



* HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 16th September, 2010

% Judgment Pronounced on: 6th December, 2010

+ ITA 759/2010

THE COMMISSIONER OF INCOME TAX-XIII Appellant
Through: Ms. Rashmi Chopra, Advocate

versus

SH. QIMAT RAI GARG Respondent
Through: Mr. Sampath Krishnan, Mr. K. Sampath,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

DIPAK MISRA, CJ

In the present appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act'), the following question was re-formulated:

"Whether the assessing officer while proceeding under Section 158BB read with Section 132(4) can take note of any information or for that matter the statement recorded by the assessee on oath and proceed further to arrive at a conclusion that there has been undisclosed income?"



2. Regard being had to the aforesaid reformulated question, we shall refer to the facts which are requisite for the adjudication of the appeal. The assessee-respondent is a Chartered Accountant and a director of M/s Amber Deposits (P) Ltd., M/s Chatinya Hire Purchase (P) Ltd., M/s Pratap Oil & Fats Ltd. and M/s M.G. Leasing Ltd. which are engaged in Hire-Purchase and Finance services. A search and seizure operation was carried out in respect of a company, namely, M/s Golden Forest India Ltd. (for short 'M/s GFIL'). Pursuant to the search carried thereon, a search and seizure operation was conducted at the residential premises of the assessee on 12.9.1995. A statement of the assessee on oath was recorded wherein he had confessed that his companies were involved in capital generation for M/s GFIL.

3. On the foundation of the said statement, the assessment for the block period 1985-86 to 12.9.1995 was completed on 20.9.1996 under Section 158BC read with Section 144 of the Act on an estimated income of Rs.3,60,000/-. It is worth noting, the assessee had never appeared before the assessing officer. On an appeal being preferred by the assessee, the Commissioner of Income Tax (Appeals) confirmed the additions made by the assessing officer. In a further appeal, the Income Tax Appellate Tribunal, Delhi Bench-G (for short



'the tribunal') set aside the order and remanded the matter to the assessing officer for framing a fresh order of assessment.

4. After the remit, the notices were served on the assessee under Section 143(2) and eventually, the assessee appeared before the assessing officer on 12.1.2005. A questionnaire was issued to the assessee on 17.2.2005 requiring him to furnish details of moveable and immovable property, household expenses, source of income and copies of the bank statements. The assessee submitted the details except the bank statements, but ultimately on 10.3.2005, he submitted that he is unable to get the statements. The assessing officer took note of the fact that in his statement on oath, the assessee had stated on 12.9.1995 that he had three bank accounts. As the assessee could not produce the account statements, summons were issued to the banks calling for the statement for the block period. The assessing officer referred to the bank accounts and credit entries. It is worth noting, he referred to Acc. No.224, Canara Bank, Mani Majra, Chandigarh, opened on 27.07.1995 and Acc. No.7553/63 in State Bank of India, opened on 16.9.92, jointly held by the assessee and his wife Madhu Rai Garg.

5. The Senior Manager of Dena Bank, Sector 7-C, Chandigarh replied that Account No. SB 8589 was opened on 3.2.1994 but the



same was not available with the bank. The assessing officer req the assessee to explain the receipts which were revealed from the bank accounts. Before the assessing officer, the assessee submitted that he was trying to locate the documents including the papers regarding the loan given to him by his brother who had expired in 1997. It was also put forth by him that account No. 7553/63 in State Bank of India was jointly held by him and his wife Madhu Rai Garg who is a LIC agent and the receipts relate to commission received by the wife from LIC. He could not produce all the documents before the assessing officer. The assessing officer, considering the material brought on record, took note of the fact that the assessee had filed the return for the block period, that is, 1986-87 to 12.9.1995 on 22.7.1996 and had disclosed Rs.27,800/-, Rs.33,087, Rs.27,660/- and Rs.49,908/- for the assessment years 1987-88, 1988-89, 1989-90 and 1990-91 respectively but had not disclosed any income for the other assessment years. The assessing officer observed that there was no material available on record pertaining to the particulars of income for the assessment years 1986-87 to 1992-93 and, therefore, the returned income for the said assessment years was accepted as the assessed income. The income for the other years was computed as undisclosed income as the deposits in the bank had not been disclosed.



6. Being dissatisfied with the said order of assessment framed under Section 158BC of the Act, the assessee preferred an appeal before the tribunal. The assessee raised a singular ground that the addition of Rs.10,58,328/- on account of credit entries in the bank accounts standing in the names of the assessee as well as in the joint name of the assessee and his wife was not sustainable. The tribunal took note of the history of litigation and its order of remand on the ground that at the time of remit, there was a direction that any material intended to be used against the assessee had to be put to him and fresh order of assessment was to be passed in accordance with law after affording reasonable opportunity of being heard to the assessee. The tribunal adverted to the reasonings given by the assessing officer and opined that the assessing officer, in the order of assessment, had stated that certain bank statements from the banks were collected after issuing requisition to the bank during the fresh assessment proceedings and had given details of the said bank accounts being Account No.224 with Canara Bank, Mani Majra, Chandigarh opened on 27.7.1995, Account No. 7553/63 with the State Bank of India opened on 16.9.1992 jointly by the assessee and his wife, Madhu Rai Garg. As is manifest, the tribunal referred to the additions made by the assessing officer which pertained to the total deposit made in Account No.7553/63 with the State Bank of India



and the amount in Account No. 224 with the Canara Bank, Majra, Chandigarh. Thereafter, the tribunal dealt with the facts which we think it seemly to reproduce:

