

IN THE HIGH COURT OF DELHI AT NEW DELHI

16.12.2009

**Present: Mr. Subhash Bansal, Advocate for the Appellant.
Mr. Satyen Sethi, Advocate with Mr. Johnson Bara, Advocate for the Respondent.**

ITA No.762/2007

COMMISSIONER OF INCOME TAX

Vs.

ANSAL PROPERTIES & INDUSTRIES

For the assessment year 1998-99, the assessee had filed return declaring income of Rs.9,81,91,190/-. The Assessing Officer found that the assessee had claimed to have entered into an agreement with M/s. Aadharshila for purchase of 167 acres of land through Mr. Ved Chaudhary. He was paid commission of Rs.2.93 crores as property consultant. On making the enquiry from Mr. Ved Chaudhary, it turned out that he had

withdrawn a sum of Rs.1.08 crores from his bank account and in his statement he admitted that he had issued bearer cheque worth Rs.55 to 60 lacs to one Mr.

Pradeep Sethi. Mr. Pradeep Sethi was the Sales Executive of the assessee company and Mr. Saleem, was stated to be the Proprietor of M/s. Pioneer.

In these circumstances, the Assessing Officer concluded that amount of

Rs.60 lacs was received back by the assessee and added it as income of the

assessee. The Income Tax Appellate Tribunal (ITAT) has deleted this addition. While arriving at this conclusion the ITAT has observed that the department

could not bring any material to show that amount of Rs.60 lacs purportedly

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paid by Mr. Ved Chaudhary to Mr. Pradeep Sethi or Mr. Saleem has
been ultimately
received by the assessee.
It was a case of mere suspicion that the amount paid to Mr. Pradeep
Sethi or Mr. Saleem by Mr. Ved Chaudhary was handed over by Mr.
Sethi to the assessee.
It is also relevant to mention that the entire commission paid to Mr.
Ved Chaudhary by the assessee was treated as income at the hands
of Mr. Chaudhary.
Mr. Ved Chaudhary had claimed deduction of the aforesaid amount
which was
disallowed by the Assessing Officer. Once the entire commission
paid by the
assessee to Mr. Ved Chaudhary had been taxed, it cannot be taxed
again at the
hands of the assessee on the mere suspicion that the aforesaid
amount was
received back. It is also important to note that Sh. Pradeep Sethi
was not even
examined by the Assessing Officer and there was no opportunity for
the assessee
to cross-examine Mr. Pradeep Sethi. No opportunity was given to
the assessee
even to cross-examine Mr. Ved Chaudhary.
We are, therefore, of the opinion that no question of law arises.
Dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

December 16, 2009/dn

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