



## THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.01.2013

+ **ITA 193/2004**

**THE COMMISSIONER OF INCOME TAX** ... Appellant

versus

**M/S INTERCONTINENTAL TRADING &  
INVESTMENT CO.LTD.** ... Respondent

**Advocates who appeared in this case:**

For the Appellant	: Mr Sanjeev Sabharwal, Adv.
For the Respondent	: Mr C.S. Aggarwal, Sr. Adv. with Mr Prakash Kumar, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

**JUDGMENT**

**BADAR DURREZ AHMED, J**

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the said 'Act') against the order of the Income Tax Appellate Tribunal, New Delhi, dated 11.09.2003, passed in ITA (SS) No. 110/Delhi/2002 in respect of the block period 01.04.1986 to 02.11.1996.

2. The appellant/revenue has proposed the following questions as substantial questions of law:-



- (a) Whether the learned I.T.A.T. was correct in law in holding that Assessing Officer has wrongly assumed jurisdiction under the provision of Section 158BD of the Income Tax Act?
- (b) Whether the I.T.A.T. was correct in law in deleting the addition made by the Assessing officer by treating the claim of the assessee regarding receipt of service charges as income from house property?
- (c) Whether the I.T.A.T. was correct in law in deleting disallowance of expenses with regards to earning of service charges made by the Assessing Officer by treating the service charges as income from house property?
- (d) Whether the I.T.A.T. was correct in law in deleting addition of Rs. 17,17,263/- on account of enhancement of Notional Annual Letting Value?
- (e) Whether the I.T.A.T. was correct in law in allowing the assessee to set off the loss amounting to Rs. 1,76,52,477/- on sale of shares?"

3. Before we examine as to whether any of these questions arise for consideration and/or are substantial question of law, it would be necessary to set out the facts.

4. A search under Section 132 of the said Act was conducted in respect of the Mody Group of cases. Particularly, on 22.11.1996 the premises of M/s Hindustan Development Corporation Limited which was a Mody group company was being searched. On that date books of



accounts of the respondent assessee were also found and seized. The details of the seized books of accounts are as under:-

“Details of seized books of accounts:

1. Ledger-F.Y. 1994-95
2. Cash Book- F.Y. 1994-95
3. Ledger F.Y. 1995-95
4. Cash Book- F.Y. 1995-96
5. Ledger- F.Y. 1996-97
6. Cash Book- F.Y. 1996-97 (written upto 9.11.96)”

5. Thereafter, *inter alia*, a communication dated 28.10.1997 was issued by the Assessing Officer in respect of the Mody Group of cases who was the Assistant Commissioner of Income-tax Circle XXV Calcutta, to the Assessing Officer of the respondent/assessee at New Delhi. The said communication is as under:-

“Sub: Search & Seizure- Mody Group of cases – Seized book of accounts- regarding.

Ref: Your Letter No. DCIT/SR-32/97-98/495 dated 21.10.97.

Kindly refer to the above.

In consultation of the records it is ascertained that during the course of search u/s 132(1) of the I.T. Act, 1961 in the case of M/s Hindustan Development Corporation Ltd. of 15-, Barakhamba Road, 7<sup>th</sup> Floor, Hansalaya, New Delhi following books of accounts and other documents pertaining to your assessee namely M/s Inter Continental Trading & Investment Co. Ltd. were seized and they are lying in my custody.

Details of seized books of accounts:



1. Ledger-F.Y. 1994-95
2. Cash Book- F.Y. 1994-95
3. Ledger F.Y. 1995-95
4. Cash Book- F.Y. 1995-96
5. Ledger- F.Y. 1996-97
6. Cash Book- F.Y. 1996-97 (written upto 9.11.96)

Since you are having the jurisdiction over the assessee M/s Inter Continental Trading & Investment Co. Ltd. and as such it is proposed that necessary proceedings may kindly be adopted against the aforesaid assessee in accordance with the provisions of Chapter- XIV-B read with section 158 BD of the I.T. Act, 1961. In this regard it may be pointed out that the inspector attached with me cannot be spared at this moment for the purpose of transmitting the seized materials to your honour due to the fact that he has been assigned with so many enquires and investigation works in relation to certain cases where block assessments are to be barred by limitation on 30.11.1997 and thereby I would request you to kindly depute your officials for taking delivery of the seized books of accounts and other documents as specified above from my custody and oblige.