"4. On perusal of the aforesaid order of the AO, it is seen that the AO has made an addition of Rs.10,58,328/- pertaining to the assessment years 1993-94, 1994-95 and 1995-96 and block period from 1.4.1995 to 12.9.1995. In the assessment the AO has stated that certain bank statements from the bank were collected after issuing requisition to the bank during the fresh assessment proceedings. The AO has given details of these bank accounts being account No.224 with Canara Bank, Mani Majra, Chandigarh opened on 20.7.1995 and account No. 7553/63 with State Bank of India opened on 16.9.1992, jointly held by the assessee and his wife Madhu Rai Garg. The additions of Rs.1,06,724/-, Rs.30,235/-, Rs.53,368 and Rs.6,95,001/- pertaining to the assessment years 1993-94, 1994-95, 1995-96 and for the block period from 1.4.1995 to 12.9.1995 are with regard to the total deposit made in the account No. 7553/63 with State Bank of India. The rest addition of Rs.1,73,000/- for the block period from 1.4.1995 to 12.9.1995 is with regard to the deposits in the account No.224, Canara Bank, Mani Majra, Chandigarh. On perusal of the assessment order it is clear that the details of bank account No.7553/63 with State Bank of India were collected by the AO during the block assessment proceedings and the addition has been made on the basis of the information so collected. These informations as to



the account No.7553/63 with State Bank of India were not found during the course of search conducted against the assessee. The addition on account of deposits in the aforesaid account No.7553/63 is thus not based on any seized evidence or materials or informations found during the course of search conducted against the assessee. Thus these additions are out of the purview of the block assessment made u/s158 BC in pursuance to the search conducted against the assessee on 12.9.1995. We, therefore, delete the aforesaid addition of Rs.1,06,724/-, Rs.30,235/-, Rs.53,368/- and Rs.6,95,001/- for the assessment years 1993-94 to 1995-96 and block period from 1.4.95 to 12.9.95. The AO shall modify the block assessment order accordingly."

7. After so holding, the tribunal proceeded to deal with the addition of Rs.1,73,000/- for the block period 1.4.1995 to 12.9.1995 on account of deposits in the bank Account No. 224 with the Canara Bank. The tribunal, on scrutiny of the material on record, came to hold that the credits in the aforesaid bank Account No. 224 are part of the seized documents or materials found during the course of search and the assessee had failed to explain the source of the deposit in the said bank and, hence, the order passed by the assessing officer on that score was justified. Being of this view, the tribunal directed the addition of Rs.10,58,328/- reduced to Rs.1,73,000/-.



8. The learned counsel for the revenue has placed reliance on the decision rendered in *Commissioner of Income Tax v. Mukundray K. Shah*, [2007] 290 ITR 433 (SC). It is urged by her that after the amendment to Section 158BB(b) and 158BC by the Finance Act, 2002 with effect from 1.7.1995, the finding of the tribunal deserves to be re-considered.

9. The learned counsel for the assessee, controverting the said submission, has commended us to the decisions in *Commissioner of Income Tax v. Ravi Kant Jain*, [2001] 250 ITR 141 (Delhi), *CIT v. Elegant Homes P. Ltd.*, [2003] 259 ITR 232, *Commissioner of Income Tax v. Ashim Krishna Mondal*, [2004] 270 ITR 160 (Calcutta), *Commissioner of Income Tax v. Vishal Aggarwal*, [2006] 283 ITR 326 (Delhi), *Commissioner of Income Tax v. G.K. Senniappan*, [2006] 284 ITR 220, *Commissioner of Income Tax, New Delhi v. Aggarwal Developers (P) Ltd.*, [2007] 163 Taxman 699 (Delhi) and *Commissioner of Income Tax, Delhi-VII v. Ashok Dua*, [2009] 177 Taxman 494 (Delhi).

10. On a careful scrutiny of the order passed by the tribunal, it is vivid that the tribunal has not kept the amended provisions in view. The search had taken place on 12.9.1995 after the amendment has come into force. The tribunal has not adverted to its impact. The



tribunal has also not taken into consideration the decision

Mukundray K. Shah (supra).

11. In view of the aforesaid, we are inclined to set aside the order of the tribunal and remit the matter to the tribunal for re-consideration regard being had to the search and seizure, the statement made by the assessee, the amendments brought into the statute and the decisions in the field.

12. The appeal is allowed to the extent indicated above.

Hitendra Mishra
CHIEF JUSTICE

Manmohan, J.
MANMOHAN, J.

DECEMBER 06, 2010
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