

(2007) 03 DEL CK 0049
In the Delhi High Court
Case No : ITA No. 900 of 2006

Commissioner of Income Tax		APPELLANT
	Vs	
S.M. Aggarwal		RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Income Tax Act, 1961 — Section 131, 132, 132(4A), 260A

Citation : (2007) 211 CTR 180 : (2007) 293 ITR 43 : (2007) 162 TAXMAN 3

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

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; C.S. Aggarwal and Prakash Kumar, for the Respondent

Judgement

V.B. Gupta, J.—Revenue has preferred the present appeal u/s 260A of the Income Tax Act (hereinafter referred as Act) against the order

dated 23rd September, 2005 passed by Income Tax Appellate Tribunal, Delhi (hereinafter referred to as Tribunal) in ITA No.116/Del/2001

relating to block period 1st April, 1988 to 21st April, 1998.

2. Vide the impugned order, the Tribunal has deleted the addition of Rs.26.05 lacs made on account of unexplained loans advanced by the assessed and the interest earned thereon.

3. The facts in brief are that the residence of the assessed at K-101, Hauz Khas Enclave, New Delhi, was searched u/s 132 of the Act on 21st

April, 1998. During the course of search, certain documents containing details of certain monetary transactions such as advancement of loan of

Rs.22.50 lacs by the assessed and also income by way of interest thereof at Rs.3.55 lacs were found. The Assessing Officer vide questionnaire

dated 27th January, 2000 required the assessed to explain the expenditure. The

Explanation given by the assessed that the account belongs to his daughter Smt.Sarla Gupta was denied by her. The Assessing Officer concluded in his assessment order that the assessed had earned income from undisclosed sources which was circulated by way of loan for the purpose of earning interest. Thus, the amount of Rs. 22.5 lacs and interest of Rs.3.5 lacs were added to the income of the assessed for the assessment year 1998-99.

4. assessed being aggrieved against the assessment order, preferred an appeal before Commissioner of Income Tax (Appeals) which was allowed.

5. The Revenue challenged the order of Commissioner of Income Tax (Appeals) before the Tribunal and the Tribunal vide impugned order dismissed the appeal of the Revenue.

6. It has been argued by the learned Counsel for the Revenue that the assessed has failed to substantiate the transactions with any evidence and

also failed to explain the source thereof. The Explanation tendered by the assessed that the account belongs to his daughter Smt.Sarla Gupta was

categorically denied by her and in view of her specific denial, there is no justification to hold it otherwise. The assessed also failed to rebut the

presumption available u/s 132(4A) of the Act and it is nobody's case that document was not in the hand writing of the assessed and, thus, the

document being found in the possession and control of the assessed, the burden lies upon him to rebut the presumption.

7. On the other hand, learned Counsel for the assessed has contended that Revenue has not been able to adduce evidence to show that the

assessed earned income relating to the entry or earned interest thereon. There is no evidence to show that the assessed was advancing any money

on interest or had any funds for lending. It is further contended that the document in this case is a dumb document and it does not lead to any

conclusion and in support his contention, learned Counsel for the assessed cited a decision of Apex Court reported as Mahavir Woollen Mills

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8. Another contention is that since the documents seized in this case are dumb document as per the finding of Commissioner of Income Tax

(Appeals) and Tribunal and this conclusion is a factual one and, thus, no substantial question of law arises in this case.

9. Relevant portion of the assessment order with regard to this document reads as under:

Annexure A-28 page 15, gives the details of certain handwritten monetary transactions which shows that the assessed had given a loan of Rs.22.5

lacs on interest and earned interest income of Rs.3.55 lacs on it. The details of the account began from 1.4.97 and the other dated recorded was

found 5.1.98 and the interest was calculated on the first day of April 1998. The assessed was asked to substantiate these transactions with

supporting and necessary evidences and to explain the sources of these amounts. The assessed vide letter dated 10.2.2000 stated that this is an

account of Smt.Sarla Gupta, the assessed's daughter, Summons u/s 131 of the Income Tax Act, 1961 were issued to Smt.Sarla Agarwal and a

statement was recorded on 7.4.2000. She categorically stated that she is a housewife and dependent on her husband for household and misc.

expenses and she does not have any source of income independently and she has not visited her father's house during 1997 except for a brief

period to invite him for her daughter's marriage. She stated that she is living separately with her husband at their residence at C-39, NDSE-II,

New Delhi, and she never gave any account of any money to her father. A perusal of this diary shows that the assessed is a very meticulous person

and keeps his accounts promptly and regularly. Certain markings with the pencil also shows that he never delays in recording the amounts that are

paid and received. A perusal of this account also shows that a detailed account of the amounts that are given on interest against various names like

