



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.05.2014

+ **ITA 606/2010**

**THE COMMISSIONER OF INCOME TAX
(CENTRAL-1)**

..... Appellant

versus

V.K. BHATNAGAR

..... Respondent

AND

+ **ITA 1893/2010**

**THE COMMISSIONER OF INCOME TAX
DELHI - III**

..... Appellant

versus

V.K.BHATNAGAR

..... Respondent

Advocates who appeared in this case:

For the Revenue : Mr Rohit Madan, Sr. Standing Counsel with
Mr P. Roy Chaudhry and Mr Akash Vajpai
in both cases.

For the Assessee : Ms Kavita Jha with Ms Bhoomika Chaudhary
in both cases.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The present appeals have been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') impugning the common order dated 08.04.2008 passed by the Income Tax Appellate Tribunal ("the Tribunal") in IT(SS)No.



141/Del/2005 and IT(SS) No. 175/Del/2005. Whereas IT(SS)No. 141/Del/2005 was preferred by the assessee against the order dated 23.01.2007 of CIT(Appeals), IT(SS)No. 175/Del/2005 was a cross appeal filed by the Revenue impugning the same order.

2. The present appeal emanates from proceedings initiated under Chapter XIV-B of the Act. Search and seizure operations were conducted at the residence of the assessee and at the school premises belonging to the Bhatnagar School, on 15.01.1999. During the said search and seizure operations, certain cash and incriminating documents were seized. Thereafter, pursuant to a notice under Section 158BC of the Act, the assessee filed its return for the block period, 01.04.1989 to 15.01.1999, returning an undisclosed income of ₹50 lacs.

3. The Assessing Officer computed the assessee's undisclosed income at ₹1,64,75,600/-, which was in addition to the sum of ₹50 lacs declared by the assessee in its return. Aggrieved by the said assessment order, the assessee filed an appeal before the CIT (Appeals). The appeal of the assessee was partly allowed and certain additions made by the Assessing Officer were deleted. Aggrieved by the same, both the assessee and the Revenue preferred appeals before the Tribunal which were disposed of by the common order dated 08.04.2008 (impugned order).

4. The Revenue has submitted that the following questions of law arise from the decision of the Tribunal in ITA No. 175/Del/2005:-

“(a) Whether on the facts and in the circumstances of the case, the Ld ITAT erred in remanding the claim of Rs.28,44,500/- being payment made to various parties



(Virendragram) even though seized material in relation thereto did not have any particulars of these parties?

- (b) Whether the Ld. ITAT erred in law and on merits in upholding the order of CIT(A) with respect to addition of Rs.4 lakhs on the ground of telescoping?
- (c) Whether the order of the Ld. ITAT erred in deleting the various additions made by the AO by not appreciating the evidence on record?
- (d) Whether the order of the Ld. ITAT is perverse in law and on merits in setting aside additions for fresh consideration to the AO thereby granting fresh opportunity to the assessee despite being granted adequate opportunity?
- (e) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in deleting the amount of Rs.9,300/- as the same representing the undisclosed income of the assessee?
- (f) Whether order passed by the Ld. ITAT is perverse in law and on merits?”

5. And, the following questions of law arise from the decision of the Tribunal in ITA 141/Del/2005:-

- “(a) Whether the Ld. ITAT was correct in law and on merits in deleting the addition of Rs.2.50 lakhs on account of household assets made by the AO on the ground that it was covered by the undisclosed income of the assessee on account of telescoping?
- (b) Whether the Ld. ITAT was correct in law and on merits in deleting the addition of Rs.1,40,400/- on the ground that it was covered by the undisclosed income of the assessee on account of telescoping?
- (c) Whether the Ld. ITAT erred in law and on merits in holding that the additions are adjustable on account of telescoping?



(d) Whether order passed by the Ld. ITAT is perverse in law and on merits?”

6. It is submitted by the learned counsel for the Revenue that the Tribunal erred in remanding the claim of the assessee with respect to sums aggregating ₹28,44,500/-, to the Assessing Officer. It is submitted that the said amount was added as undisclosed income by the Assessing Officer as various seized documents indicated that payments aggregating ₹28,44,500/- were made by the assessee to various persons. The Assessing Officer held that the assessee could not explain the said payments and, accordingly, added the same as undisclosed income. The petitioner had explained that the said payments had been made in relation to construction carried out at “Virendragram” and various schools had contributed to the said project. The total investment in the said project was stated to be ₹9.5 crores. The assessee claimed that the accounts found were only intermediary accounts and therefore, no addition could be made. The CIT (Appeals) had accepted the explanation of the assessee and deleted the addition. It was contended by the Revenue that since the seized documents did not contain any particulars, the explanation given by the assessee could not be accepted. The Tribunal considered the matter and observed that payments had been made to different persons and their names were also mentioned; however, the name of “Virendragram project” did not appear on the documents. Accordingly, the Tribunal remanded the matter to the Assessing Officer to examine whether the said payments were reflected in the accounts of the Virendragram project. The Tribunal also observed that in the event the amounts were not reflected in the accounts of the Virendragram project, the addition in the case of the assessee would be justified. We are unable to



