



* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No.663/2010**

Commissioner of Income Tax Appellant
 Through: Mrs. Sonia Mathur, Advocate
 versus
 Sudhir Thakran Respondent
 Through: None.

AND

ITA No.774/2010

Commissioner of Income Tax Appellant
 Through: Mrs. Sonia Mathur, Advocate
 versus
 Sukhbir Thakran Respondent
 Through: None.

ORDER
19.07.2010

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CM No.7491/2010 in ITA No. 663/2010 and
CM No.11194/2010 in ITA No.774/2010

These are the applications for condonation of delay in re-filing the appeals. Heard the learned counsel for the appellant. Regard being had to the averments made in the applications, the delay in re-filing the appeals is condoned.

The applications stand disposed of.



CM No.11193/2010 in ITA No. 774/2010

Allowed, subject to all just exceptions.

ITA No.663/2010 and ITA No.774/2010

These two appeals being interconnected and interlinked were heard analogously and are disposed of by a singular order. In these two appeals, though the assesseees are different, yet the points involved are the same and, hence, they were disposed of by a composite order passed by the Income Tax Appellate Tribunal Delhi Bench 'G' Delhi (for short 'the tribunal').

2. The facts as have been unfurled are that the search, seizure and survey operation was conducted on 6.11.1996 in which some books of account and documents were seized. An order under Section 158BC came to be passed by the assessing officer on 28.11.1997 determining the undisclosed income for various years of the block period amounting to Rs.24,31,599/-. Eventually, the matter travelled to the tribunal which initially granted some relief to the assessee but on three aspects, the matter was remanded to the file of the assessing officer for fresh adjudication. The aspects, which were determined by the assessee, related to sum of Rs.71,040/- for acquisition of a revolver, Rs.19,73,385/- in respect of acquisition of a house property



situated at Gurgaon, and Rs.30,147/- being the expenses incurred on the repair of the house. The assessing officer passed a fresh order on 28.4.2005.

3. As the factual matrix would show, the order passed by the tribunal on 27.8.2004 was received by the office of the CIT (Judicial) on 15.4.2005 and by the assessing officer on 27.4.2005. The assessing officer accepted the submissions of the assessee and deleted the addition of Rs.69,123/- without proper enquiry. Because of the said situation, the Commissioner of Income Tax, Central-II, New Delhi (for short 'the Commissioner') issued a notice on 6.6.2005 to show cause why the order passed by the assessing officer dated 28.4.2005 should not be reviewed under Section 263 of the Act. Pursuant to the said show cause, a reply was filed by the assessing officer contending, inter alia, that the assessee had received notice from the assessing officer on 14.1.2005 whereby it was directed to produce witnesses for examination as per the undertaking given before the tribunal and further the assessing officer had deleted the amount without the approval of the higher authority for which the assessee cannot be held to be at fault. In the show cause, reliance was placed on the decision rendered in *Russel Properties Pvt. Vs. A. Chowhury, Addl.CIT*, 109 ITR 229 (Calcutta). An explanation was also offered that the assessee had produced adequate evidence before the



assessing officer in terms of the remand of the tribunal; hence, the order passed by the assessing officer could not be treated to be erroneous and prejudicial to the interest of the revenue. The Commissioner, upon perusal of the explanation offered by the assessee, expressed the view that the assessing officer had made an irregular assessment in a haste and hurried manner without issuing proper notices for fixing of the case and more so when the order in question was received by the assessing officer on 27.4.2005 and the assessment was framed on 28.4.2005, i.e., one day after the receipt of the order of the tribunal. Quite apart from the above, the CIT addressed itself to the merits and expressed the view that the assessing officer had failed to appreciate why the investment was made in cash by one Dharam Pal and it was also not examined by the assessing officer whether Dharam Pal was maintaining any bank account and if the bank accounts have been maintained, why the amounts were not invested from the bank accounts. Being of this view, the Commissioner opined that the assessing officer had failed to examine the issues analytically and, therefore, his order was definitely erroneous and prejudicial to the interest of the revenue.

4. Being dissatisfied with the said order, both the assesseees preferred appeals before the tribunal. It was contended before the tribunal that the



assessing officer had conducted the requisite enquiry and the explanation offered by him was accepted in proper perspective and non-grant of approval cannot invite the invocation of jurisdiction under Section 263 of the Act. The said stand and stance of the assessee was resisted by the revenue contending, inter alia, that the order was passed within a day after the receipt of the order of the tribunal and, therefore, there was no application of mind and further, the assessing officer has accepted the explanation without any justification and, hence, the Commissioner was justified in initiating the proceeding under Section 263 of the Act. Various other aspects were highlighted to show that the order was erroneous and prejudicial to the interest of the revenue as the conclusion arrived at by the assessing officer was not based on the material brought on record.