Yours faithfully,  
Sd/-  
(G.C. Pandit)  
ACIT, CC-XXV, Calcutta”

6. Subsequent thereto, a note dated 21.01.1998 was prepared and that note reads as under:-

“Vide correspondence received from DCIT, Spl. Range 15, New Delhi and ADIT (Inv.) Calcutta, it has been noticed that a search operation u/s 132 of the I.T. Act was conducted in Mody Group of companies at Calcutta on 21.11.96. The search was also conducted in the office of M/s HDCL, a company of Mody Group on 21.11.96 at 15, Hansalaya, Barakhamba Road, New Delhi which in books of account of M/s Inter Continental



Trading & Investment Co. Ltd. were also seized. Even the correspondence received from ADI (Inv.) Calcutta and DCIT, SI. Range-15, New Delhi is noticed that certain transactions of shares were done by the assessee M/s Intercontinental Trading & Investment Co. Ltd.

In these circumstances notice u/s 158BC read with section 158BD of the I.T. Act may be issued to the assessee calling for the return in form No. 2B for the Block period asstt. Year 1987-88 to 2.11.1996.

Submitted

Pl issue.  
Sd/-  
(D.C.I.T)”

7. On the same date that is on 21.01.1998 a notice under Section 158BD read with Section 158BC of the said Act was issued to the respondent/assessee. In response to the said notice, the respondent / assessee filed its return on 16.09.1998 and indicated its undisclosed income to be Nil. Thereafter, the assessment was completed on 29.01.1999 and an assessment order was passed on that date holding that the respondent/assessee had undisclosed income of Rs. 3,31,20,258/- in the said block period. Being aggrieved by the said Assessment Order, the respondent/assessee preferred an appeal before the Tribunal being ITA (SS) 9/Delhi/99. By virtue of an order dated 21.02.2000, the assessment order dated 29.01.1999 was set aside by the Tribunal and the matter was



restored to the Assessing Officer for fresh orders. The Tribunal had, *inter alia*, taken the view that a complete verification had not been done and a reasonable opportunity had also not given to the respondent / assessee.

8. Thereafter, an appeal was filed before the Delhi High Court under Section 260A by the respondent / assessee. This court did not 'admit' the appeal. However, it directed that the findings / observations of the Tribunal in the order dated 21.02.2000 would not be taken into account by the Assessing Officer at the time of the fresh assessment. The High Court order dated 21.08.2001 reads as under:-

“Heard. Since the Tribunal has directed fresh assessment by setting aside the assessment, we do not find any scope for interference in the appeal. However, it is made clear that the parties shall be free to place such material as would be necessary for the purpose of assessment pursuant to the direction given by the Tribunal. While making the assessment, the Assessing Officer shall not be influenced by any observation made by the Tribunal since the Tribunal itself has observed that the observations are not findings. It is, however, made clear that they should not be treated as guidelines and an independent application of mind has to be done by the Assessing Officer. It goes without saying that the assessee shall be free to take the plea about non-applicability of Section 158 BC and BD of the Act.

Appeal stands disposed of.”

(Underlining added)



9. Thereafter, the Assessing Officer passed a fresh assessment order on 28.03.2002, three days prior to the assessment getting time barred on 31.03.2002. The Assessing Officer, once again, determined the undisclosed income of the assessee to be Rs. 3,31,20,258/- as computed in the original order dated 29.01.1999.

10. Being aggrieved by the said assessment order dated 28.03.2002, the respondent/assessee preferred an appeal before the Tribunal being ITA(SS) 110/Delhi/2002. By an order dated 11.09.2003, the Tribunal set aside the said assessment order. The Tribunal, *inter alia*, held as under:-

“6.1 We have also found, as it has not been disputed that all the transactions entered by the assessee, in the course of business, had been found duly recorded in its books of account maintained in the regular course establishing that any transaction entered into by the assessee had either been not recorded by it in the books of account or was meant not to be recorded. In our opinion, as such, the initiation of proceedings on the assessee, on the basis of the books of accounts maintained by it, by itself could not be held to be legal, valid and proper basis. All what we find, from the communication of the learned Assessing Officer, having jurisdiction over the Mody Group of cases, to the assessing officer having jurisdiction over the assessment of the assessee, that the books of account of the assessee found and seized have merely been forwarded to him. In our considered opinion, mere forwarding of such books of accounts by itself is insufficient to conclude that the learned Assessing Officer, having jurisdiction over the Mody Group of cases was “satisfied” that any undisclosed income was found or detected as a result of search, on the basis



of which, proceedings u/s 158BD of the Income Tax Act could have been initiated against the assessee.”

