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

Decided on: 09th February, 2015

\+ ITA 66/2014
\+ ITA 67/2014
\+ ITA 68/2014
\+ ITA 69/2014
\+ ITA 75/2014
\+ ITA 76/2014
\+ ITA 77/2014

COMMISSIONER OF INCOME TAX-XIV ..... Appellant
Through Ms. Suruchi Aggarwal, sr. standing counsel with Mr. Aamir Aziz, Adv.

versus

VIVEK AGGARWAL ..... Respondent
Through Mr. Sanjeev Sabharwal, Sr. Adv. with Mr. Prakash Kumar and Ms. Megha Kamthan, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The revenue is aggrieved by common order dated 28.06.2013 of the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") in several appeals filed by it in respect of a block assessment year 2001-02 to 2007-08. It urges that there are two questions of law i.e. the correctness of the ITAT order to the extent it rejected the order of the Assessing Officer (AO) adding income on account of a document seized during the search proceedings. Here revenue had contended that the amounts liable to be added as they form undisclosed salary component of the assessee's

income. The second question pertains to addition of ₹3.64 crores and ₹20 lakhs, alleged to be property related transactions again not reported by the assessee. The CIT(Appeals) and ITAT concurrently ruled with respect to the second amount (i.e. ₹20 lakhs) that since the transactions related to the time period 1999-2000, the addition was time-barred, besides overturning it on the merits.

2. Briefly the facts are that the search and seizure proceedings were conducted on 28.2.2007 in the assessee's premises. The assessee was issued notice under Section 153A and filed return declaring income as follows :

Assessment Year	*Amount*
2002-03	*Rs.13,97,169/-*
2003-04	*Rs.15,14,302/-*
2004-05	*Rs.7,24,374/-*
2005-06	*Rs.6,80,773/-*

3. The assessing officer framed the assessment under Section 153A at ₹31,79,234/-, Rs.28,13,213/-, Rs.34,26,965/- and Rs.37,95,827/- for A.Ys 2002-03, 200304, 200405 and 2005 -06 respectively.

4. The AO also determined salary – on the basis of the document said to be a letter/e-mail seized during the course of search operations- ₹ Rs.28,50,000/-,Rs.27700,000/-, Rs.33,25,000/- and Rs.36,00,000/- in A.Ys 2002-03, 2003-04 5 2004-05, and 2005-06 respective1y as against the assessee's salary declared in its turn of income at Rs. 11,03,867/-, Rs.16,47,733/-, Rs.8,29,400/- and Rs.5,39,683/- for the aforesaid years respectively.

5. The AO also premising himself upon certain loose papers marked as Annexure A-10 party R-II added as follows :

Assessment Year	*Amount*
2002-03	*Rs.17,46,133/-*
2003-04	*Rs.10,52, 267/-*
2004-05	*Rs.24,95, 600/-*
2005-06	*Rs.30,06,317/,-*

6. The AO rejected the affidavit furnished as an additional evidence and brought to tax these amounts.

7. The assessee's appeal to the CIT succeeded. The CIT(Appeals) after elaborated discussion of the relevant case law and factual analysis of the materials was of the opinion that the alleged e-mail/letter could not be exclusively relied upon to add the amounts which were sought to be brought to tax by AO. The Appellate Commissioner was of the opinion that in the absence of any corroborative material to link such letter or its contents with the assessee, the inference that some additional income was earned by him by way of salary, was incorrectly drawn. With respect to the sum of ₹41,32,800/- relating to property transactions, assessee's explanation that he entered into transactions which ultimately did not materialize was accepted. In addition to these, the CIT(Appeals) also held that the sum of ₹41,32,800/- could not be added since it pertained to a transaction which was beyond the block period i.e. since it fell in assessment year 1998-99-2000. The revenue's appeals to the ITAT failed. The revenue argues that the impugned order is erroneous because the assessee did not offer any explanation – much less credible or worthwhile explanation about the contents of the e-mail/draft letter seized. The

