

HIGH COURT JUDGMENTS

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 850 of 2006

15.09.2007

Decided on: September 15, 2007

Commissioner of Income Tax
(Central)-III, Delhi. ...Appellant

Through Mr.Mohit Jolly, Advocates

Versus

M/s. Preeti Aggarwala
E-118, Lower Ground Floor
Saket, New Delhi. ...Respondent

Through Mr.O.P.Sapra with Mr.Sandeep
Sapra, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

In this appeal under Section 260A of the Income Tax Act, 1961 ('Act'), the Revenue is aggrieved by an order dated 16th September, 2005, passed by the

Income Tax Appellate Tribunal, New Delhi Bench 'A' (Tribunal) in ITA No.1684/Del/2002 relevant for the assessment year 1998-99.

2. In the concluding paragraph of the assessment order, the Assessing Officer recorded as follows:

?Assessed. Tax as per law and charge interest as applicable. Penalty proceedings u/s 271(1)(c) have been initiated separately.?

3. On this basis, the Assessing Officer initiated the penalty proceedings against the Assessee. These were set aside by the Tribunal, inter alia, in view

of the decision of this Court in Commissioner of Income Tax Vs. Ram Commercial

Enterprises Ltd., [2000] 246 ITR 568. Since the Assessing Officer had not recorded his satisfaction that penalty proceedings should be initiated, the entire exercise conducted by the Assessing Officer in penalty proceedings were held to be vitiated.

4. We may note at this stage that the decision of this court in Ram Commercial Enterprises Ltd. has been approved by the Supreme Court in Dilip N.

Shroff Vs. Joint Commissioner of Income Tax, [2007] 291 ITR 519 (SC) and T.Ashok

Pai Vs. Commissioner of Income Tax, [2007] 292 ITR 11 (SC).

5. Learned counsel for the Revenue states that another Bench of this Court

has in Commissioner of Income Tax, Delhi IV v. Indus Valley Promoters Limited

(2006) 155 Taxman 223 referred the following substantial question of law to a

larger Bench which according to the referring Bench was not considered in Ram

Commercial Enterprises Limited:

?Whether satisfaction of the officer initiating the proceedings under section 271 of the Income-tax Act can be said to have been recorded even in

cases where satisfaction is not recorded in specific terms but is otherwise discernible from order passed by the authority??

6. He accordingly submits that this Court should await the decision of the larger Bench.

7. Assuming the Revenue were to succeed before the larger Bench, and the

question referred to it is answered in the affirmative, it would mean that it is sufficient that the satisfaction of the Assessing Officer for initiating penalty proceedings against an Assessee under Section 271(1)(c) of the Act is discernible from the assessment order itself and that such satisfaction need not

be separately or expressly indicated in the assessment order. In that event the assessment order in the present case would have to be examined to find out

if the satisfaction of the Assessing Officer is discernible. Therefore, without expressing any view on the issue pending consideration by the larger Bench, and

presuming that the question referred to it is answered in the affirmative, we proceed to examine the assessment order in the instant case in order to find out

whether the satisfaction of the Assessing Officer that penalty proceedings should be initiated against the Assessee under Section 271 (1) (c) of the Act is

discernible therefrom.

8. Upon perusing the assessment order, nowhere therein are we able to

find
any satisfaction even suggested remotely by the Assessing Officer that
penalty
proceedings should be initiated against the Assessee. On the contrary, we
find
that the Assessee was not very clear about the interpretation of the
accounting
standards issued by the Institute of Chartered Accountants of India.
Consequently, the Assessee was under a bona fide belief that she is
entitled to
file a return in the manner in which she did.
9. We do not think that any substantial question of law arises.
10. Under the circumstances, the appeal is dismissed.

Madan B. Lokur, J

September 15, 2007 S. Muralidhar, J
dc

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 5/2007

30.10.2007

Date of decision : October 30, 2007

COMMISSIONER OF INCOME TAX DEL Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

DWARIKADHISH INVESTMENT P.LTD. Respondent
Through Ms. Kavita Jha, Advocate

AND

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ITA 8/2007

COMMISSIONER OF INCOME TAX DEL Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

DWARIKADHISH CAPITAL P.LTD. Respondent
Through Ms. Kavita Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S.MURALIDHAR

O R D E R

In these appeals under Section 260-A of the Income Tax Act, 1961 ('the Act'), the Revenue is aggrieved by the order dated 7th April, 2006 passed by the

Income Tax Appellate Tribunal ('Tribunal') in ITA Nos. 2549/Del/2002 and

2550/Del/2002 relevant for the Assessment Year 1997-98.

Both the Assessee companies are engaged in the business of financing and

trading in shares. For the Assessment Year in question, the Assessee declared a

loss but were assessed at a positive income after making additions on account of

unexplained share application money to the extent of Rs.17.35 lakh in respect of

the Assessee company in ITA No. 2549 of 2002 and Rs.36.22 lakhs in respect of

the Assessee company in ITA No. 2550 of 2002.

The Assessing Officer required the Assessee to furnish details and documents. The Assessee produced copies of sale and purchase bills of the

share brokers through whom the transactions took place and photocopies of

confirmations of persons who had contributed the fresh share application money.

The Assessee furnished the PAN (GIR) numbers of the applicants, the details of

the cheque numbers and dates. The Assessee contended that letters sent to the

shareholders had not been responded to.

The Assessing Officer required the Assessee to furnish bank statement to substantiate the money availability with the Assessee and also to prove the

genuineness of the transactions. This not having been done, the Assessing

Officer got enquiries made through an Income Tax Inspector who found that none

of the applicants were found to exist at the address given in the confirmations.

