



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

**ITA No.22 of 2007**

% Judgment reserved on: 16<sup>th</sup> May, 2007

Judgment delivered on: 22<sup>nd</sup> May, 2007

**COMMISSIONER OF INCOME TAX  
DELHI-IV, NEW DELHI**

..... Appellant

Through: Ms.P.L.Bansal, Adv. with  
Mr.Vishnu Mehra, Adv.

Vs.

**SHRI GIRISH CHAUDHARY  
DIRECTOR OF I.G.BUILDERS &  
PROMOTERS PVT. LTD.,  
E-87, MASJID MOTH,  
GREATER KAILASH-III,  
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.**

Revenue has filed this appeal challenging the order



dated 12<sup>th</sup> April, 2006 passed by the Income Tax Appellate Tribunal (in short as 'Tribunal') in IT(SS) No.341/Del/2003 for the block assessment period 1990-91 to 18<sup>th</sup> January, 2000 whereby the Tribunal deleted the addition of Rs.48 lacs made by the Assessing Officer on account of undisclosed income on the basis of seized material.

2. Premises of M/s I.G.Builders and Promoters Pvt. Ltd. in which the Assessee is a Director and of the Assessee were searched on 18<sup>th</sup> January, 2000 and a document marked as Annexure A-37 was found and seized. The said document contained the following entries:-

Annexure A-37	(Page 13)
"Cash RB-	31.50
Ch.	9.50
	-----
	41.00
	16.50
	-----
	57.50
	31.50
	16.50
	-----
	48.00"



3. As per the Assessing officer, the Assessee did not render any explanation of these entries in the document and thus, the Assessing Officer took Rs.48 lacs as Assessee's income from undisclosed sources.

4. The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) who deleted this addition of Rs.48 lacs.

5. Against the order of Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal and vide the impugned order the Tribunal dismissed the appeal filed by the Revenue.

6. It has been contended by the learned counsel for the Revenue that as per provisions of Section 132(4A) where any document is found in the possession or control of the Assessee in the course of search, it has to be presumed that such document belongs to such person and that the contents of such document are true. Though this presumption is rebuttable, the Assessee did not adduce any evidence or offer any explanation before the Assessing Officer to rebut the same. The figures recorded in the loose sheet seized during the search and



the entries entered into the books of M/s I.G. Builders did not tally and the Assessee failed to explain these entries in the seized documents.

7. The Tribunal vide its impugned order deleted the addition made by the Assessing Officer holding that:-

"In the present case the Revenue has used its longest arm of search available to the Revenue to unearth unaccounted money or evidence thereof. Having taken above step and as per law, it has to be proved strictly that undisclosed income assessed in the hands of the Assessee is undisclosed income beyond a reasonable doubt. As noted earlier in the first page, total of all the five figures is 57.50 but addition of Rs.48 lacs was made and not of Rs.57.50 lacs. Why figures mentioned at second place after some gap was not taken into consideration. How 48 have been made as Rs.48 lacs and that too undisclosed income of the Assessee is absolutely not clear from the assessment order. It was stated that Rs.9.50 lacs is recorded to be received through Cheque and therefore above amount was not added. It is correct that before 9.50 the word, "Ch" is written but there was nothing on record to show this amount was any way different from other figures/amounts. No attempt whatsoever was made to link any of the entry in the seized book with any transaction carried by the Assessee in his capacity as Director or by his wife or M/s I.G.Builders and Promoters Ltd. to show the amount in figure as assessable undisclosed income.



No proper use of seized material was made to establish that entries in the seized document relates to undisclosed income of Rs.48 lacs. Seized document has rightly been held to be a dump-document. It was for the Revenue to put life into it by collecting other relevant and connected material. This has not been done to establish the case as per requirement of the statute."

8. 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."

9. 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.

10. Under Chapter XIV B of the Act, before an addition of an "undisclosed income" can be made, the Assessing Officer has to bring on record the material to show that on evidence found as a result of search there is an undisclosed income represented by credits appearing in the books of accounts.

11. Hence in the present case there is no material on record to show as to on what basis the Assessing Officer has reached at the conclusion that the figure '48' is to be read as Rs.48 lacs.



12. The Apex Court in Central Bureau Investigation vs. V.C.Shukla and Others, (1998) 3 Supreme Court Cases 410 has laid down that: -

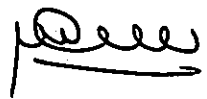
"File containing loose sheets of papers are not 'book' and hence entries therein are not admissible under Section 34 of the Evidence Act, 1872."

13. Similarly, the document Annexure A-37 recovered during the course of search in the present case is a dumb document and lead us nowhere. Thus, the Tribunal rightly deleted the addition of Rs.48 lacs made by the Assessing Officer on account of undisclosed income on the basis of seized material.


14. 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.



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

  
(V. B. GUPTA)  
JUDGE

May 22, 2007  
bisht

  
(MADAN B. LOKUR)  
JUDGE