learned counsel urged that given the statutory mandate under Section 132(4A), the inference drawn by the AO was justified and reasonable. The assessee's explanation that the income earned, had in fact been disclosed for a later period, on account of C-1 India Pvt. Ltd. was not logical and acceptable. For the earlier period he had a consultancy agreement dated 30.04.2000 with M.E.O.L. and the same was brought on record. It was urged that this explanation could not have been taken on record since the assessee was under the onus of proving that the income had in fact been declared. The learned counsel relied upon the judgment reported as *Urmila Gambhir V. CIT* 325 ITR 171 (Delhi) to say that in the past the Courts have taken note of such seemingly innocuous documents which do not connect with the assessee and yet upheld the liability in income tax proceedings. So far as other amounts are concerned it is urged that the ITAT and the CIT(Appeals) fell into error in rejecting the addition of ₹64,78,256/- and a sum of ₹41,32,800/- on account of unexplained income relying on the findings of the AO in Annexure A10, Party R-11 and submitted that these loose papers were sufficient to indicate undisclosed investments. Counsel for the respondent/assessee submitted that a bare reading of the documents seized shows that it had no connection with the assessee or his family. It was submitted that prior to 30.6.2000 the assessee was an independent consultant who had entered into an agreement for this purpose with a private software consultancy and that the agreement dated 30.4.2000 was on the record. However, for the later period i.e. after 1.7.2000, the assessee became a salaried employee of C-1 India Pvt. Ltd.

8. It was submitted by Mr. Sabharwal, learned senior counsel that the

assessment was finalized on the basis of salary income at ₹11,40,600/- under Section 143(3) read with Section 152A. Consequently it was urged by counsel that it was unreasonable to add amounts for the previous block period which were sought to be brought to tax slowly on the basis of the document which had no connection or bearing with the assessee's declared income. The learned counsel relied upon several decisions including *Dhakeswari Cotton Mills Ltd. v. CIT* (1954) 26 ITR 775 (SC), *CIT vs. S.M. Aggarwal* (2007) 293 ITR 43 (Del.) and *CIT v/s Kulwant Rai* (2002) 291 ITR 36 (Del). So far as ₹41,32,800/- is concerned learned counsel pointed out that the assessee had furnished explanation by way of the concerned parties' affidavit which was not even considered and replied to by the AO in assessment proceedings. This had compelled the CIT to reject the addition of ₹41,32,800/-. Being entirely factual and since the amount added pertained to a period prior to the block period i.e. 1999-2000, the AO's order was unsustainable. The learned counsel urged that the explanation with respect to the sum of ₹3.64 crores too was rejected without any reasons. The learned counsel relied upon findings of the CIT(Appeals) and ITAT in this regard. Before discussing the merits of the valid contentions it would be useful to notice at the outset what in fact was seized as Annexure A10 Party R-11 concededly was a document which did not bear the assessee's signature or contain his name. In fact even it would be construed as draft letter as to whom it was addressed to. The letter/e-mail is extracted below :

> *"Dear Sir,*
> *I have been working in C1 India for more than four years. In the four year, my salary has been as follows:*

July 00-June 01	*30,00,000 at the rate of 2,50,000 p.m. (50% paid by MEOL and 50% by C1 India)*
July 01- June 02	*27,75,000 at the rate of 2,50,000 p.m. from July 01 to Sep. 01 and 2,25,000 p.m. from October, 01 to June 02.*
July 02—June 03	*26,50,50,000 at the rate of 2,25,000 p.m from July 02 to April 03 and 2,00,000 p.m. for May and June 03.*
July 03-Jun.04	*36,00,000 at the rate of 200000 p.m and an incentive of RS 12 lakhs.*

The average of four years works out to 30,06,250/-. As you can see from the above, my salary has not increased in four years. In contrast to this, everyone else in C1 has been getting increments every year e.g.

