

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INCOME TAX MATTER

ITA No.134 /2008

Judgment reserved on: 29th February, 2008

Judgment delivered on: 10th March, 2008

Karun Dube

L-6, Kailash Colony New Delhi

Appellant
Through: Mr. K.Sampath with Mr. Krishan Mahajan,
Advs.

Versus.

A.C.I.T.

Central Circle-9

New Delhi .

Respondent
Through: Mrs. P.L.Bansal, Adv.

HON'BLE MR. JUSTICE V.B. GUPTA,
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether the Reporters of local papers may be allowed to see the judgment Yes 2. To be referred to Reporter or not No 3. Whether the judgment should be reported in the Digest No V.B. GUPTA, J. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (for short as Act) by the Assessee challenging the impugned order dated 8th December, 2006 passed by the Income Tax Appellate Tribunal (for short as Tribunal), Delhi Bench D in IT(SS)A No.26/DEL/2004 pertaining to block assessment period from 1st April, 1990 to 10th August, 2000.

2. The brief facts of this case are that a search was conducted at the premises of the Assessee on 20th July, 2000. Thereafter, notice under Section 158BC of the Act was issued to the Assessee and the Assessee filed the return for the block period on 22nd June, 2000 declaring undisclosed income of Rs.47,93,000/-, details of which have been mentioned in the assessment order.

3. During the course of assessment proceedings, the Assessing Officer brought to the notice of the Assessee that the undisclosed income of the family members of the group concerns had wrongly been disclosed by the Assessee in the return of undisclosed income. The Assessee filed his letter dated 11th September, 2000 with revised particulars of undisclosed income to Rs.20,55,000/-

4. The Assessing Officer assessed the original undisclosed income as per return to the extent of Rs.47,93,000/-. A sum of Rs. 69 lacs was assessed on the basis of slip No.5 Annexure A-13 of the seized documents and an addition of Rs.2,000/- was made on account of interest of loan.

5. The Assessee challenged the order of the Assessing Officer by way of appeal and in the appeal the Commissioner of Income Tax (Appeals) (for short as CIT[A]) deleted the additions made in respect of family members and other group concern besides the addition of Rs.69,00,000/- was reduced to Rs.47,00,000/-.

6. Cross appeals were filed by both the parties and the appeal filed by the Assessee was partly allowed whereas, the appeal of the Revenue was dismissed.

7. Now, the Assessee has filed present appeal challenging the impugned order passed by the Revenue.

8. It has been contended by learned counsel for the Assessee that the Tribunal cannot decide which sums in a document, seized during the search, are to be treated in what manner under the Act without first determining whether the document is a dumb document or not. Furthermore, the document seized was having only names and figures but no dates, no units and there were nothing to indicate receipts or expenditures.

9. In the present case, the Assessee has made the conditional offer in his statement which has been mentioned by the Assessing Officer in his assessment order and the same is reproduced as under:- Actually, the slip#5 contains two types of entries-one from where the money had either come to me or I was supposed to receive it. The other type of entries where those where I was supposed to give money or had already given them. If you would see carefully, you will find that some entries have been ticked right. All such entries are those where money had to be given by me or had already been given away. The sources obviously was profits earned by me or money taken from others by me. The total of all such amounts which has been given away by me comes to 58 lacs. The entries which have not been ticked right, are those from where I had either taken the money or was supposed to take the money. Out of these, 10 lacs in the name of Kapil was accounted for. The total of unaccounted money received or receivable comes to 11 lacs. It would also be very clear that unticked entries are incoming receipts or receivable if you take into consideration the fact that the amount of 10 lacs in the name of Kapil had been received by me and is unticked. So, the net income of Rs.17 lacs which includes money given away or yet to be given. It does not in any way mean that I had 47 lacs with me which I had given away. In fact, I have never possessed an amount anywhere close to 47 lacs but to buy peace of mind and avoid litigation. I am ready to let this amount be treated as money given or to be given away in consequences to the profits and wholly and solely out of the profits generated from my business activities. But my surrender is only on the condition that this amount of Rs.47 lacs is treated as application of unaccounted profit as admitted by me earlier in this statement. I'm doing this solely for the reason of buying peace and avoiding litigation so that I can be a free man to carry out my business activities, which have suffered heavily because of unfounded allegation about my involvement in betting and match fixing. By now, would also have how false allegation were. I simply want to get over with this. However, I would reserve my right to contest and litigate if this surrender of 47 lacs is treated in any form other than application of my unaccounted profits from my business activities.

10. Thus, the Assessee has surrendered Rs.47,00,000/- after due consideration of the documents seized. The subsequent retraction of the Assessee cannot be accepted and there is no basis for accepting the same. The Assessee had admitted that entries are in his own writing and has also admitted this fact that some of the transactions shown in the document were real. A document has to be accepted or rejected in toto. It cannot be said that a part of the document is true whereas the other part is false.

11. The Assessee has thus declared Rs.47,00,000/- as unaccounted income and has surrendered the same and later on tried to retract the statement given by him. Therefore, the statement given by the Assessee under these facts and circumstances cannot be allowed to be withdrawn.

12. In view of concurrent findings of facts, given by the statutory authorities, that Assessee surrendered Rs.47,00,000/- after due considerations, we do not find any infirmity in the order passed by the Tribunal.

13. Under these circumstances, 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 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

14. Accordingly, the present appeal filed by the Assessee is, hereby, dismissed. .

Sd./-
V.B. GUPTA, J
Sd./-
MADAN B. LOKUR, J

MARCH 10, 2008