



THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.04.2010

+ **ITA 363/2010****COMMISSIONER OF INCOME TAX**

... Appellant

- versus -

BHARTESH JAIN

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Ms. Sonia Mathur with Mr. Sumit Kr. Singh, Advs.

For the Respondent : Mr. K.R. Manjani, Adv.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. We have heard learned counsel for the parties.
2. The present appeal, preferred by the Revenue, is directed against the order dated 30th April, 2009 passed by the Income Tax Appellate Tribunal, in penalty proceedings relating to the Assessment Year 1994-95.
3. It may be pointed out at the outset that in so far as the quantum proceedings are concerned, additions had been made by the Assessing Officer on, inter alia, two aspects. The first being an addition on account of Assessing Officer treating the business loss claimed by the Assessee as speculation loss and the second addition was made in respect of two amounts of Rs 4 lacs and Rs 10 lacs received by the Assessee, which the



Assessing Officer treated, as unexplained income of the Assessee under Section 68 of the Income Tax Act, 1961. The said additions have been confirmed by the Tribunal and the appeal preferred therefrom has been dismissed by the High Court.

4. In the penalty proceedings under Section 271(1)(c) of the said act, the Assessing Officer imposed a penalty of Rs.32,89,552/-. The penalty was imposed on account of the aforesaid additions. The said penalty was confirmed by the Commissioner of Income Tax (Appeals). However, in the appeal preferred by the Assessee, the Income Tax Appellate Tribunal has deleted the said penalty.

5. In so far as change of treatment from business loss as claimed by the Assessee to speculation loss as determined by the Assessing Officer, the Tribunal was of the view that a mere change of treatment of the said loss would not amount to concealment under Section 271(1)(c) of the said Act. The Tribunal placed reliance on the decision of this Court in the case of **Commissioner of Income Tax v. Auric Investments & Securities Ltd. : 310 ITR 121.**

6. With regard to the amounts of Rs.4 lacs and 19 lacs, the Tribunal examined the factual position and came to a conclusion on determination of the facts that there was no concealment made out under Section 271 (1)(c) of the said Act.

7. In so far as the amount of Rs.4 lacs is concerned, the Tribunal found that it cannot be said that the explanation given by the Assessee was not bona-fide and it also cannot be said that all the facts and material relating to



observation in view of the facts that the party who had extended the amount of Rs.4 lacs to the Assessee had accepted that the cheque in question had been given by them. The only difference being that they maintained that it was not given as loan, whereas the Assessee had shown it as a loan. It was on this account that the Assessing Officer had made the quantum of addition. However, the Tribunal felt this treatment by the Assessee did not warrant penalty under Section 271(1)(c) of the said Act.

8. In so far as the addition of Rs.19 lacs under Section 68 of the said Act is concerned, the Tribunal returned the following findings:

“Regarding addition of Rs.19 lacs under Section 68, we find that as per the claim of the assessee, four cheques were received by the assessee from M/s. Sujata Securities Pvt. Ltd. totaling Rs.19 lacs. For this loan also, the assessee has given loan confirmation and in response to summon, Shri Madhup Jain, Director of M/s. Sujata Securities Pvt. Ltd. has appeared before the Assessing Officer and in his statement recorded by the Assessing Officer, he has confirmed that he has given loan to the assessee but he has not taken any security. The addition was made for the reason that this cheque of Rs.19 lacs was given by M/s. Sujata Securities Pvt. Ltd. to the assessee out of the fund of Rs.25 lacs said to be received by that company from M/s. Model Trading Co. Prop. Urmilla Batra and it is noted by the Assessing Officer Shri Madhup Jain Director of M/s. Sujata Securities Pvt. Ltd. has stated in his statement that he does not remember the address of M/s. Model Trading Co. which create serious doubt about the genuineness. It is further found that in the bank account of M/s. Model Trading Co. cash of Rs.25 lacs was deposited. On this basis, the addition made may be justified but it cannot be said that the explanation of the assessee was not bona fide and hence as discussed in the above paras regarding loan of Rs. 4 lacs, for this loan of Rs.19 lacs also, the Explanation-1 to section 271(1)(c) is not applicable and hence for this loan also, the Assessing Officer is



9. We find that in so far as the question of penalty relating to the change of treatment from business loss to speculation loss is concerned, the Tribunal has rightly applied the law as stated in *CIT v. Auric Investments (Supra)*.

10. As regard the deletion of penalty in relation to the additions of Rs.4 lacs and 19 lacs in the quantum proceedings, we find that the Tribunal has returned findings on facts and no substantial question of law arises for our consideration in respect thereof.

11. The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 06, 2010
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