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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 228/2014**

COMMISSIONER OF INCOME TAX –IV ..... Appellant
Through: Mr. Raghvendra Singh, Junior Standing counsel for Mr.Kamal Sawhney, Senior Standing counsel.

versus

DPA FINVEST SERVICES LTD ..... Respondent
Through: Mr. Piyush Kaushik, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 20.07.2015

1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act) is directed against the order dated 20th September 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in IT(SS)22.No./Del/2010 for the block period from 1st April 1990 to 20th August 2000.

2. The brief facts of the case are that a search and seizure operation under Section 132 of the Act was conducted on 3rd August 2000 by the Investigation Wing of the Department in the case of Manoj Agarwal, M/s Friends Portfolio Pvt. Ltd. ('FPPL') which admittedly had given bogus accommodation book entries to various persons. FPPL had given away its

right to trade on the Stock Exchange to another company and, therefore, no genuine trading for any client was done by FPPL. In the course of the assessment proceedings of FPPL and Manoj Agarwal, it transpired that they were using the name and accounts of FPPL for the purposes of providing accommodation book entries. One of such persons who benefitted from such accommodation entry was found to be the Respondent Assessee i.e. M/s DPA Finvest Services Ltd. ('DFSL'). It was shown to have received a sum of Rs. 61,933 from FPPL as an accommodation entry. On the basis of the above material, a notice was issued to the Respondent DFSL who was asked to explain each of the credit entries in its bank account with Syndicate Bank, Green Park Extn. New Delhi.

3. In the order dated 30th March 2005, the Assessing Officer ('AO') concluded that entries in the aforementioned account totaling Rs.33,75,949 "could not be explained by the assessee company". Accordingly, they were treated as unexplained credit under Section 68 of the Act. Penalty proceedings under Section 158BFA (2) were also initiated.

4. The aforementioned order was overturned by CIT (Appeals) by the order dated 22nd February 2010 by holding that the additions made were based on

transactions "which are not related to any evidence collected during the course of search proceedings of the main person". In other words, it was held that all the additions made were "basically the credit entry found in the appellant's declared bank account".

5. By the impugned order dated 20th September 2013, the ITAT dismissed the Revenue's appeal on the ground that "addition can be made only for an amount of Rs.61,933/- which can be said to be income from undisclosed sources". It was further recorded that as regards the additions made by the AO "nothing was brought on record to show that some evidence relating to these transactions was seized during search on Shri Manoj Agarwal".

6. It is contended by learned counsel for the Appellant that the interpretation placed by the ITAT on Section 158BB (1) of the Act is too narrow and it overlooks the words "and relatable to such evidence" which follows the words "evidence found as a result of search or requisition of books of accounts or other documents...." In other words, his contention is that if there is anything that emerges during the enquiry which can be said to be 'relatable' to the material unearthed during the search, then clearly the opinion to be formed by the AO cannot be restricted to merely what is found

during the search. However, on facts, learned counsel for the Appellant was unable to dispute that in the present case the AO simply added the credit entries for which the Assessee was unable to give explanations.

7. It is pointed out by learned counsel for the Respondent that in this case the accounts were fully disclosed by the Assessee at the time of filing regular returns. According to him the entries for which explanation was sought had no connection either with Mr.Manoj Agarwal or FPPL and, therefore, could not be said to be relatable to a single accommodation entry that was unearthed during the search. Relying on the decision in ***CIT v. Blue Chip Construction Co. (P) Ltd. 213 CTR (Del) 530***, it is submitted that the unexplained entries in the books of accounts of the Assessee could be dealt with only in the regular assessment proceedings under Section 143 of the Act and not in the block assessment proceedings. He sought to draw a distinction between 'unexplained' income and 'undisclosed' income which was a *sine qua non* for Section 158BB of the Act to apply. Reliance is also placed on the decisions in ***CIT v. JMD International 179 Taxman 253(Del), CIT v. Ansal Buildwell Ltd. 304 ITR 378 (Del), CIT v. Harkaran Das Ved Pal 336 ITR 8***.

8. At the outset, it must be noticed that the ITAT has referred to the decision of the Supreme Court in ***ACIT v. Hotel Blue Moon (2010) 321 ITR 362***. The two questions that the Supreme Court considered in the said case were: (i) whether issuance of notice under Section 143(2) of the Act within the prescribed time limit was mandatory for the purposes of the assessment under Section 143 (3) of the Act?; and (ii) whether certain additions made in that case under Section 68 of the Act ought to have been deleted?. An incidental issue that was examined was whether block assessment could have been made under Section 158BC without issuing notice under Section 143(3) of the Act? In that context, the Supreme Court discussed Chapter XIV-B under which Sections158BB and 158BC fall. In para 12, the Supreme Court observed as under:

> "Chapter XIV-B provides for an assessment of the undisclosed income unearthed as a result of search without affecting the regular assessment made or to be made. Search is the sine qua non for the block assessment. The special provisions are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period. The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substitute for regular assessment.

> Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other materials or information as are available with the AO. Therefore, the income assessable in block assessment under Chapter XIV-B is the income not disclosed but found and determined as a result of search under S. 132 or requisition under S. 132A of the Act".

9. Although in the above background the Supreme Court observed that the scope and ambit of Chapter XIV-B was limited to "materials unearthed during search," clearly the Court was not saying that the assessment for the block period could not be on the basis of materials and information available with AO and "relatable to such evidence" unearthed during the search. That question, in the facts of that case, did not arise before the Supreme Court.

10. In order to undertake a proper exercise in terms of Section 158BB(1), the AO will have to come to a definite conclusion that what emerges during the enquiry following the search in the form of information or material is 'relatable to such evidence' as has been unearthed during the search. That

exercise will of course vary from case to case. There has to be an application of mind by the AO to the information gathered, and an effort has to be made to relate such information or material to the evidence unearthed during the search. This Court in ***Harkaran Das Ved Pal*** (supra) explained as under:

> "The procedure under Chapter XIV-B is not intended as a substitute to regular assessment and its scope and ambit is limited in that sense to materials unearthed during the search. As pointed out in Ravi Kant Jain (supra), the assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other materials or information as are available with the AO and relatable to such evidence. It is, therefore, clear that the undisclosed income, which is to be determined under Chapter XIV-B, has to be determined on the basis of evidence discovered during the search. It is obvious that where the computation of undisclosed income is based on material other than what was found in the course of the search, the same could not be treated as undisclosed income determined under cl. (c) of Section 158BC".

11. In coming to the above conclusion, this Court followed its earlier decision in ***CIT v. Ravi Kant Jain 250 ITR 141***.

12. In the instant case, nothing has been brought on record by AO to show that any information or material that he came across during the enquiry was

in fact ‘relatable’ to the solitary accommodation entry which was unearthed during the search. In the circumstances the conclusion of the CIT (A) that there was no justification in the AO simply adding the credit entries which according to him were not explained by the Assessee cannot be faulted.

13. In the facts of the present case, the Court does not find any substantial question of law that arises which required examination by this Court.

14. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JULY 20, 2015
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