(2008) 09 DEL CK 0109

In the Delhi High Court

Case No : Income Tax A. No. 1126 of 2008

Commissioner of Income Tax — APPELLANT

Vs

D.K. Gupta — RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:
Income Tax Act, 1961 — Section 132(4A)

Citation : (2009) 308 ITR 230 : (2008) 174 TAXMAN 476

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Rakesh Gupta, Poonam Ahuja and Aarti Saini, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This appeal is preferred by the Revenue against the order dated January 18, 2008, passed by the Income Tax Appellate Tribunal in respect of the block period April 1, 1995, to March 18, 2002. The appeal before the Tribunal had also been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals) dated December 24, 2004. The ground raised by the Revenue before the Tribunal was that the Commissioner of Income Tax (Appeals) had erred in deleting the addition of Rs. 7,53,55,000 made on account of entries recorded in two diaries seized from the assessee''s premises holding these diaries as dumb documents.

2. A search was conducted on March 18, 2002, at the assessee''s residential premises as well as the office of the company in which the assessee was a director. Amongst other items, two diaries were seized which were marked as annexures A1 and A2 to the panchnama. These diaries apparently pertain to the calendar year 2001-02 and were found at the business premises at D-31, First Floor, Green Park, New Delhi. The assessee is a director in Aerens Buildwell Limited which is in the business of property development and real estate agency. The notings in these diaries included appointments, reminders, notings/jottings, etc. The assessee had been asked to explain all the entries in these diaries. The

same were explained by the assessee through a letter dated March 3, 2004. Even the amounts mentioned were explained as to whether they referred to "thousands" or "lakhs".

3. The Tribunal noted that the notings were also reconciled in terms of-absolute figures from the accounts seized during the search as indicated in paragraph 6 of the impugned order. Paragraph 7 contains the details which indicate that the notings were in lakhs of rupees. Paragraph 8 of the impugned order reveals that the assessee had explained the notings indicated therein were in connection with general property related discussion and had nothing to do with the actual transactions. This fact had been explained to the Assessing Officer who had accepted the same. Again, in paragraph 9 of the impugned order, the notings relating to appointments for discussion, as indicated in the said paragraph, were explained as having nothing to do with the actual transactions. Paragraph 10 refers to notings which indicate telephone numbers and are not related to actual transactions. Paragraph 11 of the impugned order indicates that each of the items in respect of which queries had been raised by the Assessing Officer were responded to by the assessee. There were 36 such items.

4. According to the Revenue, not all the entries have been explained in the sense that the assessee has not produced any material to show that the transactions themselves had not materialised. The plea raised by the Revenue was that a presumption is raised against the assessee in view of the provisions of Section 132(4A) of the Income Tax Act, 1961 (hereinafter referred to as "the said Act"). However, we find that this aspect of the matter has also been considered in detail by the Tribunal. The Tribunal has noted that after going through the contents of the diaries and observations made by the Assessing Officer and the replies filed by the assessee, the diaries found with the assessee contained various reminders, appointments, no tings/jottings which any businessman in normal course would make note of in respect of offers received and what he intends to look into. The Tribunal was of the view that merely because there were notings of offers does not mean that the transactions had actually taken place and the Tribunal was of the view that the provisions contained in Section 132(4A) of the said Act did not authorise the Assessing Officer to raise such a presumption, particularly when the assessee had offered the explanation along with the documents and evidence and had also furnished an affidavit to this effect and the Assessing Officer had also made enquiries with respect to such replies given by the assessee. The Tribunal noted that in such a situation, the burden shifted on the Revenue to prove that the replies filed by the assessee were not correct and that the notings/jottings had resulted into income which had not been disclosed in the regular books of account. The Tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings/jottings had materialised into transactions giving rise to income not disclosed in the regular books of account.

5. Consequently, the Tribunal upheld the findings of the Commissioner of Income

Tax (Appeals) and agreed with the view taken by the latter that the assessee was liable to tax only on those receipts which had been proved to be income in the hands of the recipient. As a result thereof, the Tribunal found no reason to interfere with the findings recorded by the Commissioner of Income Tax (Appeals) on the ground that the same were based on valid and cogent materials placed on record and also produced before the Assessing Officer during the course of assessment proceedings. The Tribunal also noted that all the evidence, materials, explanations were furnished before the Assessing Officer and it is on the basis of such material that the Commissioner of Income Tax (Appeals) had arrived at the conclusion that no addition was warranted on the basis of the seized diaries.

6. We have examined the impugned order in detail and have also heard the Counsel for the parties and we find that the issues sought to be raised before us are purely issues of fact. The Tribunal, being the final fact-finding authority, has returned a certain set of facts. We find no perversity in such findings and, consequently, no question of law, what to speak of a substantial question of law, arises for our consideration.

7. The appeal is dismissed.