(2007) 05 DEL CK 0249

In the Delhi High Court

Case No : ITA No. 303 of 2005

Commissioner of Income Tax APPELLANT

Vs

Aggarwal Developers Pvt. Ltd. RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Income Tax Act, 1961 — Section 132, 132A, 158B, 158BC, 158BD

Citation : (2007) 163 TAXMAN 699

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : J.R.Goel, for the Appellant;

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal has been filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as ''Act'') challenging the order dated 31st August, 2004 passed by the Income Tax Appellate Tribunal, New Delhi(hereinafter referred to as ''Tribunal'') in ITA No. 5603/Del/1996 for the block period 1986-87 to 15th September, 1995.

2. The facts in brief are that the assessed is in the business of purchase/sale of real estate and development thereof. On 15th September, 1995 a search and seizure operation u/s 132 of the Act was conducted in the case of the assessed and consequent to this search, proceedings under Chapter XIV B of the Act were initiated against the assessed for the block period 1st April, 1985 to 15th September, 1995 and notice u/s 158BC of the Act was issued on 29th February, 1996 requiring the assessed to file the return of income. The assessed filed the return declaring the undisclosed income of Rs. 50 lacs for this block period.

3. During the course of assessment proceedings, it was noted that the assessed is running the business on the basis of loans taken from various parties/banks. The examination of the documents/seized documents showed that the assessed was introducing money mainly through this channel only. With a view to verify

the veracity, the assessed was asked to produce the parties in respect of whom it was found that the confirmations were defective in as much as the addresses were incomplete, PAN Nos./Ward/Circles were not mentioned, confirmation being given without the signatures of the parties. The Assessing Officer, after considering the documents available on record, came to the conclusion that assessed has not been able to prove the identity, genuineness and creditworthiness of the parties and thus invoking the provisions of Section 68 of the Act, added a sum of Rs. 95,72,125/- (that is the amount pertaining to 11 creditors as detailed in the order of assessment) to the income of the assessed ''as income from undisclosed sources''.

4. It was further noticed that during the assessment proceedings that the assessed, on the one hand is not showing correct investment in various projects, i.e., construction cost etc. and on the other hand is also loading the project with the expenses which are relatable to other projects for which the profits are not forthcoming. The assessed has also taken huge loans from the banks and also taken advances from various parties against its projects. This money is being utilised into purchase of land for other projects or has been loaned out to sister concerns, again for purchase of land/property and no interest is being charged, except on the loans/advances given to the Directors. Since the assessed was found to be following the completed contract method, Therefore, the Assessing Officer held that the component of interest requires to be recalculated and thus, disallowed a sum of Rs. 50 lacs on account of interest.

5. Aggrieved from the order of the block assessment, the assessed filed an appeal before the Tribunal. The Tribunal vide its impugned order deleted the addition of Rs. 96,72,125/- and also deleted the addition of Rs. 50 lacs made by the Assessing Officer with regard to the interest amount.

6. Being dissatisfied with the order of the Tribunal, the Revenue has filed the present appeal.

7. It has been contended by the learned Counsel for the Revenue that the information furnished by the assessed was not supported by documentary evidence and the assessed was asked to furnish the complete details such as loans and advances, sundry creditors, advances received for land, advances paid for land and stock in process. A perusal of records will show that some of the confirmations were defective, i.e,. either the complete postal address was not given or the Income Tax Ward/Circle and GIR Number was not given or the confirmation was unsigned by their creditors. Further, the assessed was not able to get the details asked for vide various entries and the assessed was duty bound to give all the details which has not been done in the instant case.

8. The Tribunal deleted the addition of Rs. 96,72,125/- holding that the advances which have been added as ''undisclosed income'' have been duly disclosed in the books of accounts, for which regular returns of the income have been filed. No material has been detected as a result of search or gathered as a result of

enquiries conducted on the basis of material detected during the course of search to establish that such trade advances represent ''undisclosed income'' of the assessed.

9. Section 158B of the Act is a part of Chapter XIV-B dealing with special procedure for assessment of search cases. The Chapter contains Section 158B to Section 158BH. ''Block period'' and ''undisclosed income'' have been defined in Clauses (a) and (b) to Section 158B, for the purpose of the Chapter. We are concerned with the definition of ''undisclosed income''. The provision in its entirety reads as follow:

(b) ''undisclosed income'' includes 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, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Act.

10. It is clear from the above definition that the income or the property, which has been disclosed or would have been disclosed for the purpose of this Act, does not form part of the undisclosed income for purpose of block assessment. Under the provisions of Chapter XIV-B only such of the aforesaid categories of income, which has been found as a result of search can alone be the subject matter of an assessment under this Chapter. The definition specifies that where an assessed has claimed any expenses or addition, which is found to be false, the same can only be regarded as an undisclosed income for the purpose of this Chapter.

11. Under Chapter XIV B of the Act, before an addition of an ''undisclosed income'' can be made, the Assessing Officer has to bring on record the material to show that on evidence found as a result of search there is an undisclosed income represented by credits appearing in the books of accounts.

12. In the present case, no material whatsoever has been found which goes to establish that the amount of the credits were not genuine or were not disclosed. The undisputed facts are that advances, which have been added as undisclosed income, have been duly disclosed in the books of accounts, for which regular returns of income have also been filed. No material has been detected as a result of search or gathered as a result of enquiries conducted on the basis of material detected during the course of search to establish that such trade advances represent undisclosed income of the assessed.

13. In Commissioner of Income Tax, Delhi-II Vs. Ravi Kant Jain, , this Court while discussing the provisions of Section 158B of the Act held that:

The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to Sections 132 and 132A.

14. Thus, we hold that there is no basis for making an addition on account of undisclosed income in the case of the assessed.

15. With regard to deletion of addition of Rs. 50 lacs made out of interest paid on borrowing for business, this addition has been made by the Assessing Officer with the following observations:

The total loan taken as on the last day of 31.3.1995 was 1.99 crores against which a sum of 7.11 crores has been given as loans and advances the assessed is further showing current liabilities at Rs. 9 crores which include advances to the tune of 8.98 crores. The assessed is further having balance of Rs. 1.09 crores in its current account plus a stock in process of Rs. 1.95 crores only. Thus it is clear that the major amount received is diverted for other projects and the interest component loaded on various projects is unreasonable and should be disallowed. In view of past history of the case, in view of the fact that the expenses are inflated like this on various projects, which has been sold, it is fit to meet the ends of justice that a sum of Rs. 50 lacs should be disallowed on this account. This is being done only in respect of projects completed and sold.

16. As per record, it may be noticed that addition of Rs. 50 lacs has been made by the Assessing Officer without any basis or reference to any material detected as a result of search on the assessed. No where in the assessment order it has been stated that some material or evidence has been found as a result of search to show that the expenditure debited was false. The claim of the assessed that no such interest was ever debited for the assessment year 1995-96 is also correct.

17. In the present case, there is no specific finding by the Assessing Officer that the claim or deduction of interest has been made of such sums which claims have been found to be false. It is also not clear from the record as to how the Assessing Officer has arrived at the figure of Rs. 50 lacs with regard to the interest in this case. Thus, the Tribunal has rightly held that the sum added of Rs. 50 lacs is beyond the scope of Chapter XIV-B of the Act and, Therefore, it rightly deleted the same.

18. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

19. Accordingly, the present appeal filed by the assessed is, hereby, dismissed.