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

+ ITA 190/2006

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Kamal Sawhney, Sr.
Standing Counsel.

versus

KANTI BHAI DAMANI Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

% **ORDER**
02.02.2012

In the present appeal under Section 260A of the Income Tax Act, 1961 (Act, for short), which relates to block assessment period 1st April, 1988 to 27th October, 1998, we are required to answer the following substantial question of law:-

“Whether the Income Tax Appellate Tribunal was right in law in deleting the addition made by the Assessing Officer in the block assessment and directing him to treat the protective assessment as having been made on substantive basis?”

2. The respondent assessee is an individual and was working as a broker/agent in aluminum market. Search and



seizure operation under Section 132 of the Act was conducted on 27th October, 1998. Thereafter, statutory notice under Section 158BC of the Act was issued to which the respondent assessee had filed the return dated 24th December, 1999 declaring 'nil' undisclosed income.

3. The respondent assessee had earlier made a disclosure of Rs.2,85,00,000/- on 23rd December, 1997 under Voluntary Disclosure of Income Scheme, 1997. Thereafter, certificate under Section 68(2) under the said scheme was issued to him on 24th December, 1997. As per the said certificate, the cash and bank balance declared as on 31st March, 1997 was Rs.1,28,58,390/-.

4. During the course of search, it appears that the respondent assessee had surrendered and cash amount of Rs.30,10,000/- was found.

5. In the block assessment proceedings, the Assessing Officer issued notice dated 14th September, 2000 why Rs.30,10,000/- found in cash should not be treated as undisclosed income of the respondent assessee for the period 1st April, 1998 to 28th October, 1998 and added in the block assessment. In response to this notice, the respondent



assessee contended that amount of Rs.30,10,000/- was not actually found but was disclosed by him as his income to the search party. The respondent assessee had stated that he had informed the search party that he was having cash of Rs.25,00,000/- in lump sum on the date of the search, but no adverse inference should be drawn against him.

6. The Assessing Officer examined the said contention and held that cash amount of Rs.30,10,000/- was not reflected in the books of accounts. He, however, noticed that Rs.4,66,855/- had been recorded as cash received in the name of the respondent assessee during the period 1st July, 1998 to 26th October, 1998. Accordingly, difference between Rs.30,10,000/- and Rs.4,66,855/-, i.e., Rs.25,43,145/- was held as unexplained or undisclosed income and an addition to this extent was made in the block assessment proceedings.

7. It appears that the Assessing Officer in the regular assessment proceedings had made an addition of a similar amount on protective basis out of abundant caution.

8. In the first appeal, the respondent succeeded as the CIT(Appeals) deleted the said addition holding that the cash found of Rs.30,10,000/- was disclosed by the respondent



assessee voluntarily. He observed that the Assessing Officer was required to restrict the block assessment proceedings to recoveries in the course of search and not look into the income declared under the Voluntary Disclosure of Income Scheme, 1997. He had held that Rs.30,10,000/- was clearly reflectible and was a part of the disclosure of Rs.2,85,00,000/- made under the Voluntary Disclosure of Income Scheme, 1997.

9. The Revenue appealed against this order before the tribunal. The tribunal noticed the time gap between the voluntary disclosure which was made on or about 23rd December, 1997 and the date of search, i.e., 27th October, 1998 and observed that the cash amount of Rs.30,10,000/-, which was not recorded in the books of accounts, cannot be attributed to the voluntary disclosure. To this extent, the contention of the Revenue was accepted and the finding recorded by the CIT(Appeals) was held to be bad and was reversed. Thereafter, the tribunal held that addition of Rs.25,43,145/- should not be made in the block assessment proceedings as the Assessing Officer had made a similar addition in the regular assessment proceedings on protective basis. The tribunal relied upon decision of Calcutta High Court in ***Shaw Wallace versus ACIT***,



(1999) 238 ITR 13 (Cal.).

10. The aforesaid decision of the single Judge was made subject matter of challenge before a Division Bench and the decision of the Division Bench is reported as ***Deputy Commissioner of Income Tax and Others versus Shaw Wallace and Company Limited***, (2001) 248 ITR 81 (Cal.). The Division Bench noticed the amendments made in Chapter XIV-B and addition by way of insertion of an explanation to Section 158BA in view of the conflicting decisions or opinions expressed by various courts. The said explanation was inserted by Finance (No. 2) Act, 1998 with retrospective effect from 1st July, 1995 and reads as under:-

“[Explanation.- For the removal of doubts, it is hereby declared that-

- (a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;
- (b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;
- (c) The income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.]”

11. Referring to the said Explanation, it has been held by the



Division Bench in ***Shaw Wallace and Company Limited***

(supra) that both regular assessment as well as the block assessment can be continued separately. Undisclosed income is a subject matter of the block assessment proceedings, whereas in the regular assessment proceedings the Assessing Officer is to compute the regular income as disclosed in the books of accounts after applying the relevant provisions of the Act. It has been held:-

“ Considering the fact that if the regular assessment is not allowed there may be scope for escapement of assessable income. The interpretation suggested by learned counsel for the assessee, Shri Bajoria, will run counter to the intention of the Legislature. Therefore, we are in agreement with the view expressed by the Gujarat High Court in N.R. Paper and Board Ltd. v. Deputy CIT[1998] 234 ITR 733, and also the view taken by this court in the case of Caltradeco Steel Sales (P.) Ltd. [2000] 243 ITR 643, that there can be a regular assessment in addition to the assessment made under Chapter XIV-B and both the proceedings that is assessment of income under section 143(3) and assessment in the block period under Chapter XIV-B can go on simultaneously. As income assessable under Chapter XIV-B is an “undisclosed income” while the income assessable under Section 143(3) is not an “undisclosed income” that has been clarified in the Explanation that the undisclosed income relating to that block period shall not include the income assessed in the regular



assessment. Therefore, if any income is assessed under the regular assessment that cannot be taxed twice while making the assessment of the block period. But in the returns if some deductions have been claimed which are not permissible under the provisions of the Act of 1961, they can be assessed and taxed only in the regular assessment.”

12. In view of the aforesaid legal position, we have to hold that the findings recorded by the tribunal that the addition could not have been made in the block assessment, is incorrect. The facts noted above clearly show that income/cash of Rs.30,10,000/- had been found at the time of search and was undisclosed income that can be brought to tax in the block assessment proceedings. Question of law is accordingly answered in negative, i.e., in favour of the Revenue and against the respondent assessee.

The appeal is disposed of. No costs.

SANJIV KHANNA, J.

R.V. EASWAR, J.

FEBRUARY 02, 2012
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