



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 50/2006**

COMMISSIONER OF INCOME TAX Appellant
Through **Ms.P.L.Bansal, Advocate**

versus

M/S ANAND KUMAR DEEPAK KUMAR Respondent
Through **Mr. K.Sampath, Mr.R.K.Raghwan &
Mr.Manu K.Giri, Advocates**

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

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ORDER
25.08.2006

The Revenue is aggrieved by an order dated 11th May, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No. 1035/Del/99 relevant for the assessment year 1995-96.

A search was carried out in the premises of the assessee on 9th August, 2004. As a result of the search, some documents were recovered which led the Assessing Officer to believe that there were unaccounted sales to the extent of Rs. 19,89,807/- between 1.4.2004 and 9.8.2004. On this basis, he assumed that the unaccounted sales for the entire accounting year are Rs. 55,86,766/-.

Feeling aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner found



that there were two distinct periods that were involved, namely, the period from 1st April, 1994 to 9th August, 2004 in which there was definite evidence regarding unaccounted sales and the second period was from 10th August, 2004 to 31st March, 2005 when even though the account books were examined, the Assessing Officer could not find any defect in them. On this basis, the Commissioner was of the view that mere rejection of the books of account, without any basis, for the post search period was not warranted, particularly in the absence of any facts to show unaccounted sales and, therefore, the Assessing Officer had wrongly assumed that unaccounted sales would continue even in the post search period.

Against the order of the Commissioner, the Revenue preferred an appeal which was dismissed by the Tribunal and that has led to the present appeal being filed under Section 260A of the Income Tax Act.

Learned counsel for the Revenue has contended that the books are liable to be rejected for the entire year and this the Assessing Officer has done and, therefore, he was justified in estimating the unaccounted sales on the basis of material that was recovered during the search on 9th August, 2004 and by assuming that such unaccounted sales would continue for the entire year.

We are of the opinion that no such presumption can be drawn on the facts of this case.

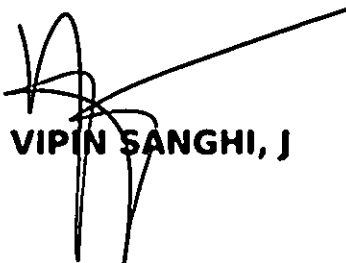


The Commissioner as well as the Tribunal found that in fact there was no discrepancy noted in the books of account in the post search period. The assumption of the Assessing Officer may have perhaps been valid if the Assessing Officer had found some discrepancy in the books of account or if the search had been conducted after the accounting year and the books of account had brought out some discrepancies. But in the present case, the books of accounts were examined by the Assessing Officer in the middle of the accounting year. Merely because there were some discrepancies in the pre-search period, it cannot lead to any presumption that the discrepancies would have continued in the post search period particularly when there was factually no evidence at all as found by both the authorities below to support such a view.

In our opinion, the Revenue has not been able to make out any substantial question of law that would require our consideration on the facts of this case.

Dismissed.


MADAN B. LOKUR, J


VIPIN SANGHI, J

AUGUST 25, 2006
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