

(2007) 10 DEL CK 0011
In the Delhi High Court
Case No : IT Appeal No. 1169 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Bluechip Construction Co. (P) Ltd.

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 158BA(3), 158BC, 254(2), 260A

Citation : (2007) 213 CTR 530

Hon'ble Judges : Madan B. Lokur, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : J.R. Goel, for the Appellant; C.S. Aggarwal, Salil Aggarwal and Prakash Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

1. The Revenue is aggrieved by an order dt. 27th April, 2005 passed by the Tribunal, Delhi Bench "C in IT(SS)A No. 136/Del/2003 relevant for the block asst. yr. 1986-87 to 14th Sept., 1995.

2. A search was carried out in the premises of the assessed company and in the residential premises of one of its directors Mr. P.K. Dang on 15th Sept., 1995. On the basis of the search, notices were issued to the assessed who filed its return u/s 158BC of the IT Act, 1961 ("the Act") for an amount of Rs. 3,20,134. An assessment order was passed on 30th Sept., 1996 but since the assessed was not satisfied with that order, it preferred an appeal before the Income Tax Appellate Tribunal ("the Tribunal") and by an order dt. 29th Jan., 2001 the Tribunal set aside the assessment order and remanded it back to the file of the AO. The AO then passed a fresh assessment order on 31st March, 2003 against which the assessed filed another appeal, which came to be disposed of by the order under appeal, that is, 27th April, 2005. In the order passed by the Tribunal on 27th April, 2005, all the contentions urged by the assessed were accepted and that is how the Revenue is before us in appeal u/s 260A of the Act.

3. We are primarily concerned with five amounts in respect of which the assessed succeeded. These are dealt with in Seriatim .

(i) An addition made by the AO to the extent of Rs. 26,10,500 in respect of a credit appearing in the bank account of the assessed.

It is clear from a reading of the assessment order as well as the order passed by the Tribunal that the amount of Rs. 26,10,500 related to deposits made by the assessed in three bank accounts viz. Bank of India (Saket), Bank of India (Greater Kailash, Part-II) and a third account in Bank of India. All these deposits were made prior to the date of the search, that is, 15th Sept., 1995.

Learned Counsel for the Revenue has drawn our attention to Section 158BA(3) of the Act to contend that the cash amount, though deposited in the bank accounts of the assessed, was undisclosed income since it was not corroborated by entries in its books of accounts.

We are not in agreement with the view canvassed by learned Counsel for the Revenue. What Section 158BA(3) requires is that the amount should be disclosed either in the books of accounts or in some other documents maintained by the assessed. In the present case, even if it is assumed that the assessed was not maintaining books of accounts, the fact is that the amount was disclosed in the bank account maintained by the assessed and to that extent it cannot be described as undisclosed income.

The further contention of learned Counsel for the Revenue is that the assessed would not have disclosed this amount in its returns and to that extent the amount has to be treated as its undisclosed income. We do not think that this matter can be treated in as simple a manner as that. Apart from the fact that the amount was disclosed in the bank account, there is nothing to support the argument of learned Counsel for the Revenue that the assessed would not have disclosed this amount in its returns, particularly for the asst. yr. 1995-96 for which the last date would have been 30th Nov., 1995. To substantiate such an argument, the burden is on the Revenue and it is an extremely heavy burden but the Revenue has made no serious attempt to discharge this burden except in the oral submissions made by learned Counsel. We find this unacceptable.

The Tribunal has noted that not only was the amount reflected in the bank accounts of the assessed but it was also reflected in the books of accounts maintained by the assessed. The doubt appears to have arisen in this case because of the view of the AO that there is no corroborative evidence to show the receipt of this amount. Whether the assessed can give a satisfactory Explanation for the receipt of amount may have to be considered by the AO in a regular assessment u/s 143(3) of the Act. What is required under the provisions of Chapter XIV-B of the Act is that the income should be undisclosed-the assessed is not required to explain the source of that income. For the purposes of a block assessment, it is enough if the amount was disclosed by the assessed in its bank accounts. Merely because the assessed may not be able to show the

source of income does not convert the amount into the undisclosed income of the assessed for the purposes of Section 158BC of the Act.

The Tribunal has noted that no evidence was found during the course of the search to show that the credits were the undisclosed income of the assessed but in the view that we have taken, we need not go into this aspect of the matter. No substantial question of law arises.

(ii) An amount of Rs. 4,95,045 has been added to the income of the assessed being commission received by it through its director P.K. Dang. The substantial question of law that has arisen in this regard is : "Whether the Tribunal was correct in law in deleting the addition of Rs. 4,95,045 on the ground that the assessment on this amount to a double assessment in the hands of the assessed ?"

