



* **IN THE HIGH COURT OF DELHI**

+ **I.T.A. NO. 294 OF 2002**

Judgment Reserved on : February 28, 2005

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Date of Decision: May 05, 2005

Commissioner of Income Tax Delhi-VIII,
New Delhi

... Petitioner

Through
Mr. Jagdish R. Goel,
Advocate

Versus

* Mrs. Kumkum Kohli

... Respondent

Through
Mr. Satish Khosla, Advocate.

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

Vide order dated 19th April, 2002, the Income Tax Appellate

Tribunal held as under :-

"After hearing both the parties, we find that the issue is squarely covered in favour of the assessee by the decision



of the Tribunal in the case of Vidya Madan Lal Malani (supra) wherein it has been held that if the income returned by the assessee is from disclosed sources then no addition can be made on account of undisclosed income under Chapter XIV B merely on the ground that the return of such income was not filed before the date of search. This view also finds support from the decision of the Hon'ble Bombay High Court in the case of Sham Lal Balram Gurbani (supra). The statement of assessable income of the assessee for asstt. Year 1995-96 shows that assessee had income by way of capital gain amounting to Rs.23,05,357/- against which the assessee had paid advance tax of Rs.4,50,000/- on 31.3.95 i.e. much before the date of search and, therefore, it cannot be said that assessee would not have disclosed such amounts. It is further seen that the return filed later on has been accepted by the AO u/s 143(3). Considering these factual aspects alongwith the case relied upon by the learned counsel for the assessee, it is held that the sum of Rs.23,05,357/- pertaining to asstt. Year 1995-96 could not be assessed as undisclosed income. Accordingly, this addition is hereby deleted.

7. In the result, appeal of the assessee is partly allowed."

These findings are challenged by the Revenue in the present appeal under Section 260A of the Income-tax Act (hereinafter referred to as the Act) on the ground that under the provisions of section 158B of the Act, the said amount of Rs.23,05,357/- would have to be treated as undisclosed income and would be liable to tax under section 158 BC Clause (c) of the Act at the rate of 60%. The findings, to the contrary, are



opposed to the presumption of law available in favour of the Revenue under Section 158B of the Act. A search and seizure operation in terms of section 132 of the Income-tax Act was conducted at the residential premises of the assessee on 15.9.95. Notice was issued to the assessee for filing income-tax return as certain documents were seized during this operation. Besides other items, the Assessing Officer vide his order dated 30th September, 1996 treated the undisclosed income of Rs.26,92,532/-. The order of the Assessing Officer was challenged by the assessee. The Income-tax Appellate Tribunal while dealing with the questions raised, the addition for the block period was reduced to Rs.2,75,227/- in regard to the assessment year 1995-96. It was noticed in the impugned order that addition of Rs.23,05,357/- was without any basis and there is no discussion in the order of assessment except to the extent that the return was not filed within time.

From the findings recorded by the Appellate Tribunal, it is clear that the assessee had paid the advance tax of Rs.5,50,000/- on 31st March, 1995 for the assessment year 1995-96 i.e. much before the date of search. This factual aspect viewed in light of the fact that the Assessing Officer accepted the return filed by the assessee for that very assessment year and accepted the return declaring an income of Rs.23,05,360/- which



was filed on 4th May, 1996. This assessment was finalised by the Assessing Officer on 28th November, 1997 after issuing notice to the assessee under section 143(2) of the Act and hearing the assessee. In the statement of assessable income filed by the assessee, the figure of Rs.23,05,360/- was duly reflected in the accounts.

From the above facts appearing on record before us, it is clear that finding of the Tribunal does not call for any interference by this Court in exercise of jurisdiction under section 260A of the Act. The provisions of Section 158B of the Act would not be attracted in the present case inasmuch as nothing has been recorded in the order of assessment or in any proceedings thereafter, that the amount had not been indicated in the books of accounts or that the assessee had failed to produce the books of accounts, as directed by the Assessing Officer. The presumption against the assessee could be drawn only if the sums wholly or partly had not been reflected in the books or the assessee had failed to render explanation in terms of the said provisions. Here the assessee had paid the advance tax and has also shown the figure in his accounts submitted before the Assessing Officer.


For the reasons aforesaid, we are of the opinion that no question of law much less a substantial question of law arises in the



present appeal, the same is dismissed by leaving the parties to bear their own costs.


(SWATANTER KUMAR)
JUDGE

May 05, 2005
rds


(MADAN B. LOKUR)
JUDGE