



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

+ **ITA No.903 of 2007**

Judgment reserved on: January 23, 2008

% Judgment delivered on: February 19, 2008

Commissioner of Income Tax
(Central)-1, New Delhi.

...Appellant

Through Mr. R.D. Jolly, Adv.

versus

Ved Prakash Choudhary
E-14, N.D.S.E.-II,
New 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? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 8th September, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' in



IT(SS) No. 107/Del/2003 relevant for the block period from 1st April, 1989 to 20th February, 2000.

2. Briefly the facts of the case are that a search was conducted at the residence of the Appellant on 10th February, 2000. During the course of search, two Memorandums of Understanding (MOU) dated 1st March, 1999 were recovered. These MOUs were entered into between the Assessee, Ravi Talwar and Madhu Talwar. In terms of the MOUs, the Assessee had paid Rs.25 lakhs each to Ravi Talwar and Madhu Talwar towards part consideration for the purchase of agricultural land valued at Rs.123.30 lakhs. The balance amount was to be paid on or before 30th April, 1999, failing which the amount of Rs.25 lakhs each would be forfeited.

3. On the basis of the MOUs, the Assessing Officer issued a questionnaire to Ravi Talwar and Madhu Talwar regarding receipt of the amount of Rs.25 lakhs each but while they both admitted having signed the MOUs, they denied having received any amount. The Assessing Officer concluded that the denials by the Assessee of having made payments and of Ravi Talwar and Madhu Talwar of having received the amounts was only to escape payment of tax liabilities. Accordingly, an amount of Rs.50 lakhs was added in the hands of the Assessee under Section 69 of the Income Tax Act, 1961 (for short the Act) as unexplained expenditure.

4. The view taken by the Assessing Officer was not accepted by the Commissioner of Income Tax (Appeals) and also by the



Tribunal. Both concurrently were of the view that there was not enough evidence to add the amount in the hands of the Assessee.

5. The Commissioner was of the view that all the parties had denied the transaction and in fact the property in question was eventually sold by Ravi Talwar and Madhu Talwar to M/s. Delhi Tent and Decorators Pvt. Ltd. whose Director gave a statement on 4th February, 2002 to the effect that he had purchased the agricultural land in question from Ravi Talwar and Madhu Talwar. It was also held that in view of the denial of receipt of any money by Ravi Talwar and Madhu Talwar, there ought to have been some independent corroboration of the payment but there was no such material forthcoming.

6. In so far as the Tribunal is concerned, it was of the view that under the provisions of Section 132(4A) of the Act, there was a presumption about the correctness of the contents of the MOUs but relying upon the decision of the Karnataka High Court in *Commissioner of Income Tax vs. P.R. Metrani (HUF)*, [2001] 251 ITR 244, it was held that the presumption was rebuttable. It was further held that the Assessee had been able to successfully rebut the presumption.

7. Learned counsel for the Revenue reiterated the view expressed by the Assessing Officer. Unfortunately, we are not in agreement with that view.

8. The facts of the case make it very clear that there were two



MOUs entered into by the Assessee with Ravi Talwar and Madhu Talwar in respect of the purchase of agricultural land. The two MOUs did record that “the purchase consideration shall be Rs.123.30 lacs. The purchaser having paid to the vendor the sum of Rs.25,00,000 part of the said purchase consideration as a deposit and shall pay the residual of said purchase consideration to the vendor on or before 30th April, 1999 when the purchase will be completed.”

9. Notwithstanding this, the Assessee as well as Ravi Talwar and Madhu Talwar denied the money transaction. In addition thereto, the case set up was that the agricultural land had, in fact, been sold to M/s. Delhi Tent and Decorators Pvt. Ltd. by Ravi Talwar and Madhu Talwar. This was confirmed by Shri N.K. Mittal, one of the Directors of M/s. Delhi Tent and Decorators Pvt. Ltd. Quite clearly, the MOUs did not fructify.

10. Section 132(4A) of the Act uses the expression “it may be presumed”. It is not obligatory on the assessing authority to make a presumption. Even if a presumption is required to be made, then, as held in *Commissioner of Income Tax v. S.M.S. Investment Corporation P. Ltd., [1994] 207 ITR 364*, the presumption is a rebuttable one and relates to a question of fact. While coming to this conclusion, the Rajasthan High Court relied upon an earlier decision rendered by it in *Commissioner of Income Tax v. S.M.S. Investment Corporation, [1988] 173 ITR 393*.

11. Even in *Income Tax Officer, B-Ward, Ernakulam v. T. Abdul*



Majeed, [1988] 169 ITR 440, it has been held as follows: -

“It is true that section 132(4A) of the Act enables the court to presume the truth of the contents of such books. However, it is a presumption which can be rebutted. Moreover, the presumption envisaged therein is only a factual presumption. It is in the discretion of the court, depending upon other factors, to decide whether the presumption must be drawn. The expression used in the sub-section is “may be presumed” as is used in section 114 of the Evidence Act, 1872. It is not a mandate that whenever the books of account are seized, the court shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court from doing so.”

12. In so far as the present case is concerned, the Assessee had stated that in fact there was no transfer of money between him and Ravi Talwar and Madhu Talwar. On the other hand, Ravi Talwar and Madhu Talwar had denied receipt of any money from the Assessee. In the fact of these denials, there ought to have been corroborative evidence to show that there was in fact such a transfer of money. Both the Commissioner as well as the Tribunal have come to the conclusion that there was no such material on record.

13. The Assessing Officer relied on certain other transactions entered into by the Assessee with Ravi Talwar and Madhu Talwar for drawing a presumption in respect of the transfer of money, but the Tribunal rightly held that those were independent transactions and had nothing to do with the MOUs, which were the subject matter of discussion. Even if there was something wrong with some other transactions entered into, that would not give rise to an adverse



14. In our opinion, no substantial question of law arises.
15. Dismissed.

MADAN B. LOKUR, J

FEBRUARY 19, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.