



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 1120/2009 & CM Nos. 15776-777/2009

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Decided on: November 17, 2009

Commissioner of Income Tax, Delhi - VIII . . . Appellant

through : Ms. Prem Lata Bansal with
Ms. Anshul Sharma, Advocates

VERSUS

Mukesh Luthra . . . Respondent

through : NEMO

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

For orders, see ITA No. 1106/2009.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

November 17, 2009
nsk



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+ ITA No. 1106/2009 & CM Nos. 15754-755/2009
ITA No. 1120/2009 & CM Nos. 15776-777/2009
ITA No. 1121/2009 & CM Nos. 15778-779/2009
ITA No. 1123/2009 & CM Nos. 15782-783/2009
ITA No. 1124/2009 & CM Nos. 15784-75/2009
ITA No. 1125/2009 & CM No. 15786/2009

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A.K. SIKRI, J. (ORAL)

1. In these appeals, we are concerned with the validity of the notice issued by the Assessing Officer (AO) under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for reassessment on the alleged ground that the income in the assessment years, namely, 1997-98, 1998-99 and 1999-2000 had escaped assessment. The reasons which were given for reopening the assessment in respect of these assessment years were identical. It is the opinion of the AO



of the Act as the export proceeds realized against the export of goods by the assessee were not from the persons to whom the exports were made and even the amount realized was beyond the statutory period. The assessee had contested this position. However, the AO did not agree with the contentions raised by the assessee and made additions in all the three years denying the benefit of Section 80HHC to the assessee. In the appeal preferred by the assessee before the CIT(A), though the validity of proceedings initiated under Section 148 of the Act was upheld, but on merits the CIT(A) allowed the appeal and deleted the additions made by the AO holding that the assessee was entitled to the benefit of the provisions of Section 80HHC of the Act.

2. Both the assessee as well as the Revenue filed cross appeals against the order of the CIT(A). The grievance of the assessee were that the findings of the CIT(A) that proceedings under Section 148 of the Act were rightly initiated was erroneous. On the other hand, Revenue was aggrieved against order passed on merits whereby the additions made by the AO were deleted. The Income Tax Appellate Tribunal (ITAT), vide impugned orders dated 23.5.2008, has held that proceedings initiated by the AO under Section 147/148 of the Act were illegal and erroneous and has quashed the same which led to allowing the appeals of the assessee and dismissing the appeals filed by the Revenue.

2. We may note at the outset that the AO had not disputed the factum



these exports is also not disputed. When the notice was issued by the AO under Section 148 of the Act, the assessee had filed objections thereto. The assessee had produced the invoices by which the exports were made. The assessee had also filed Foreign Inward Remittance Certificate (FIRC), as per which the remittances against the aforesaid exports were received by the assessee through its bankers in foreign exchange in India against those very invoices. The AO had made inquiries from Oriental Bank of Commerce and ABN Amro Bank Ltd., from where he had himself noted that these banks had credited the amount received in the account of the assessee and had also filed copies of FIRC.

4. In these circumstances, the ITAT remarked that the only doubt of the AO was as to whether the amount credited in the bank account of M/s. Shri International and Fashion, of which the assessee is the proprietor, was received from the overseas buyers of the assessee or not. This issue has been answered by the ITAT in favour of the assessee, on the basis of material produced on record, in the following manner :-

"In this regard, we find that sample copies of FIRC is available at pages 220 and 221 of the paper book. We find that in the same, Invoice No. and date against which the payment is received by the bank is duly mentioned. A sample invoice issued by the assessee to its overseas buyers is also available on page No. 222 of the paper book and in the same, name and address of the buyer is also applicable. We also find that there is a bank certificate in the FIRC and it is certified by the bank that the particulars given in Col. 1 to 17 have been verified and found to be correct. It is also certified by the bank that the bank has verified FOB value mentioned in Col.14 above with the same policy etc. The



given the amount received in the account of the assessee has also filed copies of FIRC. We are of the considered that once the bank has given the copies of FIRC for the money credited into the bank account of the assessee and such FIRCs contain all the details including invoice No. and date of FOB value and since the bank has duly certified that these particulars were verified and found to be correct, there is no material on the basis of which a reasonable person could have formed requisite belief. We are of the considered opinion that in the light of these facts and materials it cannot be said that there was relevant material on which a reasonable person could have formed a requisite belief as held by the Hon'ble Apex Court in the case of Rajesh Jhaveri & Stock broker (supra)...."

5. It is clear from the above that a finding of fact is arrived at by the ITAT that there was sufficient material on record produced by the assessee to demonstrate that the remittances in question were made by the buyers as per the invoices inasmuch as same invoice numbers, vide which the exports were made, were duly recorded in the FIRC. The ITAT was also weighed by the fact that the banks had verified the FOB value with reference to bill of lading and insurance policy and had also certified that the particulars given in Column Nos. 1 to 17 of the FIRC were verified and found to be correct. On this basis, the ITAT concluded that there was no material on the basis of which any reasonable person could have formed requisite belief.

These are pure findings of fact and no question of law arises.

6. We, therefore, dismiss these appeals and the accompanying applications.


(A.R. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)