% 17.08.2009

3+4#

Present: Mr. Prem L. Bansal with Ms. Anshul Sharma for the appellant.

+ ITA No. 550/2009
ITA No. 555/2009 (Common Order)

On the basis of intra departmental information received by the Assessing Officer (AO), a search was conducted in the case of one Mr. Kamal Chand Jain on 15.12.1997, from whose possession large number of hundi receipts were found. According to the department, some of these hundies pertain to Mr. Suresh Kr. Mittal, i.e. the present assessee. He was accordingly issued notice under Section 148 of the Income Tax Act, 1961. During the assessment proceedings, the AO required the assessee to explain as to why cash memo of Rs.20 lacs borrowed on hundies be not treated as his income under Section 69D of the Act and, ultimately, this amount was added to his income, along with interest of Rs.2,06,538/-, as undisclosed income under Section 69D of the Act.

In appeal, the CIT (A) upheld the validity of proceedings under Section 147/148 of the Act, but on merits sustained the addition only to the extent of Rs.2 lacs. In these circumstances, both the assessee as well as the Revenue preferred appeals against the order of CIT (A) before the ITAT.

The ITAT has dismissed the appeal of the Revenue and allowed the of the assessee. In the process, it has also held that proceedings under Section 147 were wrongly initiated.

We may observe that insofar as merits of the case is concerned, ITAT relied upon the judgment of this Court in the case of *CIT* v. *Capital Floor Mills Ltd.* (ITA No. 112/2006 decided on 25.7.2007), wherein it was held that documents seized from the premises of Mr. Kamal Chand Jain were not hundies and, therefore, there was no valid reason before the AO to believe that the income of the assessee had escaped assessment.

Learned counsel for the Revenue could not dispute that this case is covered by the judgment of this Court in *Capital Floor Mills Ltd.* (supra). Therefore, the other contention as to whether proceedings under Section 148 of the Act were bad in law, could not be gone into, inasmuch as, on merits itself the addition in income has been set aside. In view thereof, we are of the opinion that no substantial question of law arises.

Dismissed.

A.K. SIKRI, J.

VALMIKI J. MEHTA, J.

August 17, 2009
nsk