(2006) 09 DEL CK 0056

In the Delhi High Court

Case No : IT Appeal No. 109 of 2005

Commissioner of Income Tax APPELLANT

Vs

V.B. Aggarwal RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Citation : (2006) 206 CTR 87 : (2008) 296 ITR 750 : (2007) 158 TAXMAN 357

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

Bench : Division Bench

Judgement

1. The revenue is aggrieved by an order dated 31-8-2004 passed by the Income Tax Appellate Tribunal, Delhi Bench ''B'' in ITA No.

5600(Del.)/1996, relevant for the block period assessment year 1986-87 to 15-9-1995.

2. A search was carried out in the business and residential premises of the Aggarwal Group. On the basis of the material said to have been

obtained during the search, the assessing officer made an addition of Rs. 65,45,000 on account of unexplained cash credit in the books of the

assessed. The assessing officer made the additions for want of proper/complete details of confirmations of loans and advances that were taken by

the assessed.

3. The view expressed by the assessing officer was challenged by the assessed before the Tribunal, which accepted the contentions of the assessed

and that is why the present appeal has been filed before us u/s 260A of the Income Tax Act, 1961.

4. The Tribunal noted the contention on behalf of the assessed made before it to the effect that addition on account of cash credit can be treated as

undisclosed income only on the basis of evidence found as a result of search or requisition of books of account or documents and such other

material or information as are available with the assessing officer and that in this case, no such material or information was found during the search

to show that the credits appearing in the books of account were not genuine. We have been shown the definition of undisclosed income u/s

158B(b) of the Act. This reads as follows:

Definitions- In this Chapter, unless the context otherwise requires,

(a) **

(b) ''undisclosed income'' includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of

account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other

document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of

this Act or any expense, deduction or allowance claimed under this Act which is found to be false.

5. A perusal of the above definition clearly shows that undisclosed income includes any amount, which has not been or would not have been

disclosed by the assessed. Insofar as the present case is concerned, the admitted position is that the amounts were disclosed by the assessed in its

books of account. In addition, the Tribunal has noted that regular returns have also been filed by the assessed in respect of the relevant assessment

years and we are told by learned Counsel for the respondent that regular assessments have been completed.

6. It is significant to note that the Tribunal has noted, as a matter of fact, that no material has been detected as a result of the search or gathered as

a result of the enquiries conducted on the basis of the material detected during the course of the search to establish that the advances received by

the assessed represent undisclosed income.

7. Section 158BB(1) of the Act is clearly not applicable because the view of the Tribunal is that no evidence was found as a result of the search

which could suggest that the advances received by the assessed was undisclosed income, nor was any material gathered by the assessing officer

relatable to such evidence.

8. Moreover, adequate Explanation was given with regard to the parties from whom the amounts were received. The amounts were received by

cheques as advance for purchase of land. Complete addresses of the parties were given and if the assessing officer had some doubt, he could have

summoned these parties u/s 131 of the Act but he did not do so.

9. It was stated by learned Counsel for the assessed that the assessing officer had failed to appreciate that in some of the cases agreement to sell

and sale deed were also executed. It was also stated that similar issues arose in several other cases which were all decided in favor of those

assesseds and the order passed by the Tribunal in respect of those assesseds were accepted.

10. Keeping all these circumstances in mind, we are of the view that the Tribunal has taken a decision on the facts of the case. Learned Counsel

for the revenue has not shown us any perversity in the appreciation of facts by the Tribunal.

11. Consequently, we are of the opinion that no substantial question of law arises in this case for our consideration.

12. The appeal is dismissed.