



## THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.01.2013

+ **ITA No.43/2013**

**COMMISSIONER OF INCOME TAX-XI** ... Appellant

versus

**KULDEEP SOOD** ... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Sanjeev Rajpal

For the Respondent : None

**CORAM:-**

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

**HON'BLE MR JUSTICE R.V.EASWAR**

**JUDGMENT**

**R.V.EASWAR, J**

This appeal has been filed by the Revenue and it is directed against the order passed by the Income Tax Appellate Tribunal ('Tribunal' for short) on 22<sup>nd</sup> June, 2012 in ITA(SS) No.61/Del/2009. The Revenue seeks admission of the appeal on the following questions of law stated to be substantial questions of law:-

“I. Whether the ITAT has not erred in law in case of the respondent for deleting the addition of ₹26,27,610/- for AY 1998-1999 in the block assessment as his undisclosed income substantively from his proprietorship concern ?



## II. Whether the impugned order is not perverse?"

2. In the assessment made under Section 158BC of the Act on 27<sup>th</sup> June, 2001 pursuant to a search of the assessee's business and residential premises, the AO made an addition of ₹1,44,19,919/-. This addition was made in the following years:-

Financial Year / Assessment Year	Undisclosed Income
1995-96	₹ 1,04,79,248/-
1996-97	₹ 13,13,061/-
1997-98	₹ 26,27,610/-
<b>Total</b>	<b>₹ 1,44,19,919/-</b>

The basis of the addition was the view taken by the AO that the business carried on in the name and style of M/s Transworld International belonged to the assessee and not to his wife as claimed. The assessee had claimed before the AO that the above business was transferred to his wife Mrs.Pallavi Sood after 1994 and thereafter the business was being run by her and, therefore, the entire income from that business should be assessed in her hands. In support of the claim an affidavit from the assessee's wife was filed before the AO. The affidavit was however rejected as an afterthought; it was noted that the statement given by the



assessee's wife on oath earlier before the income tax authorities should be given more weight. It was also claimed before the AO that the income from M/s Transworld International was declared in the returns filed in the name of assessee's wife. This claim was also brushed aside by the AO as irrelevant. It was in these circumstances that the aforesaid addition came to be made in the block assessment order.

3. On appeal the CIT (Appeals) deleted the addition of ₹26,27,610/-, following his predecessor's order. It appears that his predecessor had deleted the additions on the ground that the income from Transworld International had been disclosed in the returns filed by the assessee's wife under Section 139(1) of the Act.

4. The Revenue carried the matter in appeal before the Tribunal. The Tribunal after hearing the rival contentions and after taking note of the facts confirmed the decision of the CIT (Appeals), observing as follows:-

“We have considered the facts of the case. We find that identical additions were made for three years in the case of the wife and the assessee. The appeal in the case of wife was disposed off by the Ld.CIT(A) on 27.10.2003. In this order the assessee is held to be the owner of M/s Transworld International upto assessment year 1996-97. Smt. Pallavi Sood has been held to be owner of this proprietary concern from assessment year 1997-98. The order in the case of wife has become final. It



may be added that the addition has been deleted in her case also on the ground that the transactions of M/s Transworld International had been taken into account and profit from this concern was declared by her at ₹1,04,996/-. This finding has not been challenged by the revenue as stated by the Ld. Counsel in the brief-note filed before us in the course of hearing. Therefore, this finding has become final, which means that the income from this concern for assessment year 1997-98 cannot be included in the hands of the assessee. Following the rule of consistency, it is held that Ld. CIT(A) was right in deleting the addition, representing income from aforesaid concern, from the assessment of the assessee.”

5. It will be appreciated from the above that the Revenue had accepted the order of the CIT (Appeals) in which she was held to be the owner of M/s Trans World International from the assessment year 1997-98 and that her husband, the assessee before us, was the owner of the said concern only upto the assessment year 1996-97. The finding as to the ownership of a particular business is a finding of fact. In the present case the CIT (Appeals) had found as a fact that from the assessment year 1997-98 it was the assessee's wife Mrs. Pallavi Sood who was the owner of M/s Trans World International. It was on that basis that she had filed the return of income and the finding of the CIT (Appeals) was also accepted by the Revenue. The finding of fact has not been challenged before us as perverse. It seems to us that the Revenue, having accepted



the finding in the assessee's wife's case, cannot take a different view in the assessment of the husband. That would amount to taking contradictory or inconsistent stands without any just cause. We do not, therefore, see any infirmity or error of law in the decision of the Tribunal. Its order does not give rise to any substantial question of law as it is based on not only the findings of fact but also on the Revenue's own conduct. We accordingly see no merit in the appeal filed by the Revenue which stands dismissed with no order as to costs.

**R.V.EASWAR, J**

**BADAR DURREZ AHMED, J**

**JANUARY 30, 2013**

Bisht