Learned Counsel for the assessed fairly states that the view expressed by the Tribunal in this regard is not tenable and there was no question of any double assessment of this amount. He frankly submits that this amount is liable to be taxed in the hands of the assessed after excluding the expenditure of Rs. 1,74,911.

We find from a perusal of the order of the Tribunal that there is no finding given by it where the assessed had in fact incurred the expenditure of Rs. 1,74,911 and, Therefore, we think it is appropriate if the matter to this extent is remanded to the file of the Tribunal to determine whether the amount of Rs. 4,95,045 minus Rs. 1,74,911 is to be taxed in the hands of the assessed.

We answer this question in the negative, in favor of the Revenue and against the assessed.

(iii) The third amount that we are concerned with is an addition of Rs. 8,51,000. We find that insofar as the director of the assessed, that is, P.K. Dang is concerned, an assessment order was made in this respect u/s 158BC of the Act. The assessment order is dt. 28th March, 2002 and on a perusal of para 12 of that order, the peak statement of P.K. Dang was considered and a peak amount of Rs. 28,85,195.75 was added in his hands. This assessment order was accepted by P.K. Dang and it has become final. Under the circumstances, the Tribunal is right in its conclusion that once the amount is covered by the peak statement of P.K. Dang, taxed accordingly and accepted by him, no further addition was warranted in the hands of the assessed.

Learned Counsel for the Revenue contends that there is nothing in the order of the Tribunal to suggest that the amount of Rs. 8.51 lakhs was included in the peak statement of P.K. Dang. This argument has been raised before us for the first time and it touches upon the factual determination made by the Tribunal, which appears to have proceeded on the basis that this amount was included in the peak statement of P.K. Dang. If the Revenue had any doubt about this factual conclusion, it could have moved an application before the Tribunal u/s 254(2) of

the Act, which it did not. It is, Therefore, too late in the day for learned Counsel for the Revenue to contend that this amount was factually not included in the peak statement of P.K. Dang.

We may note that learned Counsel for the assessed disputes this submission made by relying on the paper book that was before the Tribunal. However, we do not think it necessary to go into this aspect of the matter in view of what we have stated above. No substantial question of law arises.

(iv) The fourth dispute relates to an amount of Rs. 4 lakhs in respect of payments made to one Mr. Baljeet Yadav of M/s Noble Data Processing. A total amount of Rs. 18,70,000 was paid to Baljeet Yadav, out of which Rs. 50,000 was actually received. An amount of Rs. 14,20,000 was added to the income of the assessed on a protective basis, but it was found covered by the peak statement of P.K. Dang. The balance amount of Rs. 4 lakhs is in dispute before us. The Tribunal found that this amount is reflected not only in the books of accounts of the assessed but in fact an amount of Rs. 3 lakhs out of this was paid out of the bank account of the assessed.

Once again, the error committed by the AO lies in considering whether the assessed was able to explain the source of this income through corroborative evidence or not. As we have already noted above, this is not the correct approach. What is required to be considered for the present purposes is whether the amount was disclosed or not. Since the amount was disclosed not only in the books of accounts of the assessed but also in other documents, namely, the bank accounts of the assessed, the Tribunal rightly held that the amount of Rs. 4 lakhs deserves to be deleted from the income of the assessed. No substantial question of law arises.

(v) Finally, an addition of Rs. 17 lakhs has been made by the AO on the ground of alleged investment in property bearing No. 45-D, Sainik Farms.

In respect of this amount, the Tribunal held that no document was found during the course of the search to show that the property was undervalued by the assessed. Moreover, we find from a perusal of the assessment order that the AO has presumed that the cost of acquisition of the house property would not be less than Rs. 50 lakhs. Since the assessed had a 50 per cent share in the property, an amount of Rs. 17 lakhs was added (an amount of Rs. 8 lakhs having already been disclosed). There is absolutely no basis given by the AO in arriving at the conclusion that the property should be valued at not less than Rs. 50 lakhs.

Learned Counsel for the assessed has drawn our attention to Commissioner of Income Tax Vs. Manoj Jain, and Commissioner of Income Tax Vs. Jupiter Builders Pvt. Ltd., . In both these decisions, it has been held by this Court that since Chapter XIV-B of the Act is a self-contained code with regard to assessment of search cases, no addition can be made on the basis of a DVO report when no evidence has been found during the course of the search to establish that the assessed has paid more than the disclosed consideration in purchase of the

property.

In the present case, apart from anything else, the AO has not even referred the matter to the DVO and, Therefore, there is absolutely no basis on which the addition of Rs. 17 lakhs has been made to the income of the assessed. We are, Therefore, in agreement with the view expressed by the Tribunal that the addition of Rs. 17 lakhs could not have been made in the block assessment in respect of the assessed. No substantial question of law arises.

4. The appeal is disposed of as above.

5. The parties will appear before the Tribunal on 3rd Dec, 2007.