(2006) 08 DEL CK 0042

In the Delhi High Court

Case No : Income Tax A. No. 1221 of 2006

Commissioner of Income Tax — APPELLANT

Vs

SMC Share Brokers Ltd. — RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:
Income Tax Act, 1961 — Section 158BC, 158BD, 260A

Citation : (2007) 210 CTR 353 : (2007) 288 ITR 345 : (2007) 159 TAXMAN 306

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dated January 27, 2006, passed by the Income Tax Appellate Tribunal, Delhi Bench "B" in I. T. A. No. 250/Del/ 2005 relevant for the block assessment period April 1,1990, to August 3, 2000.

2. A search was carried out in the premises of one Manoj Aggarwal a director of M/s. Friends Portfolio Pvt. Ltd. The search was carried out on August 3, 2000, on which date various documents and books of account, etc. were discovered.

3. On the basis of the documents discovered and the statements of Manoj Aggarwal, a block assessment was made in respect of Manoj Aggarwal and M/s Friends Portfolio Pvt. Ltd. on August 29, 2002 under the provisions of Section 158BC of the Income Tax Act. Subsequently, the block assessment proceedings were initiated against the assessed and completed on November 28, 2004, under the provisions of Section 158BD of the Act.

4. During the assessment proceedings, the assessed requested the Assessing Officer time and again to permit him to cross-examine Manoj Aggarwal on the basis of whose statement proceedings had been launched and from whose possession the documents were recovered, so that the assessed could prove its case. The request was not acceded to by the Assessing Officer and the Tribunal

has found that this was in complete violation of the principles of natural justice.

5. The Tribunal held that the Assessing Officer was functioning as a quasi judicial authority and was under an obligation to adhere to the principles of natural justice. Several requests were made by the assessed, but Manoj Aggarwal was not made available for cross-examination. On this basis, the Tribunal set aside the block assessment and that is why the Revenue is before us in an appeal u/s 260A of the Act.

6. Learned Counsel for the Revenue relied upon One-up Shares and Stock Brokers Pvt. Ltd. Vs. R.R. Singh, Commissioner of Income Tax and Others, to contend that the statement of Manoj Aggarwal had evidentiary value, as observed by the Bombay High Court. There is no doubt that the statement of Manoj Aggarwal had evidentiary value but weight could not be given to it in proceedings against the assessed without it being tested under cross-examination. In the absence of the statement being tested, it cannot be said that it should be believed completely to the prejudice of the assessed. Under the circumstances, we do not think that the judgment relied upon by learned Counsel carries him any further.

7. We are of the opinion that the Tribunal was right in its view that in the absence of Manoj Aggarwal being made available for cross-examination, despite repeated requests by the assessed, his statement could not be relied upon to his detriment.

8. No substantial question of law arises for our consideration.

9. Dismissed.