Kapil joined in Jan-01 at a Salary of 50K, It is now at 150K which is 300% in 3 years

Anil joined in Dec. 02 at a salary of 60K, It is now 116 which is 100% in 1.5 year

Kalyan joined in Jul 02 at a salary of 42K It is not at;141K which is 333% in 2 years.

People like Kulbhushan, Rajesh Desingu, Samil Sinha, Amrjeet, Bharat have all grown bath inside C-1 India and then by joining better opportunities outside C1 India.

The industry average salary increase has been 25% p.a. every year.

However; I have not grown at all in the past, four years. I have also been told categorically that any further improvement in designation is not possible.

I believe that I have worked extremely hard for the company. I have fought in extreme rough climate where everyone had given up on the company and you were prepared to-write off all your investments. I have made many sacrifices. I have also given up other lucrative offers to make this company a success.

Most of the companies, which started alongwith us or even before us such as C1 ME, our own MEOL, Seesaini and even Commerce-one itself, have gone bankrupt. These companies had even much higher investments than us.

I believe I have been able to make company stand on its own feet and on a path to progress further, however, I believe that it is now high time that - company recognize my efforts and give me the adequate compensation.

I strongly believe that I can take this company to great heights, however, I believe that I can do so, only if I am highly motivated.

With best regards,"

9. The ITAT – which endorsed the CIT(Appeals)'s conclusions was of the opinion that since the letter was not addressed to anyone and both undated and unsigned, the revenue was under the duty to corroborate

whatever inference it wished to draw from it. Furthermore, the ITAT was of the opinion that the document could not be accepted at face value in terms of Section 2(22AA) of the Income Tax Act which includes electromagnetic records as defined in Section 2(t) of the Information Technology Act, 2000. The ITAT reasoned as follows :

> *"There nothing on record to show that any effort was made by the department to establish the nexus of the assessee with the said print out by locating the person who had seen it and who was the recipient. Undisputedly the print out is undated. No effort has also been made by the Revenue to corroborate the contents of the said print out to arrive at a definite conclusion that the assessee was indeed drawing quantum o salary mentioned therein. As per the provisions laid down u/s 132 (4A), an adverse presumption can be drawn only when firstly the document was found from the possession of the assessee and secondly, the assessee was in the control over the said document. The Ld. CIT (A) has deleted the addition placing reliance on the above cited decisions with the conclusion that the seized print out of the e-mail was a dumb document in absence of name of the addressed and addressee and it was unsigned and undated."*

10. In the judgment reported as *CIT Vs. Girish Chaudhary* (2008) 296 ITR 619 (Delhi), the Division Bench, which was called upon to decide the correctness of an addition made on the basis of a numeric entry in the document which led to addition of Rs.48 lakhs, held as follows:

> *"12. The Apex Court in Central Bureau Investigation v. V.C. Shukla and Ors. has laid down that:*

File containing loose sheets of papers are not 'book' and hence entries therein are not admissible under Section 34 of the Evidence Act, 1872.

13. Similarly, the document Annexure A-37 recovered during the course of search in the present case is a dumb document and lead us nowhere. Thus, the Tribunal rightly deleted the addition of Rs. 48 lacs made by the Assessing Officer on account of undisclosed income on the basis of seized material.

14. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

15. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed."

11. In *CIT vs. S.M. Aggarwal* (2007) 293 ITR 43 (Del.) cited by the assessee, the Court in a similar situation held as follows :

"11. In Mahavir Woolen Mills (supra) case, during the course of search and seizure proceedings, certain slips were found, which, the Assessing Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly reflected in the books of accounts. The assessee's stand before the Tribunal was that the documents were 'dumb documents' which did not contain full details about the dates of payment and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. The Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, the seized documents could not be regarded as 'dumb documents'.

12. While dismissing the appeal, the Apex Court held:

That the Tribunal had come to a certain factual conclusion about the nature of the papers seized. On the question whether the documents did or did not contain the particulars, the tribunal observed that they did contain certain materials which were sufficient to come to a conclusion about cash payments having been made in addition to those made by cheques and drafts. The conclusion was essentially factual. No substantial question of law arose from its order."

