

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

% Judgment delivered on: 01st February, 2010

+ **ITA 1415/2009**

COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI
..... Appellant

-versus-

ANIL BHALLA
FARM NO.4, SULTANPUR BANDH ROAD
VILLAGE SULTANPUR, NEW DELHI Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal with
Mr Paras Chaudhary
For the Respondent : Mr Salil Aggarwal with Mr Prakash Kumar

CORAM:

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SIDDHARTH MRIDUL, J

1. On the 11th January, 2010 this Court had passed the following order:-

“This is an appeal filed against the Income Tax Appellate Tribunal’s order dated 17.4.2009 in respect of the block assessment made for the period 1.4.1989 to 10.2.2000. Three additions were made by the Assessing Officer of Rs 1.94 crores, Rs 0.35 crores and Rs 0.15 crores under the head unexplained expenditure under Section 69C of the Income Tax Act, 1961 on the basis of certain documents which formed part of annexure A-12 of the seized documents. The

search and seizure operation was carried out in the premises of the assessee (Anil Bhalla) as well as in the premises of Vatika Township Pvt. Ltd. in which the said assessee was a director. The said search was carried on 10.2.2000. The proceedings culminated in the assessment order dated 28.2.2002 wherein the said additions were made. The Commissioner of Income Tax, Appeals, in an appeal filed by the assessee, deleted all the additions. The said deletions were confirmed by the Income Tax Appellate Tribunal by virtue of its order dated 17.4.2009. It appears that both, the Commissioner of Income Tax, Appeals and the Income Tax Appellate Tribunal were convinced by the explanation given by the assessee with regard to the nature and contents of the seized documents in question which were essentially pages 24 and 25 of annexure A-12 of the seized documents. The Commissioner of Income Tax, Appeals as well as the Income Tax Appellate Tribunal examined the entire evidence on record including the statements made by the assessee in the post-search proceedings as well as before the assessing officer and then came to the conclusion that the said additions could not be sustained in the absence of any other corroborative evidence.

The addition of Rs 1.94 crores has been made on the basis of the transactions which involved the purchase of 100 acres of land by Maruti Udyog Ltd. in village Bhondsi, District Gurgaon, Haryana. The said 100 acres of land were admittedly purchased for an amount of Rs 3.86 crores by Maruti Udyog Ltd. It is also an admitted position that the entire sum of Rs 3.86 crores was paid to the assessee through cheques. It is also an admitted position that the assessee owned 47 acres of land comprised in the said 100 acres and the balance 53 acres were arranged by the assessee from other villagers. In respect of the 47 acres of land owned by the assessee a sum of Rs 1.76 crores was received from Maruti Udyog Ltd. In respect of the remaining 53 acres of land, the assessee received an amount of Rs 2.09 crores. It is also an admitted position that the cost price of the 47 acres of land which was owned by the assessee was Rs 1.66 crores. Furthermore, the Revenue does not dispute the fact that the cost of 53 acres of land was Rs 2.07 crores. Consequently the cost price of the entire 100 acres of land comes to Rs 3.73 crores and the sale price to Maruti Udyog Ltd. was Rs 3.86

crores. In other words, a plain reading of these figures would indicate that the assessee made a sum of approximately Rs 13 lakhs out of the entire transaction of 100 crores of land which was admittedly sold to Maruti Udyog Ltd.

In these circumstances the learned counsel for the assessee submits that apart from the fact that the Tribunal is the final fact finding authority and the findings recorded with regard to the deletion of the additions are pure findings of fact, there is no logic whatsoever in the contentions raised on behalf of the Revenue.

The learned counsel for the assessee also points out that throughout the proceedings the assessee has maintained that the entries made in the said documents never culminated into actual transactions.

The learned counsel for the Revenue seeks some time to explain as to how the assessee could have expended Rs 1.94 crores in respect of a transaction which was admittedly for Rs 3.86 crores.

List on 25.01.2010.”

