



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

+ **ITA 70/2005**

COMMISSIONER OF INCOME TAX DELHI Appellant
Through **Mr. R. D. Jolly, Adv.**

versus

M/S DLF UNIVERSAL LTD. Respondent
Through **Mr. P. N. Monga with**
Mr. Manu Monga, Adv.

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

ORDER
04.09.2006

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The Revenue is aggrieved by an order dated 25th June, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench A in ITA No. 2173/Del/1996 relevant for the assessment year 1992-93.

The Assessee had filed its return of income and during the course of the regular assessment, the Assessing Officer was of the view that the Assessee had not been able to justify the liability said to be incurred in respect of 16 parties and therefore added amounts relevant to these 16 parties to the income of the Assessee.

Feeling aggrieved, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) and during the proceedings before the appellate authority the Assessee moved an application



under Rule 46 A of the Income Tax Rules for production of additional evidence. This application was not objected to by the Assessing Officer and therefore the additional evidence was taken into consideration by the CIT (A).

By way of additional evidence, the Assessee justified the liability incurred by it on facts. The additional evidence was supplied to the Assessing Officer and comments called from the Assessing Officer. The CIT (A) considered the liability on each of the 16 parties and concluded that the Assessee had been able to justify these liabilities and therefore the CIT(A) deleted the impugned additions.

Feeling aggrieved, the Revenue preferred an appeal before the Tribunal and the only ground that was urged was that the Assessee had failed to establish the identity of the parties and genuineness of the transactions.

From a perusal of the impugned order we find that in respect of the parties at no. 3 to 13 (who are in controversy) it had been contended by the Revenue that the CIT (A) should have restored the matter back to the file of the Assessing Officer rather than to delete the impugned addition. However, the Tribunal noted that the First Appellate Authority had considered the factual matrix in detail and the Revenue had not been able to rebut any of the factual findings recorded by the CIT(A) in relation to each of the parties. It was also



noticed that the CIT(A) had given a copy of the paper book submitted by the Assessee to the AO who did not have any objection to the admission of fresh evidence. After considering the matter on merits, the Tribunal upheld the view taken by the CIT(A) and found that he had not made any error in appreciating the facts placed before him.

Before us also the grievance made is only in respect of the deletion of additions made by AO of the contractors at serial nos. 3 to 13.

Having heard learned counsel for the Revenue, we are of the view that the questions that have been raised are essentially questions of facts, namely, whether the Assessee has been able to prove that it had incurred the liability. It is true that at the stage of the assessment proceedings before the Assessing Officer, the Assessee had not produced relevant evidence but the same was produced before the First Appellate Authority after filing an application under Rule 46A.

Learned counsel for the Revenue submits that the Assessing Officer would have liked to cross examine the concerned parties but was not given any opportunity of doing so. We find that in the grounds of appeals that have been urged, no such grievance has been made. In fact, on a reading of the grounds of appeal, no grievance appears to have been made about a lack of any opportunity



being granted to the Revenue by the CIT(A). Even before us, it has not been demonstrated as to how the Revenue has been prejudiced, particularly when the AO was provided with the additional evidence and his comments called for.

We find that the First Appellate Authority as well as the ITAT had concluded the matter on facts and no perversity is shown in their conclusions. No substantial question of law arises for our consideration.

Dismissed.

A handwritten signature in black ink, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in black ink, appearing to read 'Vipin Sanghi'.

VIPIN SANGHI, J

SEPTEMBER 04, 2006
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