However, the report of the Income Tax Inspector was furnished to the Assesseees

on 22nd February 2000 and the Assessment order was passed on the very next day,

that is, 23rd February 2000 giving the Assesseees no time to respond.

Before the CIT (A) the Assesseees furnished additional evidence, copies of which were sent by the CIT (A) to the Assessing Officer for comments.

Despite

reminders, no response was received from the Assessing Officer by the CIT(A)

on the additional evidence. The CIT(A) then admitted the additional evidence.

After examining the entire record, the CIT(A) deleted the addition on account of

the unexplained share application money for the following reasons:

(i) The applicants concerned were identified.

(ii) The applicants confirmed the payment of monies to the appellant for purpose of shares.

(iii) The transaction in question were by cheques.

(iv) The affidavits of the subscribers were filed indicating their full address, details of deposits made with the appellant and the source wherefrom

money was obtained to make the deposits. Copies of Bank a/cs were furnished.

These affidavits were notarized. There was no ground for disbelieving the contents of the affidavits.

(v) If the Assessing Officer entertained any doubts regarding genuineness of the credits in respect of share application money, he could have issued

summons to the subscribers or could have asked the assessee to produce them.

This was not done.

(vi) Most of the subscribers were companies incorporated with the Registrar of Companies. Proper enquiries would have revealed the true facts of the case. The appellant cannot be faulted if there was no time to give them an opportunity to rebut the Inspector's report made at the back of the appellant.

(vii) The deposits were not of an order that could not be believed.?

In the appeal by the Revenue, the Tribunal found that the facts of the case were no different from those in the case of the group company of the

present Assessee namely M/s. Dwarikadhish Financial Services. In the said case

the Tribunal had deleted the addition made by the Assessing Officer on account

of unexplained share application money. The said decision was upheld by this

Court in its order in Commissioner of Income Tax v. Dwarkadhish Financial

Services [2005] 197 CTR 202.

That apart, the Tribunal again examined the documents giving the details of each of the applicants. It noted that the above documents were available on

the file of the AO. Accordingly it dismissed the Revenue's appeals.

Learned counsel for the Revenue sought to distinguish this Court's decision in the case of the group company of the Assessee, on the ground that

the facts there were different. However, we find that the findings of the

CIT(A) as extracted hereinabove are sufficient to show that the additions made

by the Assessing Officer were not justified. The reasoning and conclusions

arrived at concurrently by the CIT(A) and the Tribunal suffer from no perversity

and are consistent with the law as explained by this Court in Commissioner of

Income Tax v. Divine Leasing and Finance Limited (ITA No. 53/2005 decided on

16th November, 2006) reported in (2007) 207 CTR (Del) 38 and in particular para

16 which reads thus:

?In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The Assessee has

to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through

banking or other indisputable channels; (3) the credit worthiness or financial

strength of the creditor/subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along

with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the Assessee; (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or

neglects to respond to its notices; (6) the onus would not stand discharged if

the creditor/subscriber denies or repudiates the transaction set up by the Assessee nor should the AO take such repudiation at face value and construe it,

without more, against the Assessee. (7) The Assessing Officer is duty-bound to

investigate the credit worthiness of the creditor/subscriber the

genuineness of
the transaction and the veracity of the repudiation.?

We are of the view that no substantial question of law arises in these
appeals. Accordingly, these appeals are dismissed.

MADAN B. LOKUR, J

S. MURALIDHAR, J
OCTOBER 30, 2007
Rk

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 522/2008

THE COMMISSIONER OF INCOME TAX V Appellant
Through Ms. Rashmi Chopra, Adv.

versus

CHAND CHAURASIA Respondent
Through Mr. Salil Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
21.05.2008

The Revenue is aggrieved by an order dated 29th June, 2007 passed by
the

Income Tax Appellate Tribunal, Delhi Bench ?B? in a batch of matters.
Learned counsel for the Revenue points out that a similar appeal arising
out of the same order in respect of some other assessee was dismissed
by this

Court being Commissioner of Income Tax v. Vinita Chaurasia (ITA
No.248/2008)

decided on 18th March, 2008.

In view of the above, this appeal is also dismissed.

MADAN B. LOKUR, J

MANMOHAN SINGH, J

MAY 21, 2008

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 11/2008

COMMISSIONER OF INCOME TAX Appellant

Through Ms.Sonia Mathur, Adv.

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versus

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RAMESHWARY DAYAL GHASI RAM P.LTD. Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S.L. BHAYANA

ORDER
28.01.2008

The Revenue is aggrieved by an order dated 23rd March, 2007 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No. 3206/Del/2005 relevant

for the Assessment Year 1998-99.

On a perusal of the order passed by the Tribunal, we find that the Tribunal has followed an earlier order passed by it in the case of M/s. Gulati

Industrial Fabrication decided on 3rd February, 2006.

Learned counsel for the Revenue informs us that against the decision of the Tribunal in M/s. Gulati Industrial Fabrication, ITA No. 1661/2006 was filed

in this Court but that was dismissed on 22nd November, 2007 since no substantial

question of law arose.

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Following the order passed by us in Commissioner of Income Tax v. M/s. Gulati Industrial Fabrication (ITA No.1661/2006) decided on 22nd November, 2007,

this appeal is also dismissed.

MADAN B. LOKUR, J

S.L. BHAYANA, J
JANUARY 28, 2008