

\$~9 to 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NOS. 122/2014, 123/2014 & 126/2014**

Date of decision: 11th December, 2014

COMMISSIONER OF INCOME TAX-X Appellant

Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

AMAR NATH VIRENDER KUMAR Respondent

Through Mr. Rajat Navet & Mr. Kushagra
Pandit, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

These three appeals by the Revenue, relating to Assessment Years 2001-02, 2002-03 and 2005-06, arise from the order dated 19th July, 2013, passed by the Income Tax Appellate Tribunal (Tribunal, for short).

2. On 15th December, 2004, search and seizure operations under Section 132 of the Income Tax Act, 1961 (Act, for short) were conducted in the case of Brij Mohan Gupta, Gali Hinga Beg, Tilak Bazar, Delhi. Incriminating documents, diaries and loose papers were found and seized. Brij Mohan Gupta was apparently involved in clandestine money lending business of undeclared or black money and was acting as a broker or middleman in cash loan transactions.

3. Brij Mohan Gupta, revenue claims, for record had maintained coded entries. These diaries/papers were seized and investigation revealed that they were written by Ram Avtar Singhal, accountant of Brij Mohan Gupta in the cryptic or coded form. It is stated that Amar Avtar Singhal had decoded the entries and had implicated the respondent assessee.

4. A list of individual firms, HUFs etc., who were either lenders or borrowers, was forwarded to the Assessing Officers of the persons identified. Along with the list, the Deputy Commissioner of Income Tax, Central Circle-19 had enclosed a satisfaction note recording that Ram Avtar Singhal in his statement dated 15th December, 2004, had decoded the entries in respect of the amount received/advanced by the veiled borrowers/lenders. The respondent-assessee, a partnership firm, finds mention in one such list. The said list gives the address of the respondent-assessee and the months in which the entries were made. The list indicates that the alphabets 'AV' had been decoded and would read 'M/s Amar Nath Virender Kumar, Khari Baoli, Delhi'.

5. In the first round, the Assessing Officer by the assessment order dated 30th December, 2008 made additions of Rs.1,56,25,000/-, Rs.61,25,000/- and Rs.60,00,000/- in respect of Assessment Years 2001-02, 2002-03 and 2005-06 relying upon Section 69A of the Act. The said additions were deleted in the first appeal, *inter alia*, recording that the respondent-assessee had made a specific request for furnishing of complete statements of Brij

Mohan Gupta, his son Rajeev Gupta and his accountant Ram Avtar Singhal and had sought cross-examination. The Assessing Officer had failed to provide the said statements and afford opportunity of cross-examination. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer should have conducted further enquiries after receiving information from the Deputy Commissioner of Income Tax, Central Circle-19, but had failed to proceed and collect relevant evidence or material to implicate the respondent-assessee.

6. Revenue preferred an appeal before the Tribunal. By order dated 29th October, 2010, an order of remand was passed setting out that the Assessing Officer had failed to provide adequate and fair opportunity to the assessee but directed that copy of the statements should be provided and the assessee should be granted opportunity to cross-examine. It was open to the Assessing Officer to carry out further enquiry and investigation. The said order of the Tribunal has attained finality and was not challenged by the revenue or the assessee.

7. In the remand proceedings, the Assessing Officer made additions of Rs.1,56,25,000/-, Rs.61,25,000/- and Rs.60,00,000/- for the Assessment Years 2001-02, 2002-03 and 2005-06, respectively, recording that the respondent-assessee had not disclosed the said transactions in the returns of income. Brij Mohan Gupta did not appear as he had died in July, 2011. On 21st December, 2011, Ram Avtar Singhal and Rajiv Gupta had appeared and

deposed that they had not known any party by the name of M/s Amar Nath Virender Kumar. They also failed to identify the assessee. The Assessing Officer held that Rajiv Gupta and Ram Avtar Singhal were trying to evade direct replies to protect the assessee and their statements dated 21st December, 2011 cannot be relied upon. He preferred to rely upon the seized documents and the statements made by Ram Avtar Singhal, Brij Mohan Gupta and Rajiv Gupta at the time of the search. He held that the onus was on M/s Amar Nath Virender Kumar to produce positive evidence that the entries as decoded did not relate to them and they were not involved in the aforesaid unaccounted /black money lending business. Late Brij Mohan Gupta, it was observed, had admitted his involvement as a broker in advancing unaccounted cash loan/*hundi* transactions.

