



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

ITA No.577 of 2007

% Judgment reserved on: 4th July, 2007

Judgment delivered on: 9th July, 2007

COMMISSIONER OF INCOME TAX
DELHI-X
DRUM SHAPE BUILDING
I.P.ESTATES
NEW DELHI

..... Appellant

Through: Mr. R.D. Jolly, Adv.

Vs.

SHIV PRAKASH AGGARWAL
A-2/5 SEA VIEW
1st FLOOR, MODEL TOWN
DELHI

..... Respondent

Through: None.

Coram:

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

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

V.B. GUPTA, J.

The Revenue is aggrieved by an order dated 22nd December,



2006 passed by the Income Tax Appellate Tribunal (for short as 'Tribunal') 'C' Bench, Kolkata in IT (SS) No.126/Del/2003 for Block Assessment period 1st April,1989 to 29th July, 1999.

2. By the impugned order, the Tribunal allowed the appeal filed by the Assessee against the order dated 21st February, 2003 passed by Commissioner of Income Tax (Appeals), New Delhi confirming the various additions amounting to Rs.1,00,61,680/- made by the Assessing Officer on the basis of entries recorded in Annexure A-1 to A-5 of the panchnama.

3. The brief facts are that a search was conducted at premises No. A-2/5, 1st Floor, Model Town, Delhi on 29th July, 1999 where the Assessee is also residing along with his father. The Assessing Officer issued notice under Section 158BC to the Assessee for filing of the Block return. The Assessee objected to the notice stating the the search warrant was in the name of his father Shri. Ram Kishan Aggarwal and there was no search warrant in his name.

4. During the course of search proceedings, certain documents as per Annexure A-1 to A-5 to the panchnama were seized which contained records of cash transactions and other transactions. The Assessee was asked to explain the notings and



the transactions recorded in the seized documents. The Assessee explained that the material seized from his residence pertain to his father and not to him but the same was not accepted by the Assessing Officer. The Assessee also furnished a letter from his father along with an affidavit of his father who claimed the ownership of the documents seized from his residence. The Assessing Officer rejected the letter and the affidavit furnished by Shri. Ram Kishan Aggarwal and made various additions totaling to Rs.1,00,61,675/- to the total income of the Assessee as his undisclosed income.

5. In appeal, the Commissioner of Income Tax (Appeals) confirmed the actions of the Assessing Officer. The Assessee challenged the order of the Commissioner of Income Tax (Appeals) before the Tribunal and the Tribunal deleted the additions made by the Assessing Officers. Hence, the present appeal.

6. It has been contended by learned counsel for the Revenue that the onus is upon the Assessee to prove the cash credits but the Assessee has failed to discharge this onus and Shri. Ram Kishan Aggarwal also failed to appear before the Assessing Officer and did not produce any evidence in support of his claim



that the documents belong to him.

7. It is not in dispute that the Assessee has time and again submitted before the Revenue authorities that the seized documents belonged to Shri. Ram Kishan Aggarwal (his father) and whatever addition has to be made, it had been made in the hands of his father. Once the father of the Assessee has owned the documents which were seized during the course of search, there was no question of making addition in the hands of Assessee.

8. The Tribunal vide impugned order has held that:-

“ Considering the totality of the facts of the case and considering the fact that addition has been made in the hands of the Appellant as well as in the hands of his father Shri. Ram Kishan Aggarwal on behalf of same sets of seized documents identified as Annexure A-1 to A-5 of the panchnama and considering the fact that Shri. Ram Kishan Aggarwal has owned up the ownership of the documents seized from the premises at A-2/5, Sea View First Floor, Model Town, Delhi as per his Affidavit dated 17th July, 2001 and considering the fact that the Affidavit has not been proved to be false or untrue and relying on the decision of Allahabad High Court in *Commissioner of Income Tax v. Ashok Kumar, [2006] 286 ITR 541*, and in the absence of any contrary decision that or material brought before us against the said decision, we are of the considered opinion that no addition can be made in the hands of the Assessee on account of the said seized documents and whatever addition required to be made on behalf of the seized documents has to be



made only in the hands of Shri. Ram Kishan Aggarwal."

9. In case of **Ashok Kumar (Supra)**, in the course of the search conducted in residential premises occupied jointly by the Assessee and his father certain books of account were found including two books maintained in the name of the Assessee's father and mother. The Assessee denied ownership, but the Assessee's father accepted ownership of the books by filing an affidavit. The Assessing Officer added the interest earned on investment found in the books to the income of the Assessee but this was deleted by the Commissioner (Appeals) and the deletion was upheld by the Tribunal. The Allahabad High Court held that:-

"It is not in dispute that the father and son were living jointly in the house. It is also not the case of the Department that the seized books in question were found from the room of the Respondent. Indisputably, the father had owned up the books in question. Normally the presumption that the seized books belonged to the person from whose possession they have been seized has been discharged and it was upon the Department to prove by cogent material and evidence that the entire contents in the said books were that of the Respondent. No such material has been brought on record by the Department and, therefore, the Commissioner of Income Tax (Appeals) was perfectly justified in accepting the plea raised by the Respondent that the books in question did not belong to him but to his

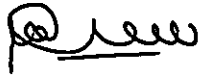


father, who had owned up the same by filing an affidavit. The finding recorded by the Commissioner of Income Tax (Appeals) is based on appreciation of evidence and material on record and has rightly been upheld by the Tribunal."

10. Similarly, in the present case, the father of the Assessee had owned up the documents seized during the course of search and had also filed an affidavit to this effect. Thus, under these circumstances no addition can be made in the hands of the Assessee on account of the seized documents and therefore we find no legal infirmity in the order passed by the Tribunal.

11. 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 appeal against the order which involves a substantial question of law.

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


(V. B. GUPTA)
JUDGE


(MADAN B. LOKUR)
JUDGE

July 9, 2007
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