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

% Judgment delivered on: 30.04.2010

\+ **ITA 692/2009**

COMMISSIONER OF INCOME TAX-V ..... Appellant

versus

M/S RADHIKA CREATION ..... Respondent

Advocates who appeared in this case:-
For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : Mr Anuj Agarwal with Mr Sumit Batra and Mr Gaurav Khanna

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. The order dated 08.02.2008 passed by the Income-tax Appellate Tribunal in IT(SS) 349/Del/2004 pertaining to the block period 01.04.1990 to 17.10.2000 is the subject matter of the present appeal preferred by the revenue. The revenue has proposed the following questions, which, according to it, are substantial questions of law and require the consideration of this court:-

> "a) Whether in the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in deleting the

assessee that it was not in a position to produce vouchers or authenticate the genuineness of expenses ?

b) Whether the Income-tax Appellate Tribunal erred in holding that Section 69C is not applicable to block assessment ?

c) Whether the Income-tax Appellate Tribunal misconstrued the provisions of Section 158 BB(b) of the Income-tax Act, 1961 ?

d) Whether the Income-tax Appellate Tribunal erred in allowing set off interest and bank charges against interest income for determining benefit under Section 80 HHC of the Act ?

e) Whether the Income-tax Appellate Tribunal erred in not considering ambit and scope of Section 41(1) of the Act in regard to cessation of the liability of the assessee ?

f) Whether the order of the Income-tax Appellate Tribunal is perverse ?"

2. Proposed questions 'a' to 'c', as would be apparent from a plain reading thereof, relate to the addition of Rs 44,38,997/- which has been held to be the unexplained expenditure of the assessee under Section 69C of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). The Assessing Officer had examined the details of the said expenditure and found that the same was not authenticated by any vouchers and consequently, made the addition of Rs 44,38,997/- as unexplained expenditure in terms of Section 69C of the said Act.

3. We may point out that during the search and seizure operations, as indicated in para 3.1 of the order passed by the Commissioner of Income-tax (Appeals), no evidence was found indicating that the assessee had any

assessee to get its accounts audited as per the provisions of Section 142(2A) of the said Act. It is on the basis of the audit report prepared under Section 142(2A) of the said Act that the addition appears to have been made by the Assessing Officer.

4. The case before us has two dimensions. The first being as to whether the Assessing Officer was right in treating the said sum of Rs 44,38,997/- as unexplained expenditure under Section 69C of the said Act. The second aspect is whether the said addition could legitimately have been made in the course of a block assessment.

5. Insofar as the first aspect of the matter is concerned, we find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about '***the source of such expenditure or part thereof***', or the explanation, if it is offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income-tax Appellate Tribunal had observed:-

> "As the expenditure was accounted in the regular books, <u>the source is obviously explained</u>. The provisions of Section 69C are not applicable as there was no unaccounted expenditure."

6. What the Assessing officer attempted to do was to go into the authenticity of the expenditure and he returned a finding that the expenditure was not authenticated by vouchers and consequently, he added the said expenditure as unexplained expenditure under Section 69C. We are in agreement with the observations and findings of the Commissioner of Income-tax (Appeals) as well as that of the Income-tax Appellate Tribunal that this is not a case which falls under Section 69C. Clearly, Section 69C refers to the 'source of the expenditure' and not to the expenditure itself. Consequently, the Assessing Officer was clearly wrong in treating the said expenditure as unexplained expenditure under Section 69C of the said Act and the lower appellate authorities were right in their conclusions in deleting the said addition.

7. Coming to the second aspect of the matter, we find that both the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal have held that the addition in a block assessment can only be made on the basis of the material found during the search. No material as such was found during the search and seizure operations and it is only in the special audit directed by the Assessing Officer, who was unable to find any material at the time of search, that the authenticity of the expenditures were doubted. We are of the view that both the lower appellate authorities correctly came to the conclusion that this was not a case where the addition would be justified in block assessment proceedings.

8. With regard to proposed question 'd', which deals with the question of netting of interest under section 80 HHC, the issue already stands decided in favour of the assessee and against the revenue by virtue of this court's decision in the case of ***Commissioner of Income-tax v. Shriram Honda Power Equipment*: 289 ITR 475 (Del)**. Therefore, no further consideration of the said question is required.

9. As regards proposed question 'e', the Tribunal has concluded in favour of the assessee, but, according to the learned counsel for the revenue, the conclusion comprises of two parts. This would be apparent from the following extract of the Tribunal's order:-

> "9.1 We have heard both the parties, perused the records and considered the matter carefully. Liability does not get extinguished merely because the period of limitation for enforcing the claim has expired as held by the Hon'ble Supreme Court in case of Sagauli Sugar Works (236 ITR 518). There is no material brought on record by the A.O. to show that liability had ceased to exist during the relevant year. Moreover, this is a case of block assessment in which undisclosed income can be determined only on the basis of material found during search. There was no material found during search to show that liability was either bogus or had ceased to exist. The addition made in the block assessment is therefore, not justified. The order of CIT(A) deleting the addition is upheld."

One part deals with the question of extinguishment of the liability because the period of limitation had expired. The second part deals with the aspect that in the case of block assessment, the undisclosed income can be determined only on the basis of the material found during the search. Inasmuch as no material was found during the search to show that the

made in the block assessment. We are not going into the first aspect of the matter because of our view on the second aspect. Since, nothing was found during the search, this, in itself, is sufficient to decide the matter in favour of the assessee.

10. Consequently, we are left with proposed question 'f'. No perversity in the findings has been pointed out as such this issue also does not arise for the consideration of this court. The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 30, 2010
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