless the Court were to conclude that the findings were perverse or were returned without evaluating the relevant material on record

13.1 The observations made in ***K. Ravidranathan Nair***'s case *qua* this aspect being apposite are extracted hereafter:

> *"7. The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it."*

14. Each of the five judgments cited on behalf of the appellant/revenue (referred to in paragraph 8.1, above) has the same principle running through them, which is that to ascertain the intent of the assessee in undertaking transactions in shares, the facts found have to be examined in the light of legal principles. The said legal principles, as set forth above in paragraph 11, broadly require ascertaining the following: the magnitude and frequency of the transactions, the period for which shares are held, the purpose for which they are held, how transactions are disclosed in the books of account, etc. Therefore, each judgment cited by the appellant/revenue is distinguishable on facts.

15. Accordingly, in our view, no substantial question of law arises as regards the first issue.

16. Insofar as the second issue is concerned, it is not disputed that capital contributions were accepted by the respondent/assessee from KPFSE and KICIPL. KPFSE contributed Rs.14 crores, while KICIPL contributed Rs.47 crores. It is on this account that the AO held that Rs.21,08,38,530/- should be taxed as deemed dividend in the hands of the respondent/assessee.

17. It is also not disputed that apart from KPFSE and KICIPL, the other two partners, Pradeep Wig (HUF) and Mrs Neera Wig, had not made any capital contribution to the respondent/assessee. What also comes to the fore is that even though Pradeep Wig (HUF) and Mrs Neera Wig had 20% and 10% shares, respectively, in the profit of the respondent/assessee, they did not have to bear the burden of any loss; the loss, if any, had to be borne by the partner companies, i.e., KPFSE and KICIPL. What has clearly emerged from the facts found by the Tribunal is that Mr Pradeep Wig and Mrs Neera Wig had substantial equity stakes in KPFSE and KICIPL. In KPFSE, Mr

Pradeep Wig and Mrs Neera Wig cumulatively held 83.34% of the shares. In their individual capacity, Mr Pradeep Wig and his wife, Mrs Neera Wig, held 41.67% of the share capital. Insofar as KICIPL was concerned, as on 31.03.2006, Mr Pradeep Wig and Mrs Neera Wig together held 99.92% of the total shareholding. Individually, Mr Pradeep Wig held 46.99%, while Ms Neera Wig had an equity stake of 52.93%.

18. Given these facts, the CIT(A), in our view, rightly observed that since the capital contribution made by KPFSE and KICIPL could not be treated as a loan or advance extended to the respondent/assessee, the AO could not have treated the same as deemed dividend in the hands of the respondent/assessee.

18.1 A plain reading of Section 2(22)(e) of the Act would show that when any payment is made by a company, in which the public is not substantially interested, of any sum by way of advance or loan to a shareholder, being a person who is the beneficial owner of the shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner, and in which he has a substantial interest, or any payment by any such company on behalf of or for the benefit of such individual shareholder, to the extent to which the company in either case possesses accumulated profits, would be treated as deemed dividend in the hands of the recipient.

19. Thus, the object and the purpose of the said provision is to unravel the distribution of accumulated profits by a company (in which the public is not substantially interested) to its registered shareholders or beneficial owners of its shares by employing the device of distributing it in the form of loan or advance. Therefore, sums distributed either directly as loan or advance to the

shareholders or to any concern in which the shareholder is a member or partner or indirectly by making payment on behalf of the shareholder, with regard to loan or advance given by a third party to the extent of the accumulated profits, would be deemed as a dividend under the provisions of Section 2(22)(e) of the Act.

20. Insofar as the judgments cited on behalf of the appellant/revenue *qua* the second issue, the same are distinguishable on facts, as demonstrated hereafter:

20.1 In the judgment rendered by the Supreme Court in ***National Travel Services vs CIT***, the assessee was a partnership firm consisting of three partners, Mr Naresh Goyal, Mr Surinder Goyal, and M/s Jet Enterprises Private Limited. The assessee firm had taken a loan from M/s Jetair Private Limited (JPL). The assessee firm had also subscribed to the equity share capital of JPL, *albeit* in the name of two of its three partners, i.e., Mr Naresh Goyal and Mr Surinder Goyal. Together, these two parties held a 48.19% equity stake in JPL and were shown as shareholders in the register of members maintained by JPL. It is in this context that the provisions of Section 2(22)(e) of the Act were invoked. However, as would be apparent from the facts, in the instant case, the two companies, i.e., KPFSE and KICIPL, had made capital contributions to the respondent/assessee. Since no money had been loaned or advanced to the respondent/assessee, both the CIT(A) and the Tribunal came to a conclusion, as noticed above, that if at all, the additions could be made only in the hands of the individual partners, after affording them an opportunity of hearing. The capital contribution on a plain reading of the section cannot be treated as a 'loan' or 'advance'.

20.2 The judgment rendered by the Supreme Court in ***Gopal & Sons (HUF) vs. CIT*** is also distinguishable on facts. This was a case where the assessee was an HUF. During the relevant AY, the assessee HUF had received advances from a company named GS Fertilizers Private Ltd. (GSFL). The Karta of the assessee HUF was entitled to 37.12% of the shareholding in GSFL. This case is also distinguishable as the assessee HUF had received monies from GSFL in the form of 'advances'. In contrast, in the instant case, admittedly, monies were received by the respondent/assessee as 'capital contribution'.

20.3 Thus, concerning the second issue as well, the Tribunal has arrived at the correct conclusion.

21. Since the findings of fact returned are that KPFSE and KICIPL had contributed capital and not extended any loan or advance to the respondent/assessee and that the respondent/assessee was neither a registered shareholder nor a beneficial owner of shares held in KPFSE and KICIPL, as rightly held by the Tribunal and CIT(A), the addition could not have been made in the hands of the respondent/assessee. As correctly observed, if at all, the addition could be made in the hands of the two individuals, i.e., Mr Pradeep Wig and Mrs Neera Wig, and that too only by the AO of the two individuals, *albeit* after affording them an opportunity of hearing.

22. Furthermore, in our view, the Tribunal has rightly concluded that it could not treat the observations made by the CIT(A) as a direction under Section 150(1) of the Act. As observed above, the addition, if at all in the hands of Mr Pradeep Wig and Mrs Neera Wig, could only be made by their AO after giving them a chance to defend themselves.

Conclusion:

23. Thus, for the foregoing reasons, we are unable to persuade ourselves that the impugned order passed by the Tribunal requires interference.

24. According to us, no substantial question of law arises for our consideration.

25. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

JANUARY 15, 2024/aj