Kharbanda etc. are mentioned and the dues taken back are recorded in Hindi as "all dues taken 31.3.98". The interest for the 1st of April was

also calculated and recorded adjacent to the account of all dues taken back. Therefore, is clearly evident that the assessed had earned income

from undisclosed sources and have circulated amongst various persons and earned interest on them. These payments and receipts are not shown in

the returns filed by the assessed. In light of the above discussions, an amount of Rs.22,50,000/- and the interest earned on it amounting to

Rs.3,55,000/- is added back to the income of the assessed for the A.Y.1998-99. Therefore, total amount of Rs.26,05,000/- is added back to the

income for the A.Y.1998-99.

10. The relevant finding of the Tribunal is as under:

The version of the assessed was that these entries related to his daughter, namely, Smt. Sarla Gupta. This version was very specific. After Smt. Sarla Gupta denied to have any transaction with the assessed, it was incumbent for the department to have confronted the assessed against the contents of this document. It is significant to point out that the statement of Smt. Sarla Gupta was recorded by the Assessing Officer on 7.4.2000. The assessed was not called to cross examine her. Further, the statement of the assessed himself was not recorded at any stage during the assessment proceedings. It is further to be pointed out that after recording of the statement of Smt. Sarla Gupta detailed questionnaire was subsequently given to the assessed but no query was made regarding this document. In view of these facts, the learned CIT(A) was justified in reversing the conclusion drawn by the Assessing Officer. The evidentiary value of a document is to be considered on the basis of its proof. If the evidence collected against a person has not been confronted against him then it cannot be utilized against him. In the present case, the Assessing Officer has taken into account the statement of Smt. Sarla Gupta and has utilized the same against the assessed but the fact remains that this statement was recorded behind the back of the assessed and no opportunity was given to him to cross examine her.

We have ourselves examined the contents of the document and are unable to draw any clear and positive conclusion on the basis of figures noted on it. The letters "H.S.", "T.2" and "D-Shop" cannot be explained and no material has been collected to explain the same. Likewise, the figures too are totally unexplained and on the basis of nothings and jottings, it cannot be said that these are the transactions carried out by the assessed for advancing money or for taking money. Thus, in our opinion, this is a dumb document.

11. In the present case the Assessing Officer has placed reliance on the statement of Smt. Sarla Aggarwal, daughter of the assessed while arriving at the conclusion, that the entries belong to the transactions of the assessed. This statement made by Smt. Sarla Gupta, cannot be said to be relevant or admissible evidence against the assessed, since the assessed was not given any opportunity to cross-examine her and even from the

statement, no conclusion can be drawn that the entries made on the relevant page belongs to the assessed and represents his undisclosed income.

It is also an admitted fact that the statement of the assessed was not recorded at any stage during the assessment proceedings. The only conclusion

which can be drawn about the nature and contents of the document is that it is a dumb document and on the basis of the entry of nothings or figure

etc. in this document, it cannot be concluded that this represents the undisclosed income of the assessed.

10. It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So,

unless and until the contents of the document are proved against a person, the possession of the document or hand writing of that person, on such

document by itself cannot prove the contents of the document. These are the findings of fact recorded by both the authorities, i.e., Commissioner

of Income Tax (Appeals) and the Tribunal.

11. In Mahavir Woolen Mills (supra) case, during the course of search and seizure proceedings, certain slips were found, which, the Assessing

Officer concluded, contained details of payment beyond those which were made by cheques and drafts and were duly reflected in the books of

accounts. The assessed's stand before the Tribunal was that the documents were "dumb documents" which did not contain full details about the

dates of payment and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. The

Tribunal considered this aspect and observed that on comparison of the seized documents and ledger accounts of the parties, the seized

documents could not be regarded as "dumb documents".

12. While dismissing the appeal, the Apex Court held:

That the Tribunal had come to a certain factual conclusion about the nature of the papers seized. On the question whether the documents did or did

not contain the particulars, the tribunal observed that they did contain certain materials which were sufficient to come to a conclusion about cash

payments having been made in addition to those made by cheques and drafts. The conclusion was essentially factual. No substantial question of

law arose from its order.

13. Similarly, in the present case as already held above, the documents

recovered during the course of search from the assessed are dumb

documents and there are concurrent findings of Commissioner of Income Tax (Appeals) and the Tribunal to this effect. Since the conclusions are

essentially factual, no substantial question of law arises for consideration.

14. 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 260A of the Act, which is confined to

entertaining only such appeal against the order which involves a substantial question of law.

15. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.