



IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No.353/2006

COMMISSIONER OF INCOME-TAX

...Appellant through
Ms. P.L. Bansal, Sr.
Standing Counsel

Versus

PRADEEP KUMAR GUPTA

...Respondent through
Dr. Rakesh Gupta
with Mr. Jitender
Saini, Advs.

WITH

ITA No.610/2006

COMMISSIONER OF INCOME-TAX

...Appellant through
Ms. P.L. Bansal, Sr.
Standing Counsel

Versus

VIJAY GUPTA

...Respondent through
Dr. Rakesh Gupta
with Mr. Jitender
Saini, Advs.

Date of Decision : 30th November, 2006

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of local papers may be allowed to see the Judgment? ✓
2. To be referred to the Reporter or not? ✓
3. Whether the judgment should be reported in the Digest? ✓



J U D G M E N T

1. The Revenue has filed these Appeals against the Order of the Income-Tax Appellate Tribunal (ITAT) deleting the agricultural income in the sum of Rs.4,34,000/- declared by Shri Pradeep Kumar Gupta and Rs.4,55,700/- declared by Shri Vijay Gupta respectively. Both these Assesseees had also assailed the validity of the assumption of jurisdiction by the Assessing Officer (AO) under Sections 147-148 of the Income-Tax Act (IT Act).

2. The case of the Revenue is that the AO had received information from the DDIT (Investigation), Faridabad that while carrying out post search enquiries relating to a third party, Shri Anand Prakash, the sole proprietor of M/s. Jai Trading Company had deposed that he was providing bogus/false transactions purporting to relate to sale/purchase of foodgrain items and that the cash deposits with him were from parties who had approached him for 'accommodation entries' in the form of agricultural receipts. The enquiries with the banks on whom cheques were drawn and credited in the account of M/s. Jai Trading Company showed that the Assesseees in the present cases were also the beneficiaries of such illegal transactions.



3. Based on the sworn statement of Shri Anand Prakash, re-assessment proceedings against the Assesseees under Sections 147/148 were initiated. The Assesseees had stated that they had taken agricultural land on lease from Shri Mool Chand and the rent had been paid in cash. Shri Mool Chand has appeared and affirmed this statement. The Assesseees have further claimed that this land had been cultivated by them through Shri Kishan Kumar of Hapur. Opportunities were granted by the AO to the Assesseees for production of Shri Kishan Kumar, which have not been availed of by them. Instead, the Assesseees have put forward a wholly incredulous and incongruent statement that Shri Kishan Kumar could not appear before the AO on 25.3.2003 because his brother-in-law, namely, Shri Yogender Pal Singh alias Raju, had been abducted on 27.3.2003. However, what is of great importance is the fact that the Assesseees had demanded an opportunity to cross-examine Shri Anand Prakash, but this was declined on the ground that the statement of this person had been recorded by the DDIT(Investigation), Faridabad. Further, while the Assesseees do not deny that they have sold produce to M/s. Jai Trading Company, and have submitted copies of the bills issued by the latter, they maintain that these sales were genuine.



4. Having heard learned counsel for the parties at great length, we are of the view that the Order of the ITAT is unassailable. In this case, the assessment had not been completed under Section 143(3) of the IT Act. There are banking transactions between the Assessee and Shri Anand Prakash and, therefore, initiation of reassessment Proceedings under Sections 147/148 may be impregnable even to the charge of legitimacy of invocation of Sections 147/148. In other words, since there were banking transactions between these persons, and Shri Anand Prakash had, in fact, deposed that he had provided bogus transactions to the Assessee that would constitute reasons for the AO to believe that income chargeable to tax had escaped assessment justifying action under Sections 147/148. Shri Anand Prakash cannot be seen as a busybody or an informer or a stock witness wholly unconnected with the Assessee concerned. Learned counsel for the Revenue had drawn our attention to *Phool Chand Bajrang Lal -vs- Income-Tax Officer*, [1993] 203 ITR 456 where the ITO had learnt that the party from whom that Assessee had allegedly borrowed Rs.50,000/- in cash had not actually done so. Information pertaining to the false nature of these transactions was exchanged between the respective Income-Tax Officers. Their Lordships opined that - "Acquiring



fresh information, specific in nature and reliable in character, relating to a concluded assessment which went to expose the falsity of the statement made by the assessee at the time of the original assessment was different from drawing a fresh inference from the same facts and material available with the Income-tax Officer at the time of the original assessment proceedings". This decision, however, does not empower the AO to rely only on the deposition of a third party in order to upset the Return filed by an Assessee.

5. This is where the failure of the Revenue to produce Shri Anand Prakash for cross-examination by the Assessee, assumes fatal consequences. Reassessment proceedings have been initiated after several years of the acceptance of the Return under Section 143(1) of the IT Act. The Assessee has themselves relied on the banking transactions between themselves and Shri Anand Prakash; secondly on bills issued by them to Shri Anand Prakash, and on the unassailed payment of rent to Shri Mool Chand. It is true that the Assessee's failure to produce Shri Kishan Chand had the consequence of not proving that the said person was tilling the land on their behalf. This failure cannot inexorably lead to the conclusion that no



agricultural income had been generated by the Assessee. Such an inference can only be drawn from the statement of Shri Anand Prakash to the effect that the transactions between him and the Assessee were bogus. Therefore, it was mandatory for the Revenue to produce Shri Anand Prakash for cross-examination by the Assessee on their specific demand in this regard. The facts on which the decision to invoke Sections 147/148 are predicated may in some cases be sufficient both for decision to carry out a reassessment as well to justify or sustain the fresh assessment. However, there may well be instances where the former said reopening may pass muster in the light of some facts, but those facts by themselves may turn out to be insufficient to preserve the assessment itself. Once Sections 147/148 are resorted to, the AO must first discharge the burden of showing that income has escaped assessment. It is only thereafter that the Assessee has to provide all the answers. We find no reason why the initial burden of proof should not rest on the AO even where the Assessment has gone through under Section 143(1) of the Act. The Tribunal has, therefore, arrived at the correct conclusion.

6. Learned counsel for the Respondent has also drawn our attention to the fact that in respect of Shri Satish Gupta, also of



M/s. Kristo Industries (as are the Assesses) the Revenue's Appeal in this Court, being ITA No.798/2004, was dismissed as not pressed. Since the tax effect in those cases was less than Rs.2,00,000/- and therefore the Appeal was not maintainable in terms of a CBDT Circular dated 29.6.2000. According to Dr. Rakesh Gupta, learned counsel for the Assessees, the incidence of tax in the present cases also would be less than Rs.2,00,000/-. He has further relied on a Circular dated 24.10.2005 whereby the monetary limit for the purposes of 'tax effect' was increased from Rs.2,00,000/- to Rs.4,00,000/-, with effect from 31.10.2005. We need not go into the question of the retrospective effect of the said Circular since the amount of tax here in any event would be below Rs.2,00,000/-. This is yet another reason why we are of the view that no substantial question of law arises in these Appeals. The Appeals are dismissed with no order as to costs.

(VIKRAMAJIT SEN)
JUDGE

(S. MURALIDHAR)
JUDGE

November 30, 2006
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