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

\+ **ITA 591/2004**

COMMISSIONER OF INCOME TAX ..... Appellant

Through : Mr. Ruchir Bhatia, Senior Standing Counsel with Mr.Gaurav Khetrapal, Advocate.

versus

D.K. AGGARWAL ..... Respondent

Through: Mr. Salil Aggarwal, Mr.Madhur Aggarwal, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **19.07.2017**

1. The Revenue is in appeal against an order dated 20th November, 2003 passed by the Income Tax Appellate Tribunal ('ITAT') in IT (SS) A No. 2/Del/1996 for the block period 1st April, 1985 to 17th October 1995.

2. While admitting this appeal, the following question of law was framed by the Court by order dated 12th August, 2014:

> "Whether the Income Tax Appellate Tribunal was right in holding that additions deleted by them could not have been made as they do not represent the undisclosed income for the purpose of Section 158BD read with Section 158BC of the Income Tax Act, 1961?"

3. The facts in brief are that a search took place in the premises of the brother of the Respondent-Assessee on 17th October, 1995, when certain documents were seized along with cash of Rs.5.27 lakhs, jewellery of 1016 gms and FDRs of the value of Rs.2,03.678. On that basis, proceedings were

initiated against the Assessee under Section158BC read with Section 158BD of the Act. Pursuant to the notice issued to him u/s 158BC, a return was filed by the Assessee on 12th August, 1996.

4. In the consequent assessment order dated 15th November, 1996, the Assessing Officer ('AO') made the following additions:

(i) Balance of capital for AY 1986-87: 1,40,731/-

(ii) Other additions in the capital account 28,77,924/-

(iii) Unexplained cash credits 2,80,84,450/-

(iv) Other unexplained receipts 8,67,150/-

(v) Unexplained investment in bank deposits 6,92,673/-

(vi) Low household expenses 4,67,000/-

(vii) Unexplained investment in property 1,63,490/-

(viii) Business income by way of brokerage and intt 89,99,192/-

(ix) Unexplained cash 5,20,000/-

(x) Unexplained jewellery 2,33,425/-

(xi) Unexplained entries in seized material 7,46,000/-"

5. Against the aforementioned assessment order, the Assessee went in appeal before the ITAT. By the impugned order, the ITAT has deleted the additions at (i) to (vi) and (viii) to (xi) above. So far as the addition at (vii) above is concerned, the ITAT remanded the matter to the AO for a fresh determination. The Court is informed, by the learned counsel appearing for the Assessee, that in the consequential proceeding before the AO, the explanation of the Assessee was accepted and addition at (vii) above was in fact deleted.

6. It may be noticed at this stage that apart from the above additions, the AO has made some other additions. However, since that was not the subject matter of the appeal by the Assessee before the ITAT, it need not to be discussed.

7. The Respondent-Assessee is the sole proprietor of the proprietary concern M/s D. Rajesh and Company. The Assessee filed his return for the Assessment Year ('AY') 1986-87 on 16th January, 1987. An assessment order was passed in respect thereof by the AO under Section 143 (1) of the Act. It is the admitted case that thereafter, no returns were filed for the AYs 1987-88 to 1991-92. According to the Assessee for these five AYs, his income was below the taxable limit and therefore, there was no requirement, given the law prevalent at that time, to file a return. The Assessee maintains that the Department was conscious of this position.

8. The Assessee filed a return for AY 1992-93 on 16th March, 1993. Although, the notice was issued to the Assessee in respect of the said return by the AO under Section 142 (1) of the Act, the order that came to be passed was under Section 143 (1) of the Act. For the next two AYs i.e. 1993-94 and 1994-95, the returns filed by the Assessee were picked up for scrutiny. After inquiry, the AO passed the assessment orders on 28th March, 1995 and 28th August 1995 respectively under Section 143 (3) of the Act. By the time the search took place, i.e. on 17th October 1995, the time within which the Assessee was required to file his return for AY 1995-96 had not lapsed.

9. It must be noted at the outset that since the question of law framed pertains only to the deletions as ordered by the ITAT with which the Revenue is aggrieved by, the scope of the present appeal is confined to examining whether the said deletions were justified or not.