2. However, the learned counsel for the Revenue has not been able to satisfactorily explain as to how the assessee is stated to have spent a sum of Rs 1.94 crores in respect of a transaction which was admittedly only for Rs 3.86 crores.
3. The next issue relates to a sum of Rs 15 lacs which have been treated by the Assessing Officer as undisclosed cash receipts of the assessee and added back as undisclosed income of the block period. The Commissioner of Income Tax (Appeals) [CIT (A)] deleted the addition of Rs 15 lacs so made by the Assessing Officer by holding that no independent corroborative

material had been found in support of the conclusion arrived at by the Assessing Officer that the amount of Rs 15 lacs was paid to the assessee. The Tribunal upheld the finding of the CIT (A) on the ground that the explanation of the assessee had not been controverted by the Assessing Officer by bringing any evidence on the record and observed as follows:-

“28. Apropos Ground No.3, the details about sheet have been given above, as already mentioned this page belongs to VTPL and is found from its premises. It contains some date wise payments upto 08.06.98. Thereafter, what is mentioned is “Add: further bills and payments”. Further, different payment, which are actually made contain nothing to that effect. The entry pertaining to assessee does not contain any factum of payment. It has not been disputed that though this paper has been found from VTPL, no corresponding addition has been made in their case. Assessee has furnished an explanation that the paper contains list of further additions in the form of bills and payment which were to be made, out of which the paid once have been mentioned accordingly. This explanation of the assessee has not been controverted by the AO by bringing any evidence on the record. If it was an undisclosed payment by VTPL to assessee director in that case the addition should have been made in the case of VTPL also. In view of these facts, the explanation of the assessee has not been rebutted by AO in proper terms. In the absence of any rebuttal or any evidence disputing assessee’s explanation, the addition made by AO on the basis of entry of Rs.15 lacs cannot be held as undisclosed expenditure of the assessee. In view thereof, this ground of the revenue is dismissed.”

4. Thus, concurrent findings of fact deleting the amount of Rs 15 lacs added by the Assessing Officer have been rendered. We see no reason to interfere with these findings of fact.

5. The third dispute in the present appeal is with regard to the addition of Rs 35 lacs made by the Assessing Officer as unexplained expenditure of the assessee under Section 69 C of the Income Tax Act, 1961. The CIT (A) in this behalf observed that no independent material or evidence had been brought on record by the Assessing Officer to establish that the notings/jottings recorded on the loose sheet of paper represented an unaccounted transaction. The CIT (A) accepted the explanation of the assessee that the sum of Rs 35 lacs represented requirement of funds for different purposes and did not represent any receipt or outgoing for any such purpose. The CIT (A) considered the material on record at length and came to the following conclusion:-

“4.2 I have considered in detail the material on record. From the notings on page 47 of Annexure A-2, it cannot be said that any actual expenditure is represented by such notings which is not recorded in the books of account. To support the addition on account of unexplained expenditure on the basis of jottings on a loose sheet of paper, it is necessary to establish that the notings represent unaccounted transaction, with the help of independent corroborative evidence. In this case apart from the notings, on the said paper, no other independent material or evidence has been brought on record. Moreover, the explanation submitted by the appellant is supported by relevant entries in the books of accounts of VTPL. Accordingly, the allegation of unexplained expenditure outside the books of account has not been established in the asstt. order. The addition of Rs 35 lacs is, therefore, deleted.”

6. The Tribunal upheld the deletion made by the CIT (A) in this behalf by holding that the entries in question belonged to M/s Vatika Township

Private Limited (VTPL) inasmuch as the assessee could explain from the books of VTPL that these projects were undertaken by it. The Tribunal further held that the loose sheet does not represent any expenditure incurred by the assessee and dismissed this ground of the Revenue by holding as follows:-

“27. Apropos Ground No.2, we find that the inscription contained various names like farms house, resort, Mussoorie project, office etc. There is neither any description of any expenditure in respect of any particular head or item, the figures are round figures and do not bear description of lacs or thousands. CIT (A) has considered explanation of the assessee against each and every entry. We have already indicated that each and every paper found may not represent undisclosed income or expenditure. The entries in question belonged to VTPL inasmuch as the assessee could explain from the books of VTPL that these projects were undertaken by it. In view thereof, we uphold the findings of CIT (A) holding that these loose sheet does not represent any expenditure incurred by the assessee. This ground of the revenue is dismissed.”

7. The findings arrived at by the Tribunal are pure findings of fact and do not warrant any interference by this Court. Consequently, the appeal filed by the Revenue does not raise any substantial question of law.

8. The appeal is hereby dismissed.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

FEBRUARY 01, 2010/dn