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

Date of decision: 21st November, 2012

+ W.P.(C) 1687/2012

T.C.SOOD , NEW DELHI Petitioner
Through: Ms. Sonia Mathur, Adv.

versus

COMMISSIONER OF INCOME TAX Respondent
Through: Mr. N. P. Sahni, Sr. Standing Counsel.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR,J: (OPEN COURT)

Issue notice.

2. Mr. Sahni, Sr. Standing Counsel accepts notice on behalf of Revenue and states that the petition can be disposed of at this stage.

3. The writ petition has been filed in the following circumstances. The petitioner is an individual. A search under Section 132 of the Income Tax Act, 1961 ('Act' for short) was conducted on 13th May, 2003 at his residential premises at C-8, Anand Niketan, New Delhi. On the basis of the evidence gathered during the search, a notice was issued under Section 158BC of the Act calling upon the petitioner to file a return of the undisclosed income. The petitioner filed a return showing undisclosed income of Rs. Nil. In the course of the assessment proceedings the Assessing Officer examined the seized material in the light of the return filed by the petitioner and eventually passed an assessment order for the block period 1.4.1997 to 13.5.2003 on 31.5.2005 under Section 158BC, determining the total undisclosed income at Rs.7,27,400/- and raised a demand of tax accordingly.



4. An appeal was preferred by the petitioner to the CIT(Appeals) questioning the various additions made in the block assessment year in respect of the cash, fixed deposit receipts and other deposits in the bank account of the assessee which were found during the search. The appeal was, however, dismissed by the CIT(Appeals). Against the order of the CIT(Appeals), the petitioner preferred a further appeal to the Income Tax appellate Tribunal ('Tribunal' for short) in IT(SS) No.40/Del/2008. The Tribunal examined the matter in great detail and ultimately allowed the appeal in part, the relief given being (a) the acceptance of the petitioner's claim that out of the cash of Rs.4 lacs found in the locker, a sum of Rs.1.50 lacs may be treated as having come out of the sale proceeds of the petitioner's old car and thus explained; (b) acceptance of a sum of Rs.45,000/- as explained, out of the cash of Rs.1,02,400/- found from the drawer of the assessee during the search and (c) restoration of the issue relating to the addition of the bank deposits of Rs.17,000/- to the Assessing Officer for a fresh decision. The rest of the additions were confirmed and the appeal of the petitioner was partly allowed.

5. Against the order of the Tribunal passed in the appeal, the petitioner preferred an application under Section 254(2) of the Act seeking rectification of the order on the ground that it contained mistakes apparent from the record. In particular it was pointed out that in respect of the addition of Rs.1,55,000/- made on account of fixed deposit receipts for which no relief was given by the Tribunal, the addition was confirmed only on account of a difference between the numbers in the fixed deposit receipts as inventorised in the panchnama and the numbers appearing in the supporting documents. It was pointed out that in fact there was no difference or discrepancy between the numbers noted in the panchnama and the numbers noted in the supporting documents and it was explained that the number noted in the panchnama is the printed serial number of stationery/machine number of the FDR, whereas the number mentioned in the supporting documents placed in the paper book filed before the Tribunal was the fixed deposit number assigned by the bank to the



fixed deposit receipt. In support of the application made under Section 254(2), the petitioner obtained and submitted a certificate dated 24.11.2010 from the Canara Bank, Subroto Park, New Delhi. In the miscellaneous application filed before the Tribunal, the petitioner sought to rely on the certificate and explained the alleged discrepancy both in respect of the deposit with Canara Bank and deposit with Punjab National Bank. It was submitted that the alleged discrepancy was not pointed out by the Bench to the petitioner in the course of the hearing before the Tribunal and, therefore, the petitioner did not have an opportunity of explaining the same. A prayer was, therefore, made for modifying the order of the Tribunal on account of a mistake apparent from the record or a direction restoring the matter to the file of the Assessing Officer for being decided afresh in the light of the evidence adduced by the petitioner.

6. The Tribunal by order dated 21st April, 2011 in MA No.12/Del/2011 dismissed the application filed by the petitioner on the following reasoning:-

We have considered the rival submissions and perused the record. We find that as per the notings on the order sheet of the Tribunal, this appeal was partly heard on 3rd November 2010 and the same was adjourned for further hearing on 15.11.2010 and, hence sufficient time was given by the Tribunal to the assessee to bring on record all facts and arguments and in spite of this, the assessee did not bring on record these facts and documents which are being submitted by the assessee along with Misc. Application filed by the assessee under sec. 254(2) of the Act. The impugned Tribunal order is dated 30.11.2010 but the hearing was concluded by the Tribunal on 15.11.2010 whereas the certificated of Canara Bank is dated 24.11.2010 i.e. after the conclusion of hearing and hence, on the basis of this certificate from Bank, it cannot be accepted that there is any apparent mistake in the impugned order of Tribunal Regarding the second FD of Punjab National Bank, the assessee has submitted before us during Misc. Application proceedings, a photocopy of the FD in question of ` 75,000/-. Even this was not submitted by the assessee in the course of



hearing of appeal before us. It is admitted position that before the Tribunal, the Ld. DR of the revenue has pointed out the difference in FD number in the FD found in the course of search and the FD with which the assessee was trying to explain the FD found in the course of search. Still no explanation was given in the course of hearing in this regard and hence, the Tribunal rejected the explanation on this basis that the FDs found in search are different FDs. The assessee had submitted a paper book of 61 pages in the course of hearing before us but in the paper book, the assessee has not submitted a photocopy of this FD of Punjab National Bank or of Canara Bank. Hence, even if some mistake are there in the order of Tribunal, these are not apparent mistakes which can be rectified under sec. 254(2). The request of the assessee in Misc. Application amounts to review of Tribunal's order which is not permitted under sec. 254(2) and hence, this Misc. Application of the assessee is liable to be rejected. We order accordingly.

7. We have considered the rival contentions and the ground on which the Tribunal rejected the application filed by the petitioner. It has been explained by the petitioner that it was only after the receipt of the order of the Tribunal in the appeal that it came to know of the alleged discrepancy and had that been put to the petitioner in the course of the hearing before the Tribunal, it could have been explained by obtaining the necessary certificates from the bank even before the conclusion of the hearing. It was submitted that the petitioner could not have, even after due diligence and enquiry, been aware of the discrepancy and once he came to know of the same on receipt of the order of the Tribunal, he took steps to obtain the necessary certificates from the bank and produced them before the Tribunal along with the application for modification of the order of the Tribunal. It was further submitted that no prejudice would be caused to the Revenue if the certificates are directed to be examined by the Assessing Officer and a fresh decision be taken in the interest of justice.



8. We find merit in the contention of the learned counsel for the petitioner. Mr.Sahney, the learned Senior Standing Counsel for the Revenue fairly stated that he would have no objection if the matter relating to the addition of Rs.1,55,000/- is restored to the Assessing Officer with appropriate directions, in the light of the evidence adduced by the petitioner along with the miscellaneous application filed before the Tribunal.

9. For the above reasons, the writ petition succeeds, the matter is remitted to the Assessing Officer for due consideration of the documents sought to be placed on record through the Miscellaneous Application before the Tribunal.

10. The petition is allowed in above terms.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

NOVEMBER 21, 2012

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