8. The respondent-assessee succeeded in the first appeal with the Commissioner of Income Tax (Appeals) deleting the aforesaid additions holding that there was no material or evidence to show that the respondents were involved in money lending business or had engaged services of Brij Mohan Gupta as a broker. In absence of any cogent and reliable material, the additions were deleted.

9. The said view has been affirmed by the Tribunal in the impugned order dated 19th July, 2013.

10. In order to ascertain and verify whether the respondent-assessee had been named in any of the statements which were recorded during the

course of search or thereafter, we had adjourned the appeals.

11. In our order dated 12th September, 2014, we had recorded that the issue raised was factual as the findings recorded by the Tribunal were under challenge on the ground of perversity. The Revenue, it is apparent had relied on the statements made by late Brij Mohan Gupta and Ram Avtar Singhal, his accountant. The said statements had not been placed on record.

12. On 25th November, 2014, again at the request of the counsel for the revenue the appeals were adjourned after recording that the Senior Standing Counsel had received the statements in the morning. On 3rd December, 2014, an adjournment slip was moved and the appeals were adjourned for today.

13. Learned counsel for the revenue has produced before us statement of Ram Avtar Singhal and Rajeev Gupta recorded on 15th December, 2004. Ram Avtar Singhal, it is apparent, was shown a bunch of loose papers (Annexure A-1) and asked to decipher the entries. In response to question No. 6, Ram Avtar Singhal deposed that the word 'Amar' referred to 'Amar Nath, Naya Bazar'. The second statement relied is again of Ram Avtar Singhal recorded on 22nd March, 2005. In response to one of the questions, Ram Avtar Singhal had affirmed that he had noted down names of the companies and would provide complete addresses on the next date, i.e. on 23rd March, 2005. The details, names and addresses provided on 23rd

March, 2005 have not been placed on record or produced before us at the time of hearing. On the basis of the said statements, it is not possible to hold that the word 'Amar' refers to 'Amar Nath Virender Kumar, Khari Baoli, Delhi'. The diary with the alphabets "AV" and the statement identifying or decoding that the alphabets "AV" refer to 'M/s Amar Nath Virender Kumar' have not been produced before us. Without any implicating material, it is difficult to hold or draw the assumption or presumption, which the revenue wants us to accept.

14. Learned counsel for the Revenue has drawn our attention to the list forwarded by the Deputy Commissioner of Income Tax, Central Circle 19 along with his satisfaction note dated 10th April, 2007. The said letter mentions that most of the parties involved were located at Khari Baoli, Tilak Bazar; Naya Bans; Lal Katra; Gadodia Market; Lahori Gate; Katra Ghee, Tilak Bazar; Ansari Road; Gali Hinga Beg, Chandni Chowk, etc. A close scrutiny of the aforesaid list would indicate that both coded and decoded names were mentioned. Three codes 'AV', 'AV-Amar' and 'AV-RFM' were decoded by the Investigation Wing as 'M/s Amar Nath Virender Kumar, Khari Baoli'; 'M/s Amar Nath Virender Kumar, Amar Lal Mill, 2647, Naya Bazar, New Delhi'; and, 'M/s Amar Nath, Khari Baoli Rajdhani Floor Mills, Lahori Gate'. The code 'AV' as per the revenue, implicates the respondent-assessee. However, there is no evidence or material to show that Brij Mohan Gupta or Ram Avtar Singhal during

the search had identified and decoded the alphabets 'AV' to stand for 'M/s Amar Nath Virender Kumar, Khari Baoli'. As already noted above, Ram Avtar Singhal and Rajeev Gupta had refused to identify the respondent and had stated that they did not know the said parties. Revenue has not produced before us any statement of Ram Avtar Singhal, Rajeev Gupta or (Late) Brij Mohan Gupta implicating the respondent assessee or corroborating that the code 'AV' stands for 'M/s Amar Nath Virender Kumar'. Even the relevant diary or papers seized with the code 'AV' have not been produced. The assertion made in the letter written by the Deputy Commissioner of Income Tax, Central Circle-19, is not sufficient and a good ground to uphold the addition. The said assertion is a finding or an inference. The basis or the foundation of the said finding was the alleged diaries/statements. Failure to produce the said diaries/statements and the relevant statement decoding the entries is fatal for the case of the revenue.

15. In these circumstances, we do not think that the decision of the Tribunal is perverse and on facts can be interfered with in these appeals.

The appeals are accordingly dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 11, 2014
VKR/NA