



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

+ **ITA 1221/2006**

COMMISSIONER OF INCOME TAX DEL Appellant
Through Mr.R.D.Jolly, Advocate

versus

M/S SMC SHARE BROKERS LTD. Respondent
Through None

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

ORDER
29.08.2006

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The Revenue is aggrieved by an order dated 27th January, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No. 250/Del/2005 relevant for the block assessment period 1.4.1990 to 3.8.2000.

A search was carried out in the premises of one Manoj Aggarwal a Director of M/s Friends Portfolio Pvt. Ltd. The search was carried out on 3rd August, 2000 on which date various documents and books of accounts etc. were discovered.

On the basis of the documents discovered and the statements of Manoj Aggarwal, a block assessment was made in respect of Manoj Aggarwal and M/s Friends Portfolio Pvt. Ltd. on 29th August, 2002 under the provisions of Section 158 BC of the Income Tax Act.



Subsequently, block assessment proceedings were initiated against the assessee and completed on 28th November, 2004 under the provisions of Section 158 BD of the Act.

During the assessment proceedings, the assessee requested the Assessing Officer time and again to permit him to cross-examine Manoj Aggarwal on the basis of whose statement proceedings had been launched and from whose possession the documents were recovered, so that the assessee could prove its case. The request was not acceded to by the Assessing Officer and the Tribunal has found that this was in complete violation of the principles of natural justice.

The Tribunal held that the Assessing Officer was functioning as a quasi judicial authority and was under an obligation to adhere to the principles of natural justice. Several requests were made by the assessee, but Manoj Aggarwal was not made available for cross-examination. On this basis, the Tribunal set aside the block assessment and that is why the Revenue is before us in an appeal under Section 260A of the Act.

Learned counsel for the Revenue relied upon ***One-up Shares and Stock Brokers Pvt. Ltd. vs. R.R.Singh, Commissioner of Income Tax & Others [2003] 262 ITR 275*** to contend that the statement of Manoj Aggarwal had evidentiary value, as observed by the Bombay High Court. There is no doubt that the statement of



Manoj Aggarwal had evidentiary value but weight could not be given to it in proceedings against the Assessee without it being tested under cross-examination. In the absence of the statement being tested, it cannot be said that it should be believed completely to the prejudice of the assessee. Under the circumstances, we do not think that the judgment relied upon by the learned counsel carries him any further.

We are of the opinion that the Tribunal was right in its view that in the absence of Manoj Aggarwal being made available for cross-examination, despite repeated requests by the assessee, his statement could not be relied upon to his detriment.

No substantial question of law arises for our consideration.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

AUGUST 29, 2006
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