12. In *CIT v/s Kulwant Rai* (2007) 291 ITR 36 (Del) interestingly the ruling of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. CIT* (1954) 26 ITR 775 (SC) was relied upon. The Supreme Court held that even though Income Tax Authorities including the Assessing Officer has unfettered discretion and not strictly bound by the rules and pleadings as well as materials on record and is legitimately entitled to act on the material which may not be accepted as evidence, nevertheless such discretion does not entitle them to make a pure guess and base an assessment entirely upon it without reference to any material or evidence at all.

13. Given the above state of law – and this Court has no hesitation in so concluding, since the document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of the AO, the ITAT's view which endorsed the findings of the CIT(Appeals) were well-founded and do not call for interference. The reliance placed upon *Urmila Gambhir V. CIT* 325 ITR 171 (Delhi) in this Court's opinion is inapt because in that case there was other corroborative material for the income tax authorities to link the description of the transactions found in

the said innocuous document seized with respect to other material. However, such inference cannot be drawn in this case because there is no other material. On the contrary the AO's acceptance and finalization of the assessment for 2007-08 on the basis of salary income of the assessee, undermines the entire findings with respect to the inferences drawn and the additions made, indicated above. The question of law urged, therefore, is not substantial and is answered against the revenue.

14. So far as the second amount ₹41,32,800/- is concerned there cannot be any doubt that the above was sought to be made in respect of the period 1999-2000. Clearly that was beyond the block period and therefore time-barred. That apart the CIT(Appeals) noted that after the remand during the pendency of appellate proceedings, the affidavit relied upon by the assessee in Brij Bhushan Gupta was not adversely commented upon. This being a factual finding the Court finds no reason to interfere with the ITAT's order.

15. That leaves the Court with the addition initially made by the AO for the sum of Rs.3.64 crores. Here too the addition was made only on the basis of some loose papers and a chit. This too would fall in the same category of material which could not have been the sole basis for addition without some surveillance of the substantiation. Consequently, the ITAT's reasoning cannot be faulted.

16. In ITA 77/2014, which relates to AY 2001-02, the revenue also claims to be aggrieved, in addition, by the deletion of the benefit granted under Section 80HHE, in respect of the sum of Rs.10,31,892/-. The AO held that it was a salaried income from C-1 India Pvt. Ltd. even though the payment was made from MEOL. The ITAT noticed that for this

particular amount the AO had relied upon very same document seized during the search proceedings. The CIT(Appeals) had rejected the revenue's contention after noticing the relevant materials which included the Software Consultancy Agreement between the assessee and MEOL, prior to employment contract with C-1 India Pvt. Ltd. In these circumstances since the issue concerns a pure finding of fact which had been rendered concurrently, the Court is of the opinion that no question of law arises.

17. In ITA 69/2014 the revenue besides its grievance in respect of the other matters discussed above, also aggrieved by addition of Rs.6,95,700/- on account of differential value added, where the assessee as per its declaration had purchased property during the relevant period at Rs.3,70,000/-. After the search was conducted and during the course of the block assessment proceedings, the AO had rejected the transaction value and referred the matter to the AVO who in his report valued the property at Rs.1065700/-. The assessee successfully contended before the CIT(Appeals) and later before the ITAT that this could not have been the basis for block assessment or for that matter reference under Section 142A given the restricted nature of the block assessment proceedings. On this aspect the ITAT relied upon a judgment of this Court in *CIT Vs. Ravi Kant Jain* (2001) 250 ITR 141 and the subsequent ruling in *CIT V. Naveen Gera* 328 ITR 516. In those judgments it has been held that in the absence of any incriminating evidence with respect to payment over and above the reported amount, the revenue is under the burden of proving that in fact there was understatement or concealment of income. In the present case too there was no material at all for the revenue to conclude

that the transaction relating to the properties was undervalued.

18. For the above reasons we find no merit in the appeals. They are consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 09, 2015
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