



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

+ **ITA No. 274/2010 and ITA No. 289/2010**

% **Decided on: May 25, 2010**

Commissioner of Income Tax
Delhi-VIII
New Delhi.

..... Appellant
Through Ms. P.L. Bansal, Adv.

versus

Shri Shailesh Jain
28, New Rohtak Road
New Delhi-110005.

..... Respondent
Through In person

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

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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. (ORAL)

The Revenue is aggrieved by an order dated 22nd August, 2008 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' in ITA



No.444/Del/2003 and 477/Del/2003. This appeal under Section 260A c

Income Tax Act, 1961 (the Act) pertains to an assessment order for the Assessment Years 1991-92 to 2001-02, that is, for the block period 1st April, 1990 to 11th January, 2001.

2. A search and seizure operation under Section 132 of the Act was conducted at the residential premises of the Assessee on 11th January, 2001. During the search, some details pertaining to fixed deposit receipts were found by the search party. On conclusion of the operation, a notice under Section 158-BC of the Act was issued to the Assessee requiring him to file his block return. In response, the Assessee filed his return on 26th March, 2002 declaring an income of Rs.1,48,090/-.

3. The Assessing Officer then issued a notice under Section 143(2) and 142(1) of the Act and passed an assessment order on 31st January, 2003 and concluded that the income of the Assessee for the block period was Rs.18,46,832/-. The main addition made in the hands of the Assessee was due to unexplained investments in fixed deposit receipts.

4. The Assessee preferred an appeal which was partly allowed by the Commissioner of Income Tax (Appeals) [CIT(A)]. A further appeal was made by the Assessee to the Income Tax Appellate Tribunal. In respect of



certain deletions made by the CIT(A), the Revenue preferred an appeal before the Tribunal and both these appeals came to be heard together and disposed of by the order dated 22nd August, 2008.

5. The Tribunal noted the submission of the Assessee that the fixed deposit receipts had been accounted for in his return of income well before the search had taken place while filing his return of income for the Assessment Year 2000-01. Since the investment in the fixed deposit receipts was disclosed by the Assessee, there was no question of any income being computed in a block assessment under Section 258-BC of the Act. In coming to the conclusion, the Tribunal relied upon the decision of this Court in *Commissioner of Income-Tax v. Ravi Kant Jain, (2001) 250 ITR 141*. In that decision, this Court conclusively held that the provisions of Chapter XIV-B of the Act are intended to provide a mode of assessment of undisclosed income which is detected as a result of the search. This is what the Division Bench held:-

“The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done or to be done. The



assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A.”

6. Insofar as the present case is concerned, there is no doubt that the investment made by the Assessee in the fixed deposit receipts was disclosed well before the search. Therefore, it is not as if some undisclosed income was unearthed by the search party. That being the factual position, the decision in *Ravi Kant Jain* is fully applicable to the facts of the present case.

7. We may note that a similar view has been taken by the Rajasthan High Court in *Commissioner of Income Tax v. Rajendra Prasad Gupta*, (2001) 248 ITR 350 in the following words:-

“..... under the scheme of the provisions for the block assessment, it is apparent that it relates to assessment of “undisclosed income” of the assessee excluding the income subjected to regular assessment in pursuance of the returns filed by the assessee for such period. It is also apparent from the perusal of section 158BB that the returns are also required to be filed in pursuance of the notice under section 158BC(a) and the assessment is to be framed on that basis in the light of material that has come into possession of the assessing authority during the course of search which is the foundation of the proceedings. That being so, the correctness or otherwise of the returns filed in pursuance of the notice under section 158BC(a) has to be examined with reference to the material in the possession of the assessing authority having nexus to assessment of “undisclosed income” which is with the assessing authority, and premise of such



proceedings. If the returns filed by the assessee do not accord the materials which are already in the possession of the authority, it can be estimated to the best judgment by the assessing authority on the basis of the material in his possession. However, the assessing authority is not conferred with power to make estimation of income de hors the material in his possession, while making regular assessment order under section 158BB.”

8. Since the law on the subject is well settled, we do not think that any substantial question of law arises for consideration.

9. It may be noted that learned counsel for the Revenue contended that the investments made in the fixed deposit receipts were not disclosed for the Assessment Years 1991-92 to 1998-99. While this may be so, the Revenue may reopen these assessments, if it is entitled to do so, but making an assessment for a block period is not the answer to the problem faced by the Revenue.

10. Since no question of law, much less a substantial question of law has arisen in these appeals, they are both dismissed.


MADAN B. LOKUR, J


CHIEF JUSTICE

MAY 25, 2010
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