



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.07.2008

+ **ITR 78/1989**

COMMISSIONER OF INCOME TAX, DELHI-X ... Applicant

- versus -

M/S PRIMA INDIA PRODUCTS ... Respondent

Advocates who appeared in this case:

For the Applicant : Mr Sanjeev Sabharwal with Ms P.L. Bansal

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This reference under Section 256 (1) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'), at the instance of the revenue, relates to the assessment year 1982-83. The following questions of law have been referred to this court by the Income Tax Appellate Tribunal:-

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the Commissioner's order u/s 263 without reversing the Commissioner's finding that the Income-tax Officer had failed to enquire into the source of



was erroneous and prejudicial to the interests of revenue ?

2. Whether, on the facts and in the circumstances of the case, it was permissible to the Tribunal to hold for the first time that the assessee possessed Rs. 2,40,000/- on 31.3.1981 and that the deposits / investments made by the assessee and its partners during the accounting period relevant to assessment year 1982-83 came out of the aforesaid sum of Rs.2,40,000/- ?
3. Whether, the Tribunal was right in holding that the assessee having moved a petition before the Settlement Commission and averring therein that the investments as detailed in Annexure-I to the said petition came out of Rs.2,40,000/- claimed to be with the assessee as on 31.3.1981, there was no need for the examination of investments and their sources in the proceedings for assessment year 1982-83 ?”

2. The facts are that the assessment in this case was completed under Section 143(3) of the said Act on 29.03.1985 on a total income of Rs 82,220/-. A search was conducted at the business premises-cum-residence of the assessee firm and the partners on 16.02.1982. During the search, various documents, including investments in the form of FDRs and cash, etc. were found. It was also found that the assessee firm had loans and advances to the extent of Rs 2,29,000/-, additions and alterations in the house property to the extent of Rs 1 lakh, cash to the extent of Rs 72,854 and bank balance of Rs 69,602/- which had not been declared to the department. It was noted that the investment in the



Smt Santosh Rani, Prince Mohan Aggarwal and Shri Dinesh Kumar Aggarwal. During the course of the assessment proceedings of the firm, the Income-tax Officer had made certain inquiries regarding the source of investments but, according to the Commissioner, failed to take any action and did not assess the said amount which was seized during the search operations in the hands of the firm. According to the Commissioner, the assessment order was erroneous and as such was prejudicial to the interest of the revenue. Consequently, a notice under Section 263 of the said Act was issued. A written reply was submitted by the assessee through its advocates on 13.12.1986. In the said letter dated 13.12.1986, it was contended by the assessee that the action under Section 263 of the said Act was without jurisdiction as the basic conditions specified therein were not satisfied. The assessee's plea was that an application had been moved before the Settlement Commission wherein a certain amount of cash, FDRs, etc. belonging to the assessee firm relating to the assessment years 1980-81 and 1981-82 had been disclosed. It was contended on the part of the assessee that the same did not form part of the records of the proceedings for the assessment year 1982-83 which is the subject assessment year.

3. However, after considering the objections raised by the assessee, the Commissioner did not agree with the assessee's



Commissioner set aside the assessment made by the Income-tax Officer and directed that he should make the assessment afresh after proper examination and investigation regarding the source of investments made in various names by the firm during the relevant accounting period and after allowing proper opportunity of hearing to the assessee to prove the contention that the investment was out of undeclared income of earlier years. The commissioner had considered the letter dated 16.02.1985 which had been written by the assessee to the Income-tax Officer during the assessment proceedings pertaining to the investments made by the partners. In that letter, it had been submitted that the following investments had been made in the names of the partners:-

1. Santosh Rani
Rs 5,000/- FDR dated 20.11.1981
Rs 80,000/- Bank deposit on 06.01.1982
Rs 20,000/- loan on 09.02.1982
2. Prince Mohan Aggarwal;
Rs 25,000/- loan on February, 1982
3. Dinesh Kumar Aggarwal.
Rs 10,000/- FDR on 20.11.1981.
4. It was stated in the said letter dated 06.02.1985 that the total investments to the tune of Rs 1,40,000/- in the year under consideration were made out of the accumulated come out of the undisclosed sources of the firm as on 31.03.1981. It was also stated in the said letter that



same amount had been considered for tax in the previous years. It was also stated that except these investments, there were no fresh investments in the partners' accounts / names in the year under consideration.

5. The Commissioner noted in his order that a perusal of the assessment record shows that the Income-tax Officer accepted this contention of the assessee, *prima facie*, without verifying or investigating or making any inquiry into the contention raised. The Commissioner was also of the view that there was nothing on record to prove the nexus between the undeclared income by the assessee prior to 1981 and the investments made in the names of the partners during the relevant accounting period. The Commissioner was also of the view that the Income-tax Officer was required to examine the contention of the assessee and to investigate the genuineness and veracity of the explanation offered regarding the source of investments during the relevant accounting year in the names of the partners alleged to be out of undeclared income in respect of the earlier years. It is in this background that the Commissioner had passed the said order dated 19.02.1987 under Section 263 of the said Act.