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“7.2 Further, we find that as a result of search conducted on Mody Group of cases, as no incriminating material had been found and the proceedings had been initiated by invoking the provisions of Section 158BD of the I.T. Act, the present assessment made is entirely unsustainable. In fact no adverse material what so ever has been brought to our notice. On the basis of which it could be held that as a result of search conducted on Mody Group of cases, any undisclosed income of the assessee was detected or found. It is seen from the record that all what had been seized as a result of search conducted on Mody Group of cases, is the regular books of account of the assessee company for the financial years 1994-95, 1995-96 and 1997-97 (up to 21<sup>st</sup> November, 1996) and no more such material was either found or gathered before either initiating the proceedings or framing the assessments on the basis of which it could be held there was an undisclosed income.”

11. The revenue is aggrieved by the said decision of the Tribunal. The first issue that is sought to be raised by the appellant/revenue is that the Tribunal was not correct in law in holding that the Assessing Officer had wrongly assumed jurisdiction under the provisions of section 158BD of the Income Tax Act, 1961. We feel that the Tribunal has correctly come to this conclusion particularly in view of the Supreme Court decision in the case of **Manish Maheshwari v. A.C.I.T.** (2007) 3 SCC 794. In that decision the question before the Supreme Court was whether the notice



issued to the assessee therein satisfied the requirements of Section 158

BD of the Act or not? Section 158BD of the said Act reads as under:-

“158-BD. *Undisclosed income of any other person.*—Where the assessing officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were requisitioned under Section 132-A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly.”

12. The Supreme Court considered the said provision and held as under:-

“11. Condition precedent for invoking a block assessment is that a search has been conducted under Section 132, or documents or assets have been requisitioned under Section 132-A. The said provision would apply in the case of any person in respect of whom search has been carried out under Section 132 or documents or assets have been requisitioned under Section 132-A. Section 158-BD, however, provides for taking recourse to a block assessment in terms of Section 158-BC in respect of any other person, the conditions precedents wherefor are: (i) satisfaction must be recorded by the assessing officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) the books of accounts or other documents or assets seized or requisitioned had been handed over to the assessing officer having jurisdiction over such other person; and (iii) the assessing officer has proceeded under Section 158-BC against such other person.

12. The conditions precedent for invoking the provisions of Section 158-BD, thus, are required to be satisfied before the



provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132-A of the Act.”

(Underlining added)

13. In the said decision the Supreme Court also noted that a taxing statute must be construed strictly. For this, the Supreme Court referred to an earlier decision in the case of *Sneh Enterprises v. Commissioner of Customs: (2006) 7 SCC 714*. In the facts of the case before it, the Supreme Court observed that the law was clear and explicit and that the only question which arose for their consideration was whether the notice dated 06.02.1996 satisfied the requirement of Section 158BD of the said Act. The Supreme Court observed that the said notice did not record any satisfaction on the part of the Assessing Officer for assuming jurisdiction u/s 158BD of the said Act. And, as the Assessing Officer had not recorded his satisfaction, which was a mandatory requirement, the notice did not comply with the requirement of Section 158BD of the Act and therefore recourse to block assessment in terms of Section 158 BC could not be undertaken.



14. The same is the position in the present case. We have already set out the communication dated 28.10.1997 from the Assessing Officer of the searched person to the Assessing Officer of the respondent / assessee. There is no recording of any satisfaction that any undisclosed income belongs to the respondent/assessee. The communication dated 28.10.1997 merely indicates that books of accounts pertaining to the respondent assessee/assesseees were seized and were lying in the custody of the Assessing Officer in respect of the Mody Group of cases. It was further indicated in the communication that since the Assessing Officer at New Delhi had jurisdiction over the respondent/assessee, it was proposed that necessary proceedings may be adopted against the respondent / assessee in accordance with the provisions of chapter XIVB of the said Act. There is no satisfaction recorded by the said Assessing Officer of the Mody Group of companies that any undisclosed income belonged to the respondent/assessee. As such the very first mandatory condition precedent for assuming jurisdiction under Section 158BD and subsequently under Section 158 BC has not been satisfied. This failing on its own would render the entire proceedings to be without jurisdiction. This is apart from the fact that the Tribunal has, even on merits, held in



favour of the respondent / assessee on the basis of findings of fact. The point in issue stands squarely covered by the decision of the Supreme Court in the case of *Manish Maheshwari (supra)* as indicated above. Therefore, the decision of the Tribunal cannot be faulted. No substantial question of law arises for our consideration.

15. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**V.K. JAIN, J**

**JANUARY 04, 2013**  
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