



\* **HIGH COURT OF DELHI : NEW DELHI**

**ITA No. 411 of 2007**

% Judgment reserved on: 25<sup>th</sup> April, 2007

Judgment delivered on: 4<sup>th</sup> May, 2007

COMMISSIONER OF INCOME TAX  
DELHI-VIII,  
NEW DELHI

..... Appellant

Through: Ms. P.L. Bansal, Adv.

Vs.

SHRI PREM NATH NAGPAL  
U-11, GREEN PARK EXTENSION,  
NEW DELHI.

..... Respondent

Through: Nemo.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

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

**V.B. GUPTA, J.**

By way of present appeal, the Revenue has challenged the impugned order dated 31<sup>st</sup> August, 2006 passed by the



Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal'), Delhi Bench 'B' in ITA No.413/Del/2003 for the block period 1<sup>st</sup> April, 1989 to 17<sup>th</sup> December, 1999.

2. The facts in brief are that a search and seizure operation under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was carried out at the residential premises of the Assessee on 17<sup>th</sup> December, 1999 during which, various documents were found and seized. Notice under Section 158BC was issued on 5<sup>th</sup> July, 2001 and in pursuance thereof Assessee filed his return for the block period declaring undisclosed income of Rs.1,64,667/-. It was noticed by the Assessing Officer that during the search, certain papers relating to property situated at 3, Club Road, Gadaipur, Mehrauli were found and as per return filed by the Assessee, he had acquired this property for a consideration of Rs.18.50 lacs during the financial year 1995-96 and Assessee had spent Rs.29,29,162/- on development of this property during financial years 1996-97 to 1999-2000. Further, this property had been let out by the Assessee to a multinational company for a monthly rent of Rs.75,000/-



along with interest free advance of Rs.1.25 crores. The Assessing Officer opined that the Assessee has received sum of Rs.1.25 crores as security and thus the value as declared by the Assessee in return of income appeared to be grossly understated and he referred the matter for valuation of the property to DVO. As per valuation report the value of this property was determined at Rs.3,04,62,000/- and the Assessee was confronted with this valuation report to which he raised objections stating that the property was given on rent with effect from 1<sup>st</sup> February, 2001 and Rs.18 lacs was spent on repairs and improvement.

3. Based upon the valuation report, the Assessing Officer made an addition of Rs.1,87,33,000/- in respect of understatement of the cost of acquisition and another addition of Rs.51,44,838/- was made in respect of understatement of expenditure on its development etc.

4. The Assessee filed an appeal before Commissioner of Income Tax (Appeals) challenging the order passed by the Assessing Officer and the Commissioner of Income Tax (Appeals) held that the Assessing Officer was not justified



in making the reference to DVO as the same could be legally made only during the regular assessment proceedings under Section 143(3) and not under Section 158BC as the property was not an undisclosed asset on the date of search and no paper was found during search which suggested concealment of any consideration or undisclosed investment in the property and accordingly the Commissioner of Income Tax (Appeals) deleted the addition made by the Assessing Officer.

5. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue filed appeal before the Tribunal. The Tribunal vide impugned order, dismissed the appeal filed by the Revenue.

6. It has been contended by the learned counsel for the Revenue that the Assessee is engaged in the business of real estate including construction and sale purchase of the properties and, therefore, the investment in the said property was in the nature of regular business investment. Whatever incriminating documents relating to the understatement of business income were found during the search would amply cover this property and bring it within



the ambit of provisions of Chapter XIV-B and all the incriminating documents as well as ownership papers gave sufficient authority under the law to the Assessing Officer to examine the question of investment in the said property and make a reference to the DVO.

7. Section 158B of the Act is a part of Chapter XIV-B dealing with special procedure for assessment of search cases. The Chapter contains section 158B to section 158BH. "Block period" and "undisclosed income" have been defined in clauses (a) and (b) to section 158B, for the purpose of the Chapter. We are concerned with the definition of "undisclosed income". The provision in its entirety reads as follow:-

"(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 the Act."

8. It is clear from the above definition that the income or the property, which has been disclosed or would have been



disclosed for the purpose of this Act, does not form part of the undisclosed income for purpose of block assessment. Under the provisions of Chapter XIV-B only such of the aforesaid categories of income, which has been found as a result of search can alone be the subject matter of an assessment under this Chapter. The definition specifies that where an Assessee has claimed any expenses or addition, which is found to be false, the same can only be regarded as an undisclosed income for the purpose of this Chapter.

9. In ***Commissioner of Income Tax vs. Ravi Kant Jain (2001) 250 ITR 141***, this Court while discussing the provisions of Section 158B of the Act held that:-

“The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing



Officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A.”

10. In the present case, during the search, only ownership papers of the property were found and seized. No other incriminating document was found which may show that there was understatement of the purchase consideration or the cost of improvement. The papers with regard to the ownership will always be found with the owner and finding of such documents does not lead to any inference that either the purchase consideration or the cost of improvement have been understated. Since no document was found in the course of search leading to any adverse inference about the aforesaid understatement, under these circumstance, no computation of undisclosed income could have been made by resorting to the provisions of Chapter XIV-B of the Act.

11. Under these circumstance, we hold that there is no basis for making an addition on account of undisclosed income in the present case and we do not see any reason to differ with the finding arrived at by the Tribunal.

12. The above being the position, no fault can be found



with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

13. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

A handwritten signature in black ink, appearing to read 'V. B. Gupta', written over a horizontal line.

**(V. B. GUPTA)**  
**JUDGE**

**May 4, 2007**  
**bisht**

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

**(MADAN B. LOKUR)**  
**JUDGE**