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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 51/2008

COMMISSIONER OF INCOME TAX Appellant
Through: Mr R.D. Jolly, Advocate

Versus

BHARAT GLASS TUBE LTD Respondent
Through: Mr. Praveen Chauhan and
Mr. Amol Sinha, Advocates

CORAM
HON'BLE MR JUSTICE VIKRAMAJIT SEN
HON'BLE MR JUSTICE RAJIV SHAKDHER

ORDER
22.01.2009

This is an appeal preferred by the Revenue under Section 260A of the Income Tax Act, 1961 against the judgment dated 29.12.2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to in short as the 'Tribunal') in IT(SS) A No.510/Del/2003 pertaining to block assessment year 1990-91 to 08.07.1999. The only issue which arises for consideration in the matter is whether the Tribunal misdirected itself in law in upholding the order of the Commission of Income Tax (Appeals) [hereinafter referred to in short as CIT(A)] in deleting the additions of Rs 9,25,56,130/- made by the Assessing Officer by treating the returned income of Rs 9,25,56,130/- of the assessee in respect of assessment year 1998-99 as 'Nil' for the purposes of computation



of undisclosed income under the provisions of Section 158BB(1)(c) on the ground that the regular return was not filed by the assessee within the due date as provided under Section 139(1) even though it was filed within time prescribed under Section 139(4) of the Act. In order to dispose of this appeal the following relevant facts are required to be noted:-

On 08.07.1999 the search was conducted under Section 132(1) of the Act on one, Haryana Sheet Glass Ltd. During the course of search certain papers relating to the assessee company were also seized. Consequently, on 10.8.2000 a notice under Section 158BC read with Section 158BD of the Act was issued to the assessee calling upon the assessee to file a return for the block period.

On 11.12.2000 the assessee filed a return showing undisclosed income as Nil. The Assessing officer vide order dated 08.07.2002 framed the block assessment, wherein he determined undisclosed income to the tune of Rs 9,25,56,130/- in respect of assessment year 1998-99. The rationale for doing so was that since assessee had failed to file the return income within the due date as prescribed under Section 139(1) of the Act, the returned income will be taken as Nil for the purposes of computing undisclosed income under Section 158BB(1)(c) of the Act.



The assessee being aggrieved preferred an appeal to the CIT(A). The CIT(A) after considering the facts and the case law cited, in detail, allowed the appeal of the assessee.

The Revenue being aggrieved preferred an appeal to the Tribunal. The Tribunal in view of the findings returned in the impugned order of CIT(A) and after examining at its end sustained the order of the CIT(A).

After hearing the learned counsel for the Revenue as well as the assessee, we are of the view that impugned judgment deserves to be sustained. The search took place on 08.07.1999. In the normal course due date for filing of the return for the year 1998-99 expired on 30.11.1998. The assessee, however, filed a return on 17.9.1999 which was admittedly within the time prescribed under Section 139(4) but after the expiry of the due date specified under 139(1) of the Act. It is important to note at this stage that the assessee had filed a Tax Audit Report as required under Section 44AB of the Act on 30.11.1998, as also, the annual return with the Registrar of Company which included balance sheet and profit and loss for the financial year 1997-98 pertaining to assessment year 198-99 on 17.2.1999. Furthermore, it is not disputed that the assessee had paid self assessment tax to the tune of Rs 2.75 crores on 22.3.1999, as also, a further sum of Rs 10 lakhs towards self assessment tax on 30.03.1999. It is also not disputed that the



return which was filed on 17.9.1999 wherein the assessee has disclosed the income of Rs 9,25,56,130/- was based on the books of accounts and the income disclosed therein.

In the background of these facts the Tribunal was required to consider as to whether the mere fact that the date of search preceded the date of filing of return would it give the returned income the colour of an undisclosed income even if the returned income was based on the books of accounts as demonstrated by various filings in the nature of Tax Audit Report and annual report with the Registrar as well as payment of self assessment tax made much prior to the date of search. The Tribunal was of the view that in the circumstances it was not an undisclosed income. We tend to agree with the reasoning of the Tribunal that the undisclosed income would be one which is hidden from the Department with the intention to escape assessment. In the instant case no such intention is discerned as is evident from the facts and circumstances set out hereinabove. In our view no substantial question of law has arisen for our consideration. In the result appeal is dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

JANUARY 20, 2009/da