5. Be it noted, a clarificatory affidavit was filed by the appellant to the effect that as the assessing officer had not received the order for a considerable period of time, the assessee provided him a copy thereof on the basis of which de novo assessment was made.

6. The tribunal accepted the stand of the assessee being reasonable that the assessee himself had given a copy and, hence, no adverse inference could be drawn against the same. The tribunal referred to the order of the



Commissioner who himself has noted that there was another copy of the order passed by the tribunal on record but it is not known how the said order came on record. In our considered opinion, the view expressed by the tribunal is justified as the assessee had himself stated that the copy of the order was given and the same was on record at an earlier point of time and, in this factual backdrop, it cannot be said that the assessment order was framed within one day.

7. After dealing with the aforesaid aspect, the tribunal has adverted to the merits of the order. The first ground related to the addition of Rs.71,040/- in respect of acquisition of a revolver. The explanation of the assessee was that he had received the same by way of gift from his father and no investment was made by him. He had also filed an affidavit to this effect from his father. No contrary evidence was brought on record. The Commissioner has opined that the father should have been examined. The tribunal has opined that there was no need and the assessing officer was satisfied with the affidavit and thought it appropriate not to cross-examine the father and, therefore, there was no illegality or error in this approach.

8. The second ground related to the contributions of Rs.4 lacs and Rs.8 lacs from the mother and wife of the assessee respectively. The mother had



sold agricultural land and documents to that effect were brought before the assessing officer. The Commissioner opined that the credit entries in her bank account on 6.1.1992 and 24.3.92 appeared to be on account of sale of agricultural land but the nature of debit entries were not clear. The Commissioner dislodged the finding holding that the Commissioner had accepted that the mother had sold agricultural land but only commented on the debit entries. However, the assessee had clarified that the debit entries were in respect of the contribution towards the construction of house property.

9. As far as the wife is concerned, an affidavit was filed which was signed by the notary on 10.9.1992. The tribunal examined the affidavit and came to hold that she had stated that the contribution of Rs.8 lacs towards construction of the property and the source of her income was agricultural holdings. The Commissioner took note of the fact that no evidence was brought on record to show how the crop was grown and to whom they were sold and what was the quantum of income. The tribunal took note of the fact that the wife of the assessee, Smt.Veena Thakran, held agricultural land and a case was made out that she earns agricultural income from the land year-after-year. The money earned by way of income was deposited in her bank



account out of which Rs.8 lacs was contributed towards the construction of the property. In view of the aforesaid, the tribunal found that there was no error in the order of the assessing officer and the conclusion of the Commissioner was not correct.

10. The third aspect related to duplicate entries and also included amounts receivable and payable which had no relevance with the construction. The assessee had submitted work sheets from the seized record in this matter. The Commissioner had stated that the assessing officer accepted the benefit of double entries without examining their correctness and without verifying and tallying them with the seized documents. The tribunal further took note of the fact that the Commissioner had not mentioned that the work-sheets were not filed or that there was any error in working out the effect of the duplicate entries or the entries which were irrelevant for this purpose. He has not done this exercise so as to conclude that the cost of construction worked out by the assessing officer was incorrect. Under these circumstances, as is manifest, the tribunal expressed that the finding could not have been recorded that the computation of the cost of construction as put forth by the assessee was incorrect. Because of the aforesaid analysis, the tribunal expressed the view that the order passed by the Commissioner



did not meet the twin test, namely, erroneous and prejudicial to the interest of the revenue which has to be read in conjunction and held that the order of the assessing officer would not be treated to be erroneous and prejudicial to the interest of the revenue.

11. As far as the factum of not obtaining the previous approval of the Commissioner is concerned, there can be no trace of doubt that the same would not affect the view expressed by the assessing officer and in any case the same cannot be held against the assessee. We are inclined to say so as on delineation on the merits of the case, we find that the conclusion arrived at by the tribunal is based upon apposite analysis of facts and not perverse. Hence, the dislodging of the orders passed by the Commissioner under Section 263 of the Act in the obtaining factual matrix is totally justified.

12. In the result, we do not perceive any merit in these appeals and accordingly the same are dismissed in limine.


CHIEF JUSTICE


MANMOHAN, J.

JULY 19, 2010
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