6. The said order has been set aside by the Tribunal in the



Tribunal examined the application made by the assessee before the Settlement Commission and noted the terms of settlement offered by the assessee. The same are as under:-

- “i) That it be accepted that the undisclosed income of the assessee firm for the years upto and including the year ended 31.3.1981 amounted of Rs.2,40,000/- and that the said amount of Rs.2,40,000/- was available as on 31.3.81 and thereafter in the manner detailed in Annexure I hereto.
- ii) That the aforesaid amount of Rs. 2,40,000/- be assessed in the hands of the assessee firm by spreading the same equally over the assessment years 1976-77 to 1981-82 (both inclusive), i.e. an additional amount of Rs.40,000/- be assessed in the hands of the assessee firm, in each of the above mentioned assessment years, over and above the income disclosed by the books of accounts. Further, that the provisions of Section 245E of the Act be invoked so far as the assessment years 1976-77 to 1979-80 (both inclusive) are concerned, so as to give effect to the aforesaid proposal.
- iii) That it be accepted that the cash amounts available as on 31.03.1981, as detailed in Annexure I hereto, were available for making investment advances in the period subsequent to 31.3.1981.
- iv) That it be accepted that the assessee firm did not own as on 31.3.1981, any assets other than the assets disclosed in its balance sheet as on 31.3.1981 and the above mentioned undisclosed assets amounting to Rs. 2,40,000/-.
- v) That the assessee firm be granted the benefit of registration / continuation of registration for each of the assessment years under consideration.
- vi) That interest and penalties chargeable / imposable under the various provisions of Income-tax Act,



firm and the partners therein be granted immunity from prosecution under the provisions of the Income-Tax Act, 1961 and / or any other law for the time being in force in relation to the various matters covered by the instant application for settlement.

- vii) That the assessee firm and the partners therein be granted instalments spread over a period of 3 years for making payment of the taxes ultimately determined as payable upon disposal of the instant application for settlement.”

7. The Annexure I referred to in the terms of the settlement, which carries the heading “Details of availability of undisclosed funds as on 31.3.1981”, so much as is relevant for the present case, reads as under:-

“III. Amount available in Cash with the firm as on 31.3.81 which was invested in banks, loans etc. in the previous year relevant to the A.Y. 1982-83 as under:-

a)	Smt. Santosh Rani			
	1) F.D.R. dt. 20.11.81	5,000		
	2) Bank Deposit on 6.1.82	80,000		
	3) Loan to Navin Jain Metal Udyog on 9.2.82	<u>20,000</u>	1,05,000	
b)	Sri Prince Mohan.			
	1) Loan to Navin Jain Metal Udyog on 11.2.82	<u>25,000</u>	25,000	
c)	Shri Dinesh Kumar			
	F.D.R. Dt. 20.11.81	<u>10,000</u>	10,000	1,50,000/-
				2,31,000/-

Rounded off to Rs. 2,40,000/-”



8. After considering the said offer for settlement before the Settlement Commission and the other surrounding circumstances, the Tribunal came to the following conclusion:-

“5. In view of the question, about of facts, admitted by the assessee as to undisclosed income of the assessee firm for the year upto and including the year ending on 31.3.1981 about the said amount of Rs.2,40,000/- and also further the assessee that the said sum of Rs.2,40,000/- was available as on 31.3.1981 and thereafter in the manner detailed in Annexure I, the same has yet to be taken as proved. The contents of annexure-I, to the order of the learned Commissioner of Income-tax, as such need no further examination / investigation. Since the assessee has already same to the Revenue Department, in this case the settlement Commission, with the disclosure. The investment of Rs.2,40,000/- made in differents case of the partner of the assessee firm as such is held to have been proved. The impugned order stands cancelled on merits and on facts, with the natural consequent flowing out of these findings to follow.

6. The appeal succeeds and stands allowed.”

9. In this context, when we examined the questions that have been referred to us, it was apparent that the concern of the Commissioner at the time of issuing the notice under Section 263 and ultimately the order under Section 263 was with regard to the nexus between the undeclared income of the assessee prior to 1981 and the investments made in the names of the partners during the accounting period relevant to the assessment year under consideration. It is obvious that if there was such a nexus, then there would be no occasion



fact that the Commissioner felt that there was no such nexus that a further inquiry was necessary on the part of the Income-tax Officer. However, the Tribunal has taken note of the fact of the disclosures before the Settlement Commission as also Annexure-I to the said application for settlement. The said annexure clearly reflects the FDRs, bank deposits and loans mentioned in the letter dated 06.02.1985 issued by the assessee to the Income-tax Officer. It is in this context that the Tribunal came to the conclusion that in view of the contents of Annexure-I, no further examination was required by the Income-tax Officer. The obvious conclusion is that the Tribunal was satisfied that there was a nexus between the undeclared income which had been disclosed before the Settlement Commission and the investments made in the names of the partners during the accounting period relevant to the assessment year under consideration. It is apparent that by virtue of this, the Commissioner's finding that the Income-tax Officer had failed to inquire into the source of the deposits/investments stood reversed by necessary implication. Consequently, question No.1 would have to be answered in favour of the assessee and against the revenue.

10. With regard to question No.2, we are of the opinion that the same also has to be answered in favour of the assessee and against the revenue. This is because of the very nature of the provisions of Section



Section 263 requiring further investigation, has to merely raise doubts and suspicion based on material facts, the Tribunal, if it reverses such an order, has to take a stand and has to return a finding as to whether the said doubts were substantiated or not. It is in this context that the Tribunal in the present case came to the conclusion that the investments made by the assessee and its partners during the accounting period relevant to the current assessment year (1982-83) came out of and had a direct nexus with the sum of Rs. 2,40,000/- as had been disclosed by the assessee before the Settlement Commission.

11. Question No.3 also stands answered in favour of the assessee and against the revenue in view of the discussion above. The reference, therefore, stands answered accordingly.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 11, 2008

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