



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 405 of 2009

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Reserved on: November 23, 2009
Pronounced on: November 27, 2009

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

through : Mr. Sanjeev Sabharwal with
Mr. A.K. Verma, Advocates

VERSUS

Berjesh Kumar Goyal . . . Respondent

through : Mr. Satyen Sethi with
Mr. Johnson Bara, Advocates

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.

1. A search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was carried out at the residential premises of the respondent/assessee herein on 14.9.2000. Thereafter, notice for block assessment was served upon the assessee. The assessee, pursuant thereto, filed his return for the block period 1.4.1990 to



respect of house property for the period 20.1.1998 to 25.

which he had not earlier shown in the income tax returns.

2. The Assessing Officer (AO) passed orders dated 29.11.2000 completing the block assessment. In this order he made various additions, details whereof are as under :-

Income as per block return	Rs.22,02,783/-
<u>Add: F. Year 2000-01</u>	
Unexplained receipts	Rs.55,000/-
Unexplained cash	Rs.12,59,281/-
Unexplained Investment in Jewellery Para 7(A)	Rs.59,610/-
Unexplained Investment in Jewellery Para 7(B)	Rs.85,589/-
Unexplained Expenditure	Rs.32,008/-
Unexplained Household goods	Rs.11,13,000/-
<u>F. Year 1999-2000</u>	
Unexplained Expenditure	Rs.3,88,069/-
Total undisclosed income for the block period	Rs.51,95,340/-

3. The assessee preferred appeal against this order questioning the aforesaid additions made by the AO. The Commissioner of Income Tax (Appeal) went into the validity of each addition and found that the assessee had been able to satisfactorily explain, by producing sufficient evidence, the source of all receipts, investments, household goods, etc. and no such additions, except one, were warranted. He, thus, deleted all the additions but sustained addition on account of unexplained cash in the sum of Rs.9,63,085/-.

4. Both the Revenue as well as the assessee filed appeals before the Income Tax Appellate Tribunal (ITAT) against the order of CIT(A).



cash to the extent of Rs.9,63,085/- maintained by the CIT(A) Tribunal has decided both the appeals vide impugned order dated 17.4.2008. The deletions made by the CIT(A) are sustained resulting into dismissal of the appeal of the Revenue. The Revenue has accepted this part of the order of the Tribunal. The Tribunal has, however, allowed the appeal of the assessee thereby deleting the addition of Rs.9,63,085/- as well. Present appeal is preferred by the Revenue challenging this deletion.

5. Insofar as this addition on the ground of unaccounted cash is concerned, the facts are that during the course of search, a sum of Rs.13,44,050/- was found. The explanation of the assessee was that an amount of Rs.1,50,000/- had been received from M/s. Aswani Investments Pvt. Ltd.; Rs.1,00,000/- was received from Mrs. Dina Sood, given by her for studies of her daughter Ms. Rasika Sood for whom the assessee was the legal guardian; Rs.55,000/- was received from 11 persons who are diary product manufactures; Rs.29,769/- was cash in hand as disclosed by the assessee in his returns; Rs.46,196/- represented the cash in hand of M/s/ Indo-Nippon Foods Ltd. and balance of Rs.9,63,085/- was cumulative amount kept by the assessee in his house representing the rent received by the assessee, which had been disclosed by the assessee as undisclosed income in the block assessment return, i.e. it was part of rent of



6. The CIT(A) had accepted the explanation with regard to the of all other monies except the amount of Rs.9,63,085/-. He did not accept the plea of the assessee that this amount was liable to be telescoped into the amount of Rs.10,80,000/- offered by the assessee as undisclosed income representing the rent receipts in his block return. The main reason given by the CIT(A) is that there was a long back between the period to which the undisclosed rent receipts pertained and the date of search on which cash was found at the residence of the assessee and, therefore, no benefit of telescoping could be allowed. The CIT(A) did not believe that rents received were kept intact over such a long period of time with the assessee. For this reason, addition to this extent was confirmed.
7. The ITAT, while rejecting this rationale of the CIT(A) and allowing the telescoping of amount of Rs.9,63,085/- into the undisclosed income of Rs.10,80,000/- offered in the return, has been swayed by the following factors :-
- (a) The assessee had disclosed the amount of Rs.10,80,000/- representing the rent received by him in his returns filed for the block assessment period.
 - (b) It was an undisputed fact that amount of rent received by the assessee for the period 20.1.1998 to 25.1.2000 had not been found to have been invested by him in acquiring any asset or



expenditure being incurred and the amounts have been from M/s. Indo-Nippon Foods Ltd. and the differential amount of Rs.1,85,000/- having been offered to tax as undisclosed income, which would mean that the assessee was in the habit of maintaining records.

- (d) The fact that the amount of Rs.10,80,000/- had not been found to have been spent by the assessee which he offered for taxation also gave credence to his claim that he was holding the said amount of cash in hand, which he received in the form of rent.
- (e) The fact that the assessee's brother had left a sum of Rs.1,50,000/- and Mrs. Dina Sood gave him Rs.1,00,000/- showed that it was the normal habit of the assessee to maintain cash in hand and was trusted to have the capacity of keeping cash in hand.

In view of the aforesaid and coupled with the fact that it was not found that the assessee had not spent the amount, the Tribunal held that the aforesaid amount of Rs.9,63,085/- was liable to be telescoped in the sum of Rs.10,80,000/- which had been offered by the assessee as undisclosed in the block income and which represented the rent received by him for the aforesaid period.



long gap between the period for which he received the rent date of search when the aforesaid amount was found in his possession.

9. We are not convinced with the above argument of learned counsel for the appellant. We find that cogent reasons are given by the Tribunal in arriving at a finding of fact that this amount would be part of the sum of Rs.10,80,000/- which the assessee himself showed as undisclosed income and paid tax thereupon in the block assessment. It would be significant to point out that so many additions were made by the AO in the block assessment towards unexplained expenditure, investments in jewellery as well as household goods, etc. This was based on the entire inventory of the goods lying in the house of the assessee made at the time of search. All these additions have been deleted by the CIT(A) and upheld by the ITAT. This would show that the assessee had been able to explain each and every household item as well as items of jewellery, etc. In these circumstances, it is correctly observed by the Tribunal that insofar as amount of rent received by the assessee is concerned, it has not been invested in acquiring any other asset or for incurring any specific expenditure. Telescoping, under these circumstances, is rightly allowed on the facts of this case and, as rightly pointed out by the learned counsel for the assessee, this situation would be covered



10. We are, therefore, of the opinion that no question of law arises for
determination and dismiss this appeal.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

November 27, 2009
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