ITA 9/2011

P R E S E N T

HON’BLE THE CHIEF JUSTICE (ACTING) MR. K. SREEDHAR RAO

THE HON’BLE MR. JUSTICE P. K. SAIKIA

(K Sreedhar Rao, CJ (Acting)

A search of the house of the resident of the respondent was conducted on 27-11-1998 by the Income Tax Officers. One diary was found described as GD No. 8 in the said diary, the name of the employee working as Accountant under the assessee and his family members and relatives were found with details of the investment of money in different shares. The amount shown in the diary was Rs. 13,73,136/-. The A.O. considered the said amount as undisclosed income of the assessee and passed assessment order. The CIT appeals set aside the order of the A.O. and held that the inclusion of the said amount to the income of the assessee is illegal. The Department filed an appeal before the appellate Tribunal. The Tribunal, in its order in paragraph 23, 24, 25 and 29 has made the following observations:

23. As regards ground No.2 - addition of Rs. 13,73,136/-, Rs. 1,25,000/-, Rs. 38,500/-, Rs. 30,000/- and Rs. 1,00,000/-

The A.O. has discussed the addition in the order on pages 3 to 5. The assessee has brought on record the copy of submission dated 12.6.2000 placed on page 45, in reply to A.O.s letter placed on pages 126 & 127 dt. 10.5.2000 & 19.6.2000, deposition recorded on 27-11-1998 on pages 131 to 134 and deposition recorded on 04-07-2000 placed on page 135 to 139 which makes clear that the seized documents GD-8 to GD-12 were found and provided to Shri Hazarimal Bajaj who is employee. The documents seized contained the details of investment in shares in the name of Hazarimal Bajaj and his family members and money/gift received by some others. The statement u/s. 132(4) recorded by the A.O. dated 27-11-1998 and 04-07-2000 during assessment and during search wherein Hazarimal Bajaj submitted that he is taxpayer and admitted that the seized documents belonged to him (question No. 9) and using the folders GD-9 to GD-12 being employee and GD-8 relates to note book of Gupta business diary and further in the submission dated 12.6.2000, the assessee confirmed the same. Since Shri Hazarimal Bajaj is taxpayer with the Revenue admitting that investment belongs to him and his family. The A.O. admitted that the investment reflected in returns of Hazarimal and his family members (A.O. page 4) and examined and opined being found investment in his and family members’ name cannot be easily brushed out unless there is documents showing that the investment belongs to assessee with corroborative evidence. The seizure of the document from the custody of Hazarimal Bajaj does not lead to addition without justification since Mr. Hazarimal Bajaj accepted that the investment belongs to him and his family members. Therefore, we are of the opinion that the addition of Rs. 13,73,136/- is not justified since no specific evidence has brought on record by the A.O. that this investment based on seized documents GD-8 to GD-12 relates to the assessee and not Mr. Hazarimal Bajaj.

24. In case of gift received by Mishrilal Bajaj and withdrawal from bank Rs. 1,25,000/-, he is assessee. Return filed on 30-07-1998 for assessment year and afterwards, deposition dated 04-07-2000, seized documents belong to him and his family members (page 137/138). The deposition cannot be ruled out unless seized documents shows that gift and loan were from undisclosed income of the assessee.

25. In case of gift/loan received by Vijay Kumar Bajaj Rs. 38,500/- seized document the A.O. discussed the addition on pages 3 to 5. The deposition dated 26-02-1999 which was before the A.O. and on 21-07-2000 was placed on record on pages 179 to 183 along with return, computation, details of source and confirmation. Not related to assessee he is family member of Hazarimal Bajaj. Mr. Hazarimal Bajaj admitted that seized documents belong to him and family members. Mr. Vijay Kumar Bajaj admitted loan given by him (question No. 6). He is taxpayer filing returns. Return for assessment year 1998-99 filed on 16-10-1998 (paper book page 184), therefore, for want of cogent evidence no addition is called for.

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29. It is a fact that the above mentioned ladies are taxpayers filed returns of income on 30-07-98 and 22-10-98 not controverted by the Ld. D.R. Their statements were recorded u/s. 132(4) placed on record. The documents seized i.e. GD-8 to GD-12 are admitted and belongs to Hazarimal Bajaj and not the assessee, therefore, such admission being evidenced has to be controverted by the Revenue on the basis of evidence fround during the search. Not doing so, the addition for the name sake cannot be justified.

The Tribunal based on the oral and documentary evidence has come to the conclusion that the addition of the amount of the income of the assessee was illegal and upheld the order of the CIT appeals with elaborate discussion with reference to the evidence.
Upon considering the order of the appellate Tribunal, we do not find that there is any perversity in appreciating the materials on record and in coming to the conclusion.
The only possible question, the Revenue could urge that the finding of the appellate Tribunal is perverse and contrary to the evidence and material on record, however, such question would not arise in the light of the above observations extracted above made by the Tribunal in coming to the conclusion while upholding the order of the CIT appeals.
In that view of the matter, the appeal stands dismissed.