

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

**18.09.2009**

**Present: Mr. Dr. Rakesh Gupta, Mr. Ashwani Taneja and Ms. Aarti Saini,**

**Advocate for the appellant.**

**Ms. Sonia Mathur, Advocate for the respondent.**

**ITA No. 954/2009 HARISH DARGAN**

**On 2.2.2001, the assessee was intercepted at IGI Airport with a cash of**

**Rs.18 lacs approximately. This cash was seized. The assessee was immediately**

**brought before the Income Tax Officer at Jhandewalan, New Delhi and his**

**statement was recorded under Section 132(4). On the same day, search was also**

**conducted at the business premises of Sona Jewellers and Hira Jewellers Pvt.**

**Ltd. and records thereafter were seized. The assessee, thereafter, on 21.11.2002**

**filed his return of income declaring NIL income for the Block period ending on**

**2.2.2001. This block assessment was done under Section 158 BC of the Income Tax**

**Act, 1961 and regular assessment was done thereafter on 16.7.2003. The**

**aforsaid cash was stated as unexplained cash and additions were made on this**

**behalf under Section 68 of the Act. The assessee filed appeal thereagainst**

**before the CIT(A)**

**which was dismissed on 6.6.2003. In further appeal filed before the ITAT, the**

**appellant remained unsuccessful and that was also dismissed on 14.7.2003.**

**Undeterred, the appellant approached this court and filed second appeal under**

**Section 260-A of the Income Tax Act. This was also dismissed on**

**19.2.2008. Not**

**only this, a Special Leave Petition preferred by the appellant was also**

**dismissed by the Supreme Court on 5.8.2008.**

**We may observe at this stage that the Assessing Officer had also initiated penalty proceedings under Section 158BFA (2) of the Income Tax Act in**

**the meantime and penalty order in this behalf came to be passed on 31.7.2007.**

**Thus, penalty proceedings were initiated on the ground that there was**

**concealment of income by the assessee in as much as, the aforesaid sum of Rs.18**

**lacs was not disclosed by the appellant in his return. This penalty order was**

**affirmed by the CIT(A) and thereafter Income Tax Appellate Tribunal has also**

**dismissed the appeal thereafter on 5.6.2009. Challenging this order, the**

**present appeal is filed. It is clear from the aforesaid sequence of events that**

**the quantum proceedings taken against the appellant and additions of the income**

**on the ground that it was an undisclosed income, has been upheld in Supreme**

**Court. Taking into consideration, the findings and**

**observations of those judicial pronouncements, it is clear that a case of**

**concealment of income and providing wrong particulars was made out and**

**therefore, penalty proceedings in these circumstances would be fully justified.**

**Learned counsel for the appellant, however, submits that penalty proceedings are different from the assessment proceedings. In this behalf, his**

**contention is that the appellant had produced copies of two letters. These are**

**the internal correspondence within the departments. One communication is dated**

**11.7.2001 addressed by office of the Addl. Director of Income Tax**

**(Investigation) wherein some observations were made by the Addl. Director indicating that the cash which was seized from the appellant belonged to M/s Hira Jewellers and M/s Sona Jewellers. This letter obviously was written much before the assessment order was passed. This would be at most personal opinion of the Addl. Director which was not substantiated or agreed upon as is clear from the ultimate order passed in the assessment year which was upheld in the Supreme Court as mentioned above. Another letter shown is dated 20.2.2003, written by the Commissioner of Income Tax to Chief**

**Commissioner of Income-Tax (Central), New Delhi. The position in respect of this letter is also the same. Therefore, we are of the opinion that even if these letters are taken into consideration that would not change the position as reliance upon these letters is totally misconceived. No question of law arises. Dismissed. A.K.SIKRI, J**

**VALMIKI J.MEHTA, J**

**September 18, 2009**

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