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

+ ITA 232/2004

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Ruchir Bhatia, Adv.

versus

M/S REAL OVERSEAS P. LTD. Respondent
Through:

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **09.03.2017**

1. The question of law framed in this case is as follows:

"Whether considering Section 158BA(2) with the Explanations and Section 158 (3) as also sub-section (l) of Section 158B, it is open to the assessing officer to include the income of the assessee, which is not disclosed for assessment for the block period though the transaction relating to such income is reflected in the account books of the respective years?"

2. The facts of the present case are that the premises of one Mr. Alok Aggarwal were searched on 19.04.1996 resulting in a notice under Section 158BC of the Income Tax Act, 1961 (in short the Act) being issued to him. On the basis of materials seized during the course of the search, a notice under Section 158BD of the Act was issued to the assessee calling upon it to file its return, which it did for the concerned block period i.e. AY 1986-87 to 1996-97. The AO

added, in respect of AYs 1993-94 to 1996-97, the amounts of Rs. 5 lacs, Rs. 25,000/-, Rs. 17,66,800/- and Rs. 24.35 lacs respectively. As a matter of fact, the assessee had not filed returns for the AY 1993-94 and 1995-96. The rationale for adding these amounts, may be found in the following extract of the AO's order:

“.... In response to statutory notices, Sh. Ashutosh Agarwal, AR of the assessee appeared from time to time and furnished the details. The assessee company is engaged in the activities of giving accommodating entries. The seized material and appraisal report were examined. The books of accounts and documents seized from the above premises and the enquiries made in this case establish that shareholders are benami, they have signed blank receipts, blank sale bills, blank share transfer forms and also confirmatory affidavits which form part of seized material in annexure A-38 and A-97 of Panchnama dated 24.4.96/25.4.96. The blank signed receipt (signed on revenue stamp) by the alleged shareholders mention that the shareholders have received the amount against sale of share held by them though the amount of cash and the distinctive number of shares are not mentioned in these receipts but as the receipts are found from the possession of the company M/s Real Overseas Pvt. Ltd., they have kept it in their possession to have control over the benami shareholders and the amount and distinctive numbers can be filled up by the company as per their Will. The blank signed share transfer forms and blank signed sale bills are kept by the company to have further control over the benami shareholders as with the help of these documents, company can get transfer these shares in its name or in the name of any other person at their Will. Even the confirmatory affidavits do not mention the distinctive numbers of the shares held by the so called shareholders. It shows that the

shareholders are not even aware about their shares. The availability of these documents with the assessee company clearly shows that the allottees are not real shareholders and merely name lenders and the total on shares is in the hands of the company. The shareholders have just lent their names and provided entries....”

3. The assessee appealed to the ITAT which was of the opinion that since no material relatable to the assessee was discovered or seized in the course of search, the additions made by the AO were unsustainable.

4. The Revenue places reliance upon the findings of the AO especially his allusion to A38 and A97 of the *panchnama* recorded on 24.04.1996/ 25.04.1996. It was submitted that the blank share transfer forms, which did not even contain a reference to the share transfers, as well as the confirmation affidavits by the share investors, were a give away so far as the identity and genuineness of the transactions were concerned. The Revenue highlights that the AO's attempt to verify the assessee's explanation were unsuccessful because the inspector, who visited the premises of the share applicants, reported that they were not found at the said premises. In these circumstances, the counsel argued that there were sufficient materials relatable to the assessee to justify the search assessment in this case.

5. The learned counsel for the assessee urged that the question of material relatable to the assessee did not arise because the assessee

was not subjected to search but was rather the recipient of the notice under Section 158BD of the Act. It was argued that to issue such notice, the AO had to satisfy himself, not merely *prima facie*, but also that there were credible materials relatable to the assessee which could impel an assessment for the block period.

6. Given the nature of the material seized in the facts of this case, the ITAT's findings that block assessment notice under Section 158BD of the Act was unwarranted, cannot be sustained. Undoubtedly, the A38 and A97 of the *panchnama* were fresh materials unearthed during the course of search, albeit in a third party premises, but they clearly related to the assessee. In these circumstances, the notice issued under Section 158BD of the Act and the consequential block assessment proceedings were warranted.

7. Although this Court has answered the question framed, at the same time the facts are that such answer does not dispose of the appeal or the matter. For an addition under Section 68 of the Act, it is now well settled [*CIT vs Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)*] that the AO has to be satisfied about the identity of the share application, the genuineness of the transaction, and the credit worthiness of the investor. Whilst the inquiry in this case – i.e. the seizure of materials from the searched party, were entirely justified, a notice of final assessment with the additions that were ultimately made, could have been justified only after a proper finding in that regard.

8. Here, the AO's actions were lacking inasmuch as he did not

diligently perform the task required of him. It was quite possible for the AO to have inquired from the assessee and also found for himself, on the basis of inquiries into the bank accounts of the share applicants, as to whether the transactions were in fact as suspect as he concluded. The addition under Section 68 of the Act can be justified only if the AO also discharges the onus which is cast on him after the initial material is disclosed. The order nowhere reveals that the AO ever bothered to make such inquiry.

9. For the foregoing reasons, although the question of law is answered in favour of the Revenue, the appeal has to fail. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 09, 2017/kk