accept the view that the decision of the Tribunal in remanding the matter to the Assessing Officer is in any manner perverse or raises a question of law. The contention of the assessee that the amounts noted on the documents reflected contributions to Virendragram project was required to be verified and the same could be done by examining the entries in relation to the Virendragram project. We find no infirmity with this reasoning.

7. The second question of law proposed by the Revenue is with respect to deletion of certain additions made by the Assessing Officer on account of unexplained expenditure. The CIT (Appeals) had deleted the additions on the ground that the adhoc addition of ₹10 lacs and the declared undisclosed income of ₹50 lacs would cover the additions on account of undisclosed expenditure. While additions aggregating ₹41,62,747/- were liable to be made on account of the documents found during the search, the assessee had filed a return declaring a larger sum of ₹50 lacs as undisclosed income. Thus, the assessee had accepted an additional undisclosed income of ₹8,37,253/-. Apart from other additions, the Assessing Officer had also made an addition of ₹10 lacs on account of bogus expenses. The CIT (Appeals) and the Tribunal concluded that the additions proposed would be covered by the disclosure and the additions already made. The learned counsel for the Revenue is unable to point out any flaw in this reasoning.

8. The Assessing Officer had taken note of certain documents that evidenced receipt of donations by the assessee. The Assessing Officer had accordingly added a sum of ₹29.75 lacs received as donations as undisclosed income. The assessee contended before CIT (Appeals) that the documents (specifically a diary), on the basis of which additions were



made, contained only figures without any narration. It was, thus, contended by the assessee that the additions made by the Assessing Officer were merely on basis of surmises. The assessee also made a grievance that it was not known as to how the Assessing Officer had deciphered the entries in the documents. The CIT (Appeals) had accepted the assessee's contention and deleted the additions made by the Assessing Officer. The Tribunal considered the controversy and held that certain documents were clear and had expressly mentioned receipts of money. Accordingly, the Tribunal set aside the deletion made by the CIT (Appeals) and remanded the matter to the Assessing Officer to consider it afresh after hearing the assessee. Indisputably, it was necessary to hear the assessee while examining the manner in which the entries were to be read. We are unable to find any flaw in the decision of the Tribunal.

9. The learned counsel for the Revenue has submitted that the Tribunal had deleted various deletions made by the Assessing Officer without appreciating the evidence on record. However, the counsel has been unable to point out any specific instance which indicates that the decision of the Tribunal is perverse or not informed by reason. In this view, we are unable to appreciate as to how a question of law arises from the findings arrived at by the Tribunal.

10. In ITA No. 1893/2010, the Revenue is aggrieved by the decision of the Tribunal in deleting the addition of ₹2.5 lacs made by the Assessing Officer on account of household assets and an unexplained sum of ₹1,40,440/- as unexplained bank deposits. The sum of ₹2.5 lacs was added by the Assessing Officer as undisclosed income of the assessee on account



of electronic and other items found at the residence of the assessee. The Assessing Officer had concluded that such items were acquired during the block period. A sum of ₹1,40,440/- was added by the Assessing Officer on account of deposits made in the bank account of M/s Bhatnagar Design. The assessee had explained the deposits to be on account of sample exports; however, the same was disbelieved by the Assessing Officer.

11. The assessee had carried the said issues in appeal. The Tribunal found that the explanation given by the assessee with regard to the household items as well as with respect to the bank deposits in the account of M/s Bhatnagar Design were not satisfactory. However, the Tribunal concluded that the ad hoc addition of ₹10 lacs made on account of bogus expenses as well as the amount accepted by the assessee as undisclosed income were sufficient to include the said additions. In the given circumstances, the finding of the Tribunal cannot be stated to be perverse. The learned counsel for the Revenue has also been unable to point out any reason as to why the said additions ought not to be included in the ad hoc additions made by the Assessing Officer.

12. We have examined the matter at some length and find that the present appeal does not raise any questions of law for our consideration. Accordingly, the present appeals are dismissed.

VIBHU BAKHRU, J

S. RAVINDRA BHAT, J

MAY 19, 2014/RK