10. As regards the additions made by the AO in the sum of Rs.26,50,000 relating to AYs 1993-94 and 1994-95 as unexplained capital, as already noted for both these AYs the Assessee's returns were picked up for scrutiny and assessment orders, after inquiry, were initially passed by the AO under Section 143 (3) of the Act. The AO's impugned order dated 15th November 1996 does not mention any incriminating material recovered during the search that would justify the above addition. What the AO has done is to again examine the Assessee's books of account and seek further explanation during the course of assessment, which exercise was already undertaken by the AO when the assessments for AYs 1993-94 and 1994-95 were completed originally under Section 143(3) of the Act. In the absence of any incriminating material justifying the same, the Court finds that the impugned order of the ITAT having deleted these additions does not call for any interference.

11. As regards, the addition of Rs.1,40,731 for AY 1986-87 as balance of capital, again there is no reference by the AO in the impugned order to any incriminating material. The case of the Revenue is that the original return filed by the Assessee for AY 1986-87 was not accompanied by the balance sheet and therefore, there was no occasion for the AO at that stage to have examined it or raised a query. In any event, the Court finds that the AO has

not referred to any incriminating material as such which would justify the additions except by saying that no appropriate justification was shown by the Assessee regarding the opening balance in the capital account.

12. The ITAT has in the impugned order noted that the fact of the above amount representing the opening balance in the capital account was known to the AO. The ITAT accordingly held that this addition was outside the ambit of Chapter XIV B of the Act. Under Section 158B (b) of the Act, "undisclosed income" is defined as any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions "which has not been or would not been disclosed for the purpose of this Act." Further, under Section 158 BB (1) (c) amounts that have been recorded in the books of accounts or other documents on or before the date of search would go to reduce the 'undisclosed income'. Viewed in the above perspective, the amount of Rs. 1,40,731 having already been disclosed in the balance sheet of the Assessee for the AY in question, the deletion of the said addition by the ITAT cannot be faulted.

13. A major addition that has been deleted is to the extent of Rs.2,80,84,450/- on account of 'unexplained cash credits' relating to various AYs and the corresponding interest on the said amount for the AYs 1994-95 and 1995-96 in the sum of Rs.31,05,348. The basis for the AO to make this addition is a single piece of paper seized at the time of the search operation in which the bank balances of various companies were noted. The Assessee was shown to hold shares in one such company viz., Agbros Polymers Pvt.

Ltd. and also the Director of Agbros Sharebroking Ltd. It would therefore not be surprising that a slip of paper containing the bank balances of such companies are found in the possession of the Assessee.

14. In any event, the names of the entities whose bank balances were shown in the said slip of paper were themselves income tax payers/Assessees. The confirmations from those who had given the advances were in fact produced by the Assessee. The AO in the assessment order simply states "it appears that the Assessee was used as a person through whom the unaccounted money of the assessee was coming back in the form of creditors to the assessee's account." This is a conclusion based on surmises. In light of the explanation offered, it was necessary for the AO to have undertaken some inquiries before arriving at the above conclusion. The mere fact of a slip of paper showing bank balances was by itself insufficient for the AO to infer that the Assessee had routed his own money through the said creditors. The addition of such a large sum based on extremely tenuous material cannot be sustained in law. Therefore, the said additions were rightly deleted by the ITAT. The corresponding deletion of the interest amount is also, therefore, justified.

15. The other addition is of Rs.8,67,150/- on account of unexplained receipts relating to AY 1992-93, Rs.4,67,000/- on account of 'low household expenses' for the block period, Rs.1,63,490 on account of unexplained investment in a plot, Rs.1,35,746 on account of deposit in the name of Ms. Archana Agarwal, wife of the Assessee and Rs.2,33,425 on account of unexplained jewellery. The impugned order of the ITAT in regard to the

deletion of each of the above additions is a detailed one which analyses the evidence with sufficient clarity.

16. The Court is not inclined to interfere with the said deletions as it cannot be said that the impugned order suffers from perversity. For the aforementioned reasons, the question framed by the Court is answered in affirmative i.e. in favour of the Assessee and against the Revenue.

17. In view of aforesaid, the appeal is dismissed, but in the circumstances, no orders as to costs.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 19, 2017
j