



THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.09.2008

+ **ITA 1126/2008**

**THE COMMISSIONER OF INCOME
TAX DELHI (CENTRAL)-II**

... Appellant

- versus -

D.K. GUPTA

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr R.D. Jolly

For the Respondent : Dr Rakesh Gutpa with Ms Poonam Ahuja and Ms Aarti Saini

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 appeal is preferred by the revenue against the order dated 18.01.2008 passed by the Income-tax Appellate Tribunal in respect of the block period 01.04.1995 to 18.03.2002. The appeal before the Tribunal had also been preferred by the revenue against the order of the Commissioner of Income-tax (Appeals) dated 24.12.2004.



Commissioner of Income-tax (Appeals) had erred in deleting the addition of Rs 7,53,55,000/- made on account of entries recorded in two diaries seized from the assessee's premises holding these diaries as dumb documents.

2. A search was conducted on 18.03.2002 at the assessee's residential premises as well as the office of the company in which the assessee was a director. Amongst other items, two diaries were seized which were marked as Annexure A1 and A2 to the *Panchnama*. These diaries apparently pertain to the calendar year 2001-02 and were found at the business premises at D-31, First Floor, Green Park, New Delhi. The assessee is a director in Aerens Buildwell Limited which is in the business of property development and real estate agency. The notings in these diaries included appointments, reminders, notings / jottings, etc. The assessee had been asked to explain all the entries in these diaries. The same were explained by the assessee through a letter dated 03.03.2004. Even the amounts mentioned were explained as to whether they referred to 'thousands' or 'lakhs'. The tribunal noted that the notings were also reconciled in terms of absolute figures from the accounts seized during the search as indicated in paragraph 6 of the impugned order. Paragraph 7 contains the details which indicate that the notings were in lakhs of rupees. Paragraph 8 of the impugned order



were in connection with general property related discussion and had nothing to do with actual transactions. This fact had been explained to the Assessing Officer who had accepted the same. Again, in paragraph 9 of the impugned order, the notings relating to appointments for discussion, as indicated in the said paragraph, were explained as having nothing to do with the actual transactions. Paragraph 10 refers to notings which indicate telephone numbers and are not related to actual transactions. Paragraph 11 of the impugned order indicates that each of the items in respect of which queries had been raised by the Assessing Officer were responded to by the assessee. There were 36 such items.

3. According to the revenue, not all the entries have been explained in the sense that the assessee has not produced any material to show that the transactions themselves had not materialised. The plea raised by the revenue was that a presumption is raised against the assessee in view of the provisions of Section 132 (4A) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). However, we find that this aspect of the matter has also been considered in detail by the tribunal. The tribunal has noted that after going through the contents of the diaries and observations made by the Assessing Officer and the replies filed by the assessee, the diaries found with the assessee contained various reminders, appointments, notings / jottings which



offers received and what he intends to look into. The tribunal was of the view that merely because there were notings of offers does not mean that the transactions had actually taken place and the tribunal was of the view that the provisions contained in Section 132 (4A) of the said Act did not authorise the Assessing Officer to raise such a presumption, particularly when the assessee had offered the explanation alongwith the documents and evidence and had also furnished an affidavit to this effect and the Assessing Officer had also made enquiries with respect to such replies given by the assessee. The tribunal noted that in such a situation, the burden shifted on the revenue to prove that the replies filed by the assessee were not correct and that the notings / jottings had resulted into income which had not been disclosed in the regular books of accounts. The tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings / jottings had materialised into transactions giving rise to income not disclosed in the regular books of accounts.

4. Consequently, the tribunal upheld the findings of the Commissioner of Income-tax (Appeals) and agreed with the view taken by the latter that the assessee was liable to tax only on those receipts which had been proved to be income in the hands of the recipient. As a result thereof, the tribunal found no reason to interfere with the



ground that the same were based on valid and cogent materials placed on record and also produced before the Assessing officer during the course of assessment proceedings. The tribunal also noted that all the evidence, materials, explanations were furnished before the Assessing Officer and it is on the basis of such material that the Commissioner of Income-tax (Appeals) had arrived at the conclusion that no addition was warranted on the basis of the seized diaries.

5. We have examined the impugned order in detail and have also heard the counsel for the parties and we find that the issues sought to be raised before us are purely issues of fact. The tribunal, being the final fact finding authority, has returned a certain set of facts. We find no perversity in such findings and, consequently, no question of law, what to speak of a substantial question of law, arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

September 26, 2008

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