

(2007) 05 DEL CK 0121

In the Delhi High Court

Commissioner of Income Tax

APPELLANT

Vs

B.K. Malik

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Citation : (2007) 165 TAXMAN 65

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The revenue is aggrieved by an order dated 26-8-2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "E" in IT(SS)A Nos. 136-138/Delhi/2000 relevant for the block period 1-4-1987 to 6-11-1997.

2. It appears that a search operation u/s 132 of the income tax Act, 1961 was conducted at the residential and business premises of the assessed on 6-11-1997. During the search, cash vouchers showing requirement of material etc. in connection with the construction of a farm house in Rajokari were seized. As per the documents available, the total expenditure on construction of the farm house as on the date of the search amounted to Rs. 4.88 crores. Out of this amount, a sum of Rs. 3.31 crores was booked in the accounts during the date of search. The balance amount of Rs. 1.56 crores represented the amount for which cash vouchers were found during the search.

3. Out of the balance amount of Rs. 1.56 crores the assessed (Deepak Seth) surrendered an amount of Rs. 86.79 lakhs and the expenditure with regard to the balance amount of Rs. 70 lakhs is what is in dispute. This amount was said to represent the reserve fund of M/s. Mina Exports Ltd.

4. The Income Tax Appellate Tribunal noted that during the search, a daybook which is annexure A-3 was seized. The Tribunal also noted that the details of the accounts mentioned in the day book showed that two different balances were maintained: one representing cash kept in the safe and the other representing

the reserve fund. The accounts in the day book were found to tally completely with the cash books maintained by M/s. Mina Exports Ltd. and M/s. Pearl Global Ltd. a sister concern. No discrepancies were noticed and cash shown in the books was physically found in the searched premises. The amount representing the reserve fund was not found during the search and as per the Explanation given by the assessed this amount was utilized in the construction of the farm house at Rajokari.

5. On this material, the Tribunal came to the conclusion that cash balance in the form of Reserve Fund was available to the assessed and that this represented amounts belonging to the two aforesaid companies. Out of this amount, Rs. 70 lakhs was utilised in the construction of the farm house at Rajokari and some amounts in terms of physical cash were found at the residence of the three assessed before us.

6. On the basis of the accounts maintained, in which no discrepancies were found, the Tribunal concluded that the assessed had been able to adequately explain the cash that was available for investment as well as the cash that was physically available.

7. Having heard learned Counsel for the revenue and having gone to the records of the case, which disclose the facts that we have mentioned above, we find that no substantial question of law arises. The Tribunal has believed the assessed primarily on the basis of the account books maintained by M/s. Mina Exports Ltd. and M/s. Pearl Global Ltd. as well as the day book Annexure A-3 recovered from the premises of one of the assessed. The Tribunal has also relied on the fact that there were no discrepancies found in the accounts that were maintained by M/s. Mina Exports Ltd. and M/s. Pearl Global Ltd. on the one hand and the day book on the other.

8. Consequently, we find that: no substantial question of law arises in this appeal.

9. The appeal is dismissed.