



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 109/2005

COMMISSIONER OF INCOME TAX DEI Appellant

Through Mr. Sanjeev Sabharwal

versus

V.B.AGGARWAL

..... Respondent

Through Mr. C.S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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06.09.2006

The Revenue is aggrieved by an order dated 31st August, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No.5600(Del)/1996 relevant for the block period assessment year 1986-87 to 15th September, 1995.

A search was carried out in the business and residential premises



of the Aggarwal Group. On the basis of the material said to have been obtained during the search, the Assessing Officer made an addition of Rs.65,45,000/- on account of unexplained cash credit in the books of the Assessee. The Assessing Officer made the additions for want of proper/complete details of confirmations of loans and advances that were taken by the Assessee.

The view expressed by the Assessing Officer was challenged by the Assessee before the Tribunal, which accepted the contentions of the Assessee and that is why the present appeal has been filed before us under Section 260 A of the Income Tax Act, 1961.

The Tribunal noted the contention on behalf of the Assessee made before it to the effect that addition on account of cash credit can be treated as undisclosed income only on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other material or information as are available with the Assessing



Officer and that in this case no such material or information was found during the search to show that the credits appearing in the books of accounts were not genuine. We have been shown the definition of undisclosed income under Section 158 B(b) of the Act. This reads as follows:

"158B. In this Chapter, unless the context otherwise requires--

(a) xxx

(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act or any expense, deduction or allowance claimed under this Act which is found to be false."

A perusal of the above definition clearly shows that undisclosed income includes any amount, which has not been or would not have been disclosed by the Assessee. In so far as the present case is



concerned, the admitted position is that the amounts were disclosed by the Assessee in its books of account. In addition, the Tribunal has noted that regular returns have also been filed by the Assessee in respect of the relevant assessment years and we are told by learned counsel for the Respondent that regular assessments have been completed.

It is significant to note that the Tribunal has noted, as a matter of fact, that no material has been detected as a result of the search or gathered as a result of the enquiries conducted on the basis of the material detected during the course of the search to establish that the advances received by the Assessee represent undisclosed income.

Section 158 BB(1) of the Act is clearly not applicable because the view of the Tribunal is that no evidence was found as a result of the search which could suggest that the advances received by the Assessee was undisclosed income, nor was any material gathered by the Assessing Officer relateable to such evidence.



Moreover, adequate explanation was given with regard to the parties from whom the amounts were received. The amounts were received by cheques as advance for purchase of land. Complete addresses of the parties were given and if the Assessing Officer had some doubt, he could have summoned these parties under Section 131 of the Act but he did not do so.

It was stated by learned counsel for the Assessee that the Assessing Officer had failed to appreciate that in some of the cases agreement to sell and sale deed were also executed. It was also stated that similar issues arose in several other cases which were all decided in favour of those assessees and the order passed by the Tribunal in respect of those assessees were accepted.

Keeping all these circumstances in mind, we are of the view that the Tribunal has taken a decision on the facts of the case. Learned counsel for the Revenue has not shown us any perversity in the



appreciation of facts by the Tribunal.

Consequently, we are of the opinion that no substantial question of law arises in this case for our consideration.

The appeal is dismissed.

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

MADAN B. LOKUR, J

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

VIPIN SANGHI, J

SEPTEMBER 